



BENBROOK WATER AUTHORITY

Board of Directors Meeting

Tuesday, March 7, 2023

1121 Mercedes Street, Benbrook, TX 76126

3:00 p.m.

The BWA Board of Directors may discuss, consider, and take all necessary action, including possible expenditure of funds, regarding each of the agenda items below

1. Call To Order
2. Invocation
3. Citizen Comment On Any Agenda Item
4. Consent Agenda

Items listed under Consent Agenda are considered routine and are enacted under one motion. The exception to this rule is that a Board Member, Citizen or General Manager may request one or more items to be removed from the Consent Agenda for separate discussion and action.

1. Minutes from the February 21, 2023 Board of Directors Meeting
5. General Manager's Report And Update
The General Manager and staff will brief the Board on the administrative, financial, or operational matters of the BWA including without limitation activities of the General Manager and staff since the last board meeting, new or ongoing residential, commercial, or other developments in the BWA, capital projects, planning activities, issues involving the water treatment plant, water distribution system, wastewater collection system, and other infrastructure and facilities, service extensions, billing and customer services issues, interactions with other governmental entities or officials, and any other items included in the General Manager's written report, which may include without limitation the following items:
 1. Preliminary Bid Results for Basin 7 West Project
 2. Update on current administrative activities.
 3. Report on developments under contract with BWA.
 4. Report on developments that are currently proposed, but not under contract.
 5. Update on active capital projects.
 6. Update on miscellaneous projects.
6. New Business

- 6.I. Consider And Possibly Award Contract For Enterprise Resource Planning (ERP) Software To Caselle, Inc. (Utility Billing, Finance, Payroll And Human Resources)

Documents:

[ERP SOFTWARE SR.PDF](#)
[BENBROOK WATER AUTHORITY - CONTRACT PROPOSAL.PDF](#)
[BENBROOK WATER AUTHORITY TX - SAAS AGREEMENT.PDF](#)
[BENBROOK WATER AUTHORITY TX - SOFTWARE USE AGREEMENT.PDF](#)

7. Public Comment

All persons wishing to provide public comment should complete a public comment information form and submit it to the General Manager before the meeting.

Documents:

[PUBLIC COMMENT FORM.PDF](#)

8. Director / Staff Comment

Announcements from Board Members and / or Staff; there will be no discussion or formal action taken on these items.

9. Executive Session

Conduct Closed Executive Session Pursuant to Chapter 551, Government Code, for: consultation with the BWA attorney regarding pending or contemplated litigation, settlement offers, or other attorney-client matters (§551.071); deliberation regarding real property (§551.072); deliberation regarding prospective gifts (§551.073); personnel matters (§551.074); or deliberation regarding security devices (§551.076).

1. Any other item set forth in any section of this notice/agenda.

10. Re-Convene In Open Meeting

Take any Action Necessary from Executive Session

11. Adjournment

Next regular meeting scheduled for March 21, 2023

12. Work Session

Discussion of current / future agenda items

The above agenda schedule represents an estimate of the order for the indicated items and is subject to change at any time. Public hearings and public meetings of the BWA Board of Directors are available to all persons. This facility is wheelchair accessible. If you require special assistance to attend a hearing or meeting, please call (817) 249-1250 at least 24 hours in advance of the hearing or meeting to coordinate any special physical access arrangements. For sign interpretative services, please call 48 hours in advance.

Meeting Date

March 7, 2023

New Business Item #1

Subject

Enterprise Resource Planning (ERP) Software
Utility Billing, Finance, Payroll, Human Resources

Recommendation

Staff recommends the Board of Directors award the contract for ERP software and services to Caselle, Inc. and authorize the General Manager to execute the necessary contracts.

Background/Analysis

In 2019, following review of proposals from various ERP software vendors, BWA determined to renew its software licensing with its current vendor, with the expectation that a cloud-hosted version of the software would soon be available. However, over time it became apparent that the current platform would be insufficient to meet the Authority's future needs. Accordingly, and as previously discussed with the Board, staff determined that it was in the best interest of the Authority to seek alternative vendors.

On September 22, 2022, staff posted a request for proposals for an ERP system. Basic required components of the system included Utility Billing, General Ledger, Budgeting, Accounts Payable, Payroll and Human Resources. In addition, the Authority required implementation services, data conversion, and training.

On the closing date of October 21, 2022, four proposals had been received. All four proposers demonstrated their software to a staff committee which evaluated each proposal with the following criteria:


- Functional Requirements
- Implementation Approach
- Cost (Implementation & Annual Maintenance/Licensing)
- Stability Factors

Based on the established criteria, staff determined that Caselle offered the most complete value for required functions. Additionally, Caselle's proposal included an optional function of Document Management – a feature that staff has previously contemplated the development of to help with open records compliance.

Staff recommendation is for Caselle's cloud-hosted product which provides off-site safety and redundancy along with lower upfront cost.

Financial Impact

Implementation costs will be \$85,656 with half to be paid upon contract execution, with the balance due upon completion of training. Monthly software license costs will be \$4,618 (\$55,416 annually) beginning upon completion of training. Both the implementation costs and licensing costs have been accounted for in the operating budget adopted for 2023.



Caselle® Hosted Software & Services Proposal

Benbrook Water Authority, TX

February 17, 2023

From:

Wade Walker, Territory Manager
pww@caselle.com

Caselle[®] Hosted Software & Services Proposal
Benbrook Water Authority, TX
February 17, 2023

Proposal Summary

License Type	Hosted
Total Hybrid Training	\$32,138
Total Setup	28,700
Total Conversion	24,818
Total Investment	\$85,656

A deposit of 50% of the total proposal price is required with order. The remaining balance will be due upon completion of training.

Monthly Hosted Maintenance & Support will be \$4,618.

I have read and agree to all terms & conditions proposed herein. I understand if Benbrook Water Authority is unable to provide data to Caselle in the requested format, additional fees will apply.

Signature

Printed Name & Title

Date

Caselle® Hosted Software & Services Proposal
Benbrook Water Authority, TX
February 17, 2023

Proposal Detail

<i>Caselle</i> ® Application Software	License Type	Hybrid Training	Setup	Conversion	Total
General Ledger	Hosted	\$2,250	\$700	\$1,500	\$4,450
Budgeting	Hosted	Included	-	-	-
Bank Reconciliation	Hosted	Included	-	3,000	3,000
miExcel GL	Hosted	Included	1,000	-	1,000
Payroll/Direct Deposit	Hosted	3,375	1,750	918	6,043
Electronic W2/1099	Hosted	Included	-	-	-
Timekeeping	Hosted	1,100	500	-	1,600
Human Resources	Hosted	550	-	-	550
Online Pay Stubs/W2's	Hosted	-	3,000	-	3,000
miExcel PR	Hosted	Included	1,000	-	1,000
Accounts Payable	Hosted	550	500	360	1,410
AP Direct Pay	Hosted	Included	-	-	-
Purchases & Requisitions	Hosted	550	-	-	550
miExcel AP	Hosted	Included	500	-	500
Accounts Receivable	Hosted	1,100	500	40	1,640
Utility Management	Hosted	3,375	1,500	18,000	22,875
Utility Electronic Reading Interface	Hosted	Included	250	-	250
Utility Service Orders	Hosted	550	500	-	1,050
Online Mapping	Hosted	-	-	-	-
miExcel UM	Hosted	Included	1,000	-	1,000
Maintenance Orders	Hosted	550	500	-	1,050
Cash Receipting	Hosted	550	500	-	1,050
Payment Import Bundle	Hosted	Included	1,000	-	1,000
Cash Receipting Web Services	Hosted	-	-	-	-
Utility Management Web Services	Hosted	-	-	-	-
Asset Management	Hosted	550	500	500	1,550
Materials Management	Hosted	1,125	500	500	2,125
Project Accounting	Hosted	2,250	500	-	2,750
Caselle Document Management	Hosted	3,000	2,000	-	5,000
Zonal OCR	Hosted	-	-	-	-
Project Management Fee	-	-	10,500	-	10,500
GIS Interface	Hosted	-	-	-	-
Fifteen (15) Concurrent User Licenses	Hosted	-	-	-	Included
Sub Total	-	\$21,425	\$28,700	\$24,818	\$74,943
Onsite Training Cost	-	10,713	-	-	10,713
Grand Total	Hosted	\$32,138	\$28,700	\$24,818	\$85,656

Caselle® Hosted Software & Services Proposal
Benbrook Water Authority, TX
February 17, 2023

Notes:

1. Hybrid training will take place onsite and online.
2. Monthly credit card and electronic payment transaction fees are billed separately by Invoice Cloud.
3. Online Paystubs includes 42 employees paid bi-weekly and annual W2's. Software Assurance will be adjusted if the number of employees exceeds this estimate.
4. The subscription based Caselle Document Management includes: Full Text Search, Encryption, Drag and Drop, Role-Based Security, Versioning, Document Retention, Audit Trail, OCR (10,000 pages/month), five (5) Concurrent User Licenses, five (5) Advanced Workflow Licenses and the Caselle Integration.
5. History Conversion is available on a per bid basis. Additional fees may apply upon review of existing legacy data.

Caselle[®] Hosted Software & Services Proposal
Benbrook Water Authority, TX
February 17, 2023

On-site Training

Travel expenses will be invoiced when training is complete and include actual airfare, hotel, and car expenses, plus Caselle's food per diem of \$55.00. These are not included in the total proposal price.

On-site Training Requirements

In order to receive the full benefit and value of our software products, it is imperative that the on-site training be conducted in an organized, professional and uninterrupted manner. To ensure this, Caselle Inc. requires the following conditions:

- Training class size will be limited to the number of workstations available in the training area.
- Each training area will have one workstation for each student and one workstation for the instructor or data conversion specialist. Each training workstation must have access to a common network.
- Each training room must have a dedicated printer networked to all the training workstations.
- Training rooms must be set up and completely functional before the first day of training.
- Training rooms should provide an education environment and be free from interruptions or distractions for students. Equipment such as a whiteboard or easel, three-hole punch, and stapler should be available in the training room.
- Key personnel must be available before and after normal working hours to discuss data conversion issues, assist with implementation, or if a "live" run of Accounts Payable, Utility Billing or Payroll etc., is to be done.

Caselle will be in contact with the customer prior to scheduling the training to ensure the above conditions can be met. If delays result from the above conditions not being met during on-site training, additional training fees may apply.

Caselle® Hosted Software & Services Proposal
Benbrook Water Authority, TX
February 17, 2023

Implementation Services

Data conversion is an involved, sometimes complicated procedure that must be completed with a high level of accuracy and precision. To make this process run smoothly, Caselle requires your assistance in providing the required materials for preliminary data conversion, offering clarification as needed during the conversion process, and supplying updated materials for the final data conversion. ***Please read the following information carefully.***

Gathering Preliminary Data

Assemble the following information and send it to Caselle.

- Complete the **Information Worksheets** during each phase of the conversion.
- Provide **data to be converted**.
 - You may need to clarify the data, as needed, during the conversion process.
 - Caselle will not convert the prior period detail during data conversion unless optional history conversion is specified in the contract.
- Send **printed or PDF reports** to verify account balances at the time data is sent to Caselle for preliminary conversion and again for final data conversion.

Submitting Conversion Data

You will be provided a file layout for each application that will have data conversion. The file layout details the required and/or optional fields that Caselle will need to provide the conversion. The cost of conversion quoted in this proposal is based on your submission of the necessary data in the requested formats. If data cannot be supplied in this format, additional costs will be billed to get your existing data into the desired formats ready for conversion, and could delay any proposed timeline. We may also need file layouts or descriptions of tables and where all of the necessary information is located within your existing data to complete the conversion.

Data Conversion Timeline

The timeline begins when the requested data and all required preliminary information has been received by Caselle. The timeline to complete an accurate data conversion can range from 120 – 180 days. This is dependent upon the condition of the data and the client’s willingness to review the preliminary information for accuracy, including information requested in the discovery phase of the conversion.

Scheduling Training

Important! Training will only be scheduled after Caselle has completed the mock conversion and the customer has reviewed and approved the conversion.

After training is scheduled, a representative from the Implementation team will review the remaining steps to ensure a successful implementation, prior to going Live on Caselle.

Caselle® Hosted Software & Services Proposal
Benbrook Water Authority, TX
February 17, 2023

Software Setup & Data Conversion

This section contains the items, per directory, that will be setup and converted in each module. Since estimating the exact quantity may be difficult, we will adjust the calculated conversion cost if the actual number of items converted is greater than or less than 25% of the original estimate.

Data conversion requires that data be submitted in the required format. It is the responsibility of the customer to provide data to Caselle. Conversion services to retrieve or modify your data to the required formats are available at an additional cost. These services will be billed at Caselle’s current hourly rate and are not included in this proposal.

General Ledger Setup

- Set up the control table in the General Ledger and Account Masks with the appropriate segments for funds, departments, revenue sources, object codes, and other account classifications.
- Modify the existing chart of accounts to utilize the advanced reporting features available with Caselle, if needed.
- Format five standard financial statements:
 - Balance Sheet with Revenue/Expenditures compared to budget
 - Allocation Reconciliation
 - Income Statement (All Funds)
 - Balance Sheet (All Funds)
 - Fund Summary Income Statement

Note: Additional fees may be required to set up additional financial statements.

- Establish all necessary journals for interfaced subsystems to allow the subsystems to update transactions to the General Ledger.
- Create a custom Checklist to document your organization’s daily, monthly, and fiscal year-end steps; as well as budget procedures.

Data Conversion

- The current year-to-date trial balance and budget will be entered and balanced to your existing system. Caselle will provide supporting reports that document the balance sheet accounts, revenues, and expenditure balance for auditing purposes. A trial balance period will be established and all periods from that period forward will contain detail transaction information, if provided.

750 accounts are included

**Bank Reconciliation
Data Conversion**

- Bank reconciliation for the desired cash accounts with outstanding deposits and checks will be established. A bank reconciliation will be completed and balanced to cash for the appropriate beginning period.

6 bank accounts are included



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Benbrook Water Authority, TX
February 17, 2023

Payroll/Direct Deposit Setup

- Set up necessary pay codes for gross pay, deductions, taxes, and benefits.
- Set up check formats for the Employee Payroll Check and Vendor Remittance for applicable deductions.
- Create a custom Checklist to document all necessary payroll procedures for pay periods and year-end.
- Set up default reports for all necessary payroll reporting, including:
 - Transmittals
 - Standard State/Federal Reporting
- Set up header and batch information with the appropriate ACH/NACHA file information.
- Set up bank file with all necessary employee bank routing information.
- Format one direct deposit voucher and one transmittal voucher.
- Additional form set up, such as timesheets will be billed at the rate of \$100 per form. Forms that have multiple pages will be billed \$100 for each additional page included in the form.

Data Conversion

- Each employee's information will be converted. This information includes the employee name, address, Social Security number, exemptions, and worker's compensation status.
- Each employee's wage distribution for salary and benefits will be established.
- Employee pay codes for all wages, deductions, taxes, benefits, and reimbursements will be converted.
- Payroll YTD information will be entered and reviewed to ensure W-2 information is accurate at year-end.
- Payroll processing to verify data conversion is accurate will be completed.
- Payroll YTD totals, leave time, hours, and benefits will be balanced to the existing system if supporting reports are provided.
- Caselle will provide reports of the converted data for auditing purposes.
- Each employee file will be set up with the employee's bank routing account information for full ACH compatibility. A pre-notification test file will be generated and verified to ensure accuracy.

54 employees are included

Timekeeping Setup

- Establish activity codes and appropriate payroll overrides.
- Set up and define task codes, including descriptions and General Ledger override accounts, if necessary.
- Set up employee defaults for tasks, activities, and shifts.
- Set up applicable FLSA shifts.

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Benbrook Water Authority, TX
February 17, 2023

Accounts Payable Setup

- Establish vendor defaults.
- Format one check form with requested stub detail.
- Create a Checklist to document Accounts Payable procedures, including the printing of 1099's.

Data Conversion

- Each vendor's information will be converted. This information includes the vendor name, street address, mailing address, remittance addresses, city, state, zip code, and 1099 status.
 - Exception: 1099 balances can be established, if provided.

180 vendors are included

AP Direct Pay Setup

- Set up header and batch information with the appropriate ACH/NACHA file information.
- Set up vendors with necessary routing and account numbers.
- Format one direct pay voucher.

Purchases & Requisitions Setup

- Format one purchase order form.
- Create a Checklist to document Purchase Order procedures.
- Additional custom purchase order form set up will be billed at the rate of \$100 per form. Forms that have multiple pages will be billed \$100 for each additional page included in the form.

Accounts Receivable Setup

- Set up the appropriate billing categories and penalty rates.
- Format standard reports for reporting and balancing of customer accounts.
- Format one of each of the following: statements, invoices, and delinquent notices.
- Create a Checklist to document Accounts Receivable procedures.
- Additional form layouts for statements, invoices, and delinquent notices will be billed at the rate of \$100 per form. Forms that have multiple pages will be billed \$100 for each additional page included in the form.

Data Conversion

- Each customer's account information will be converted. This information includes the customer's name, street address, mailing address, bill to information, city, state, and zip code.
- Customer balances will be converted.

20 accounts are included

Caselle® Hosted Software & Services Proposal

Benbrook Water Authority, TX

February 17, 2023

Utility Management Setup

- Set up services, taxes, rate tables, and other fees for billing.
- Format one form for each of the following: utility bills, delinquent notices, and shut-off notices.
- Set up default reports for billing, meter proofing, and reviewing customer information.
- Create table lists to generate customer labels, reports for new connects, terminated customers with credit balances, and terminated customers with a zero balance.
- Create a Checklist to document daily, monthly, and billing procedures.
- Additional forms will be billed at the rate of \$100 per form. Forms that have multiple pages will be billed \$100 for each additional page included in the form.

Data Conversion

- Each customer's information will be entered and verified. This information depends on what is provided. Information will be converted as is and normally includes the customer number, name, service address, mailing address, city, state, zip code, telephone numbers, meter number, location, balances, and previous reads.
- All appropriate transactions for balancing the billing will be converted.
- Balancing totals, billing totals, receivable by service totals, if provided, will be balanced to the existing system using supporting reports.
- Caselle will provide reports of the converted data for auditing purposes.
9,000 meters or customers are included

Utility Electronic Reading Interface Setup

- Create the appropriate import/export formats and test with the interfaced meter reading equipment.

Service Orders Setup

- Set up the Service Order options (including user, department, and actions).
- Customize Service Order data entry screens.
- Format three Service Order form layouts.
- Set up the Utility Management interface.
- Additional form layouts will be billed at the rate of \$100 per form. Forms that have multiple pages will be billed \$100 for each additional page included in the form.

Maintenance Orders Setup

- Set up the Maintenance Order options (including personnel, department, and actions).
- Customize Maintenance Order data entry screens.
- Format three Maintenance Order form layouts.
- Set up organization information.
- Additional form layouts will be billed at the rate of \$100 per form. Forms that have multiple pages will be billed \$100 for each additional page included in the form.

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Benbrook Water Authority, TX
February 17, 2023

- Cash Receipting Setup**
- Set up the General Ledger accounts for bank deposits and standard receipting revenue.
 - Set up category and distribution codes.
 - Set up payment types, for example, check, cash, and credit card, and associated reports for balancing.
 - Create default reports to assist in daily operation.
 - Create a Checklist to document procedures for daily cash receipting transactions, updates, and posting of receipts.
- Online/Electronic Payments Setup**
- Set up Online and Electronic Payment Processing (credit cards, electronic funds transfer, and online bank bill pay consolidation).
 - Set up Utility Direct Pay.
 - Set up Xpress Bill Pay, Caselle's authorized electronic payment vendor, including online bill presentation, online bill history, automatic recurring payments, and payment wallets with full integration to Cash Receipting.
- Asset Management Setup**
- Establish the default depreciation frequency and method, with the asset number format.
 - Set up departments, classifications, and asset types.
 - Create a Checklist to document procedures, including the asset creation and General Ledger updates.
- Data Conversion**
- Asset number, description, department, classification, and type will be converted. The depreciation start date, life, and method of depreciation will be converted for each asset, if provided.
 - Accumulated depreciation can be converted to ensure an accurate beginning balance.
- Materials Management Setup**
- Create the inventory number mask.
 - Set up the Department, Category, and Location files.
 - Establish inventory levels, turnover, and valuation reports.
 - Create a Checklist to document daily, monthly, and inventory procedures.
- Data Conversion**
- Inventory items will be converted. This includes the inventory number, description, location, category, quantity, and unit cost for each item. Inventory valuation will be balanced if available.
- Project Accounting Setup**
- Set up organization settings and all system defaults.
 - Determine job number mask with segments and values for all projects.
 - Determine and set up General Ledger accounts for WIP, depreciation, accumulated depreciation, and clearing accounts for labor and purchases.
 - Interface all applicable Caselle applications.
 - Set up the Crew Rate, Departments, and Jobs for creation, approval, and completion procedures.

CASELLE, INC.
Software as a Service Agreement

Caselle, Inc.
1656 S East Bay Blvd
Suite 100
Provo, UT 84606

Benbrook Water Authority
1121 Mercedes St
PO Box 26929
Benbrook, TX 76126

TERMS OF SERVICE

These Terms of Service constitute an agreement (this “Agreement”) by and between Caselle, Inc., a Utah Corporation, (“Provider”) and the Benbrook Water Authority, TX, (“Recipient”).

1. Definitions.

- (a) “Account” refers to the Service plans and features selected by Recipient at the time of this Agreement and accepted by Provider, as such plans and features may change by mutual consent of the parties, as recorded by Provider.
- (b) “AUP” refers to Provider’s acceptable use policy as described in Schedule B.
- (c) “Authorized Representative” refers to an individual who is authorized under applicable law to bind and/or consent on behalf of the Provider or Recipient.
- (d) “Data Policy” refers to Provider’s standard data deletion policy as described in Schedule A of this Agreement.
- (e) “Effective Date” refers to the date of this Agreement.
- (f) “Materials” refers to written and graphical content provided by or through the Service, including, without limitation, text, photographs, illustrations, and designs, whether provided by Provider, another customer of the Service, or any other third party.
- (g) “Recipient Data” refers to data in electronic form input or collected through the Service by or from Recipient.
- (h) “Service” refers to Provider’s hosted version of the Caselle Connect software. The Service includes such features as are set forth on Provider’s website (www.caselle.com), as Provider may change such features from time to time, in its sole discretion.
- (i) “Service Failure” refers to an event during which Recipient is unable to access or use the Service for more than four (4) hours.

2. Service & Payment.

- (a) *Service.* Provider will provide the Service to Recipient pursuant to schedules A and B attached hereto (as amended).

(b) *Payment.* Upon completion of data conversion and training, Recipient will pay Provider a monthly Service fee of \$4,618.00. The Service fee will be considered due five (5) days before the start of the calendar month of Service.

3. Service Level Agreement.

In the event of any "Service Failure," as that term is defined above, Provider will issue Recipient a credit. Credit will be 10% of the Recipient's monthly Service fee. Credits issued will apply to outstanding or future payments only and are forfeited upon termination of this Agreement. Provider is not required to issue refunds or to make payments against such credits under any circumstances, including without limitation termination of this Agreement. Credits issued are the Recipient's sole remedy for the Service Failure in question. Provider shall not be liable for service failures caused by factors beyond the reasonable control of the Provider, such as, but not limited to, strikes, insurrection, war, fire, lack of energy, acts of God, mechanical or electrical breakdown, governmental acts or regulations, computer malfunction, quality of data from the customer's software or acts of third parties.

4. Materials, Software, & IP.

(a) *Materials.* Recipient recognizes and agrees that: (i) the Materials are the property of Provider or its licensors and are protected by copyright, trademark, and other intellectual property laws; and (ii) Recipient does not acquire any right, title, or interest in or to the Materials except the limited and temporary right to use them as necessary for Recipient's use of the Service.

(b) *Intellectual Property in General.* Provider retains all right, title, and interest in and to the Service, including without limitation all software used to provide the Service and all logos and trademarks reproduced through the Service, and this Agreement does not grant Recipient any intellectual property rights in or to the Service or any of its components.

5. Online Policies.

(a) *AUP.* Recipient will comply with the AUP. In the event of Recipient's material breach of the AUP, including without limitation any copyright infringement, Provider may suspend or terminate Recipient's access to the Service, in addition to such other remedies as Provider may have at law or pursuant to this Agreement. Neither this Agreement nor the AUP requires that Provider take any action against Recipient or any other customer for violating the AUP, but Provider is free to take any such action it sees fit.

(b) *Privacy Policy.* The Privacy Policy applies only to the Service and does not apply to any third party site or service linked to the Service or recommended or referred to through the Service or by Provider's employees.

6. Each Party's Warranties.

(a) *Recipient's Identity.* Recipient warrants: (i) that it has accurately identified itself through its Account and will maintain the accuracy of such identification; and (ii) that it is a corporation or other business entity authorized to do business pursuant to applicable law.

(b) *Right to Do Business.* Each party warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened

claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.

- (c) *Disclaimers.* Except for the express warranties specified in this section and the Software Use Agreement, THE SERVICE IS PROVIDED “AS IS” AND AS AVAILABLE, AND PROVIDER MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. Without limiting the generality of the foregoing, (i) PROVIDER HAS NO OBLIGATION TO INDEMNIFY OR DEFEND RECIPIENT AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS; and (ii) Provider does not warrant that the Service will perform without error or immaterial interruption.

7. Limitation of Liability.

IN NO EVENT: (a) WILL PROVIDER’S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNT PAID FOR 60 DAYS OF SERVICE; AND (b) WILL PROVIDER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES. THE LIABILITIES LIMITED BY THIS SECTION 7 APPLY: (i) TO LIABILITY FOR NEGLIGENCE; (ii) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (iii) EVEN IF PROVIDER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (iv) EVEN IF RECIPIENT’S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Section 7, Provider’s liability will be limited to the maximum extent permissible.

8. Data Management.

- (a) *Access, Use, & Legal Compulsion.* Unless it receives Recipient’s prior written consent, Provider: (i) will not access or use Recipient Data other than as necessary to facilitate the Service; and (ii) will not give any third party access to Recipient Data. Notwithstanding the foregoing, Provider may disclose Recipient Data as required by applicable law or by proper legal or governmental authority. Provider will give Recipient prompt notice of any such legal or governmental demand and reasonably cooperate with Recipient in any effort to seek a protective order or otherwise to contest such required disclosure, at Recipient’s expense.
- (b) *Recipient’s Rights.* Recipient possesses and retains all right, title, and interest in and to Recipient Data, and Provider’s use and possession thereof is solely as Recipient’s agent.
- (c) *Retention & Deletion.* Provider will retain all Recipient Data until erased pursuant to the Data Policy.
- (d) *Injunction.* Provider agrees that violation of the provisions of this Section 8 might cause Recipient irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Recipient will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

9. Term & Termination.

- (a) *Term.* This Agreement will continue for one (1) year following the Effective Date (a “Term”). Thereafter, this Agreement will renew for subsequent terms (“Terms”) of thirty (30) days, unless

either party notifies the other of its intent not to renew thirty (30) or more days before the beginning of the next Term.

- (b) *Termination for Cause.* Either party may terminate this Agreement for material breach by written notice, effective in 30 days, unless the other party first cures such breach.
- (c) *Effects of Termination.* The following provisions will survive termination of this Agreement: (i) any obligation of Recipient to pay for Service rendered before termination; (ii) Sections 4, 5(b), 6(c), and 7 of this Agreement; and (iii) any other provision of this Agreement that must survive termination to fulfill its essential purpose.

10. Miscellaneous.

- (a) *Notices.* Provider may send notices pursuant to this Agreement to Recipient's address at Benbrook Water Authority, 1121 Mercedes St, PO Box 26929, Benbrook, TX 76126, and such notices will be deemed received ten (10) days after they are sent. Recipient may send notices pursuant to this Agreement to Caselle, Inc, 1656 S East Bay Blvd, Suite 100, Provo, UT 84606, and such notices will be deemed received ten (10) days after they are sent.
- (b) *Amendment.* Provider may amend this Agreement (including the SLA and Data Policy) from time to time by posting an amended version at its website and sending Recipient written notice thereof. Such amendment will be deemed accepted and become effective 30 days after such notice (the "Proposed Amendment Date") unless Recipient first gives Provider written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of Recipient's next Term following the Proposed Amendment Date (unless Recipient first terminates this Agreement pursuant to Section 9 above). Recipient's continued use of the Service following the effective date of an amendment will confirm Recipient's consent thereto. This Agreement may not be amended in any other way except through a written agreement executed by Authorized Representatives of each party. Notwithstanding the foregoing, Provider may amend the AUP or Privacy Policy at any time by posting a new version at its website and/or sending Recipient notice thereof, and such amended version will become effective 30 business days after such notice is sent.
- (c) *Independent Contractors.* The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other and neither may bind the other in any way.
- (d) *No Waiver.* Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than (i) by an Authorized Representative and (ii) in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement.
- (e) *Force Majeure.* To the extent caused by force majeure, no delay, failure, or default will constitute a breach of this Agreement.
- (f) *Assignment & Successors.* Neither party may assign this Agreement or any of its rights or obligations hereunder without the other's express written consent, except that either party may assign this Agreement to the surviving party in a merger of that party into another entity. Except to the extent forbidden in the previous sentence, this Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the parties.

- (g) *Choice of Law & Jurisdiction.* This Agreement will be governed and construed solely by the laws of the State of Texas, without reference to such State’s principles of conflicts of law. The parties consent to the personal and exclusive jurisdiction of the state courts of Texas.
- (h) *Severability.* To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- (i) *Certain Notices.* Pursuant to 47 U.S.C. Section 230(d), Provider hereby notifies Recipient that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist in limiting access to material that is harmful to minors. Information regarding providers of such protections may be found on the Internet by searching “parental control protection” or similar terms.
- (j) *Conflicts among Attachments.* In the event of any conflict between the terms of this main body of this Agreement and those of any accompanying schedule, the terms of this main body will govern. In the event of any conflict between this Agreement and any Provider policy posted online, including without limitation the AUP and Privacy Policy, the terms of this Agreement will govern.
- (k) *Entire Agreement.* This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to the subject matter hereof. Neither party has relied upon any such prior or contemporaneous communications.

Note: The attached proposal is considered part of this Agreement.

The signatures below indicate each party’s acceptance of the Agreement. Each party has caused this Agreement to be executed by its duly Authorized Representative.

CASELLE, INC.

BENBROOK WATER AUTHORITY

By: 

By:

Name: Alan S. Hutchings

Name:

Title: President

Title:

Date: February 17, 2023

Date:

Schedule A – Data Policy

- (a) *Access, Use, & Legal Compulsion.* Unless it receives Recipient’s prior written consent, Provider: (i) will not access or use data in electronic form collected through the Services from Recipient’s customers or other third parties, or collected or accessible directly from Recipient, (collectively, “Data”) other than as necessary to facilitate the Services; and (ii) will not give any third party access to Data. Notwithstanding the foregoing, Provider may disclose Data as required by applicable law or by proper legal or governmental authority. Provider will give Recipient prompt notice of any such legal or governmental demand and reasonably cooperate with Recipient in any effort to seek a protective order or otherwise to contest such required disclosure, at Recipient’s expense.
- (b) *Recipient’s Rights.* Recipient possesses and retains all right, title, and interest in and to Project Data, and Provider’s use and possession thereof is solely as Recipient’s agent.
- (c) *Retention & Deletion.* Provider will retain any Data in its possession until Erased. Provider will Erase: (i) all copies of Data promptly after Recipient’s written request; and (ii) all copies of Data no sooner than 90 days after termination of this Agreement and no later than 120 days after such termination. Promptly after Erasure pursuant to this Subsection (c), Provider will certify such Erasure in writing to Recipient. (“Erase” and “Erasure” refer to the destruction of data so that no copy of the data remains or can be accessed or restored in any way.)
- (d) *Individuals’ Access.* Provider will not allow any of its employees to access Data, except to the extent that an employee needs access in order to facilitate the Services and executes a written agreement with Provider agreeing to comply with Provider’s obligations set forth in this Section.
- (e) *Compliance with Law & Policy.* Provider will comply with all applicable federal and state laws and regulations governing the handling of Data.
- (f) *Leaks.* Provider will promptly notify Recipient of any actual or potential exposure or misappropriation of Data (any “Leak”) that comes to Provider’s attention. Provider will cooperate with Recipient and with law enforcement authorities in investigating any such Leak, at Provider’s expense. Provider will likewise cooperate with Recipient and with law enforcement agencies in any effort to notify injured or potentially injured parties, and such cooperation will be at Provider’s expense, except to the extent that the Leak was caused by Recipient. The remedies and obligations set forth in this Subsection (f) are in addition to any others Recipient may have.

Schedule B – Acceptable Use Policy

A. Unacceptable Use

Provider requires that all customers and other users of Provider's service (the "Service") conduct themselves with respect for others. In particular, please observe the following rules in your use of the Service:

- 1) *Privacy*: Do not violate the privacy rights of any person. Do not collect or disclose any personal address, social security number, or other personally identifiable information without each holder's written permission. Do not cooperate in or facilitate identity theft.
- 2) *Intellectual Property*: Do not infringe upon the copyrights, trademark rights, trade secret rights, or other intellectual property rights of any person or entity. Do not reproduce, publish, or disseminate software, audio recordings, video recordings, photographs, articles, or other works of authorship without the written permission of the copyright holder.
- 3) *Hacking, Viruses, & Network Attacks*: Do not access any computer or communications system without authorization, including the computers used to provide the Service. Do not attempt to penetrate or disable any security system. Do not intentionally distribute a computer virus, launch a denial of service attack, or in any other way attempt to interfere with the functioning of any computer, communications system, or website. Do not attempt to access or otherwise interfere with the accounts of other users of the Service.
- 4) *Fraud*: Do not issue fraudulent offers to sell or buy products, services, or investments. Do not mislead anyone about the details or nature of a commercial transaction. Do not commit fraud in any other way.
- 5) *Violations of Law*: Do not violate any law.

B. Consequences of Violation

Violation of this Acceptable Use Policy (this "AUP") may lead to suspension or termination of the Recipient's use of the Service or legal action. In addition, the Recipient may be required to pay for the costs of investigation and remedial action related to AUP violations.

C. Reporting Unacceptable Use

Provider requests that anyone with information about a violation of this AUP report it to the following address: Caselle, Inc. 1656 S East Bay Blvd, Suite 100, Provo, Utah 84606. Please provide the date and time of the violation and any identifying information regarding the violator, including e-mail or IP (internet protocol) address if available, as well as details of the violation.

D. Revision of AUP

Provider may change this AUP at any time by posting a new version on its website (www.caselle.com) or by sending the Recipient written notice thereof. The new version will become effective on the date of such notice.

SOFTWARE USE AGREEMENT

CASELLE, INC.
1656 S. East Bay Blvd.
Suite 100
Provo, UT 84606

("Caselle")

BENBROOK WATER AUTHORITY
1121 Mercedes St
PO Box 26929
Benbrook, TX 76126

("You" or "Your")

You agree to Use the Software and Purchase the services detailed below ("Items"), and Caselle, Inc. agrees to provide them, subject to the terms and conditions on pages two and three of this Agreement.

Total Price \$85,656.00

Deposit: \$42,828.00

Balance Due \$42,828.00

Items

License Type	Hosted
Total Training	\$32,138.00
Total Setup	28,700.00
Total Conversion	24,818.00
Total Price	<u>\$85,656.00</u>

The attached Proposal is considered part of this Agreement.

The signatures below indicate each party's acceptance of this Agreement. Each party has caused this Agreement to be executed by its duly authorized representative.

CASELLE, INC.

By:

Name & Title: Alan S. Hutchings, President

Date: February 17, 2023

BENBROOK WATER AUTHORITY

By:

Name & Title:

Date:

CASELLE, INC.
SOFTWARE USE AGREEMENT

Grant of Right

Caselle, Inc. and its Licensors agrees to grant, and You agree to accept a limited, non-transferable, non-exclusive right ("Right") to use the computer programs, with the accompanying manuals, literature and other materials ("Software") as detailed under Items, subject to the terms and conditions of this Software Use Agreement and subject to termination as provided herein. The term Software shall also include all revisions, updates, enhancements and new modules or add-ons to the existing Software as detailed under Items.

Payment

The Deposit shall be paid by You upon execution of this Software Use Agreement with the Balance to be paid upon completion of Training. Payment shall be in U.S. Dollars and shall not be deemed to have been received by Caselle until Your check clears the banking process. Any costs incurred in collecting Your check, due to insufficient funds or any other reason, shall be reimbursed by you. Late payments shall be subject to a FINANCE CHARGE OF 1.5% PER MONTH, OR 18% PER ANNUM.

Taxes

Prices and fees are exclusive of all federal, state, municipal, or other government excise, duties, sales, use, occupational, or like taxes now or hereafter in force, and are therefore subject to increase in an amount equal to any tax Caselle may be required to collect or pay upon licensing or delivery of any Items, other than federal, state and local taxes based on Caselle's income. You also agree to pay all personal property taxes which accrue to you by reason of this Agreement.

Title and Confidentiality

Title and full ownership rights to the Software licensed under this Agreement, including, without limitation, all intellectual property rights therein and thereto, and any copies You make, remain with Caselle. It is agreed the Software is the proprietary, confidential, trade secret property of Caselle, whether or not any portions thereof are or may be copyrighted and You shall take all reasonable steps necessary to protect the confidential nature of the Software as You would take to protect Your own confidential and trade secret information. You further agree that You shall not make any disclosure of any or all such Software (including methods or concepts utilized therein) to anyone, except to employees, agents, or contractors working for You to whom such disclosure is necessary to the use for which rights are granted hereunder. You shall appropriately notify all employees, agents, and contractors to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by them. Upon Caselle's request, such employees, agents, and contractors shall enter into an appropriate confidentiality agreement for secrecy and nonuse of such information which by its terms shall be enforceable by injunctive relief at the request of Caselle. If Caselle makes such a request, it shall provide You with the appropriate confidentiality agreements. The obligations imposed by this section upon You, Your employees, agents, and contractors, shall survive and continue after any termination of rights under this Agreement. It shall not be a breach of this Agreement if you are required to disclose or make the Software available to a third party or to a court if the Software is subpoenaed or otherwise ordered by an administrative agency or court of competent jurisdiction to be produced or disclosed.

Rights

You may not:

- a) Rent, lease, sublicense, assign, sell, loan or otherwise transfer this Right, in whole or in part, except as expressly permitted by this Agreement.
- b) Inspect, disassemble, decompile, reverse engineer or in any way attempt to determine the internal methods of the Software.
- c) Modify the Software or merge it into any other product without the express written consent of Caselle.
- d) Reproduce, prepare derivative works based upon, transmit or distribute the Software, or any part of it, in any form or by any means except as expressly permitted in this Agreement.
- e) Transfer or assign the Software and the rights under this agreement to another party without the express written consent of Caselle.

Any attempt to do any of the above (a to e) shall void and terminate this Agreement.

Term

This Software Use Agreement is and shall be effective from the date of full execution and shall remain in force until terminated. You may terminate this Agreement at any time by notifying Caselle in writing at least 30 days prior to the date of termination Your Right terminates automatically if you materially fail to comply with any terms or conditions of this Agreement.

Warranty

Caselle warrants that it has sufficient right and title to the Software to grant You this Right. For one (1) year from the date of receipt of the Software ("Warranty Period"), Caselle also warrants the Software media to be free from defects in materials and workmanship under normal use, and Software operation will substantially conform to the specification published by Caselle. If an error or a defect in the Software or its media becomes apparent within the Warranty Period You must promptly notify Caselle, in writing, describing the defect. Upon confirming the error or defect Caselle will, at its exclusive option, repair or replace the item or refund the price paid for the defective item. Caselle does not warrant that the functions contained in the Software will meet Your requirements or that the operation of the Software will be uninterrupted or error free. The warranty does not cover Software modified by anyone other than Caselle and problems with, or caused by, computer hardware or non-Caselle software. This limited warranty is VOID if failure of the licensed Software has resulted from accident, abuse or misapplication.

Disclaimers and Limitations of Warranty and Remedies

EXCEPT AS SPECIFICALLY STATED IN THE WARRANTY SECTION OF THIS AGREEMENT, THE SOFTWARE IS LICENSED "AS IS" WITHOUT ANY OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL CASELLE BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE OR SAVINGS, BUSINESS INTERRUPTION OR LOSS OF BUSINESS INFORMATION, ARISING FROM THE USE OF OR INABILITY TO USE THE SOFTWARE OR BREACH OF ANY EXPRESSED OR IMPLIED WARRANTY, EVEN IF CASELLE OR ITS AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. CASELLE'S AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR DAMAGE WILL NOT, IN ANY EVENT, WHETHER BASED UPON CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT, WARRANTY, OR ANY OTHER BASIS, EXCEED THE LICENSE FEES PAID BY YOU FOR THE LICENSED SOFTWARE GIVING RISE TO SUCH LIABILITY.

Returns

- a) No returns will be accepted without a written request to Caselle. To receive full credit, less the cancellation fee (set forth below), such requests must be made in writing to and received by Caselle's corporate office within thirty (30) days of this agreement. No returns will be considered for credit until appropriate notice has occurred within the time limits specified and all related materials are returned to Caselle's corporate office within ten (10) days of notice.
- b) Pre-approved returns occurring after the thirty-day period has lapsed will be allowed 75% credit, if such requests are made in writing to and received by Caselle's corporate office within sixty (60) days of this agreement. Any returns attempted after the sixty-day period has lapsed will receive no credit.
- c) A minimum cancellation fee of 10% will be assessed to all pre-authorized returns.
- d) In addition, You agree that You will return all written materials received from Caselle, including program materials, instruction manuals, and any and all training materials to Caselle.

Additional Services

Support, Training and Data Conversion for the Software will be provided directly by Caselle, or its authorized support centers, and are subject to separate agreements.

General

- a) This Agreement shall be governed and construed in accordance with the laws of the State of Texas and You hereby consent to the jurisdiction of State and Federal courts in Texas. If any part of this Agreement violates applicable law, that part shall be deemed to be amended to the extent necessary to comply with the law.
- b) This Agreement constitutes the entire Agreement between Caselle and You and supersedes any prior Agreement or understanding, written or oral, relating to the subject matter of this Agreement. Except as provided herein, this Agreement may not be amended or supplemented except in writing and properly executed by both parties.
- c) If any provision of this Agreement shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement or the validity or the enforceability of this Agreement.
- d) All rights and remedies provided herein are cumulative and are in addition to all other rights and remedies available at law or equity.
- e) In the event that either party successfully takes legal action to enforce any provision of this Agreement the unsuccessful party shall pay full costs and expenses of such action, including reasonable attorney's fees.
- f) Any notice required by this Agreement shall be deemed to have been properly given if sent by registered or certified mail to the address set forth in this Agreement.
- g) The waiver of any breach or default of this Agreement shall constitute a waiver only as to such particular breach or default and shall not constitute a waiver of any other breach or default. Failure to act by either party in exercising any right, power, or remedy under this Agreement, except as specifically provided herein, shall not operate as a waiver of any such right, power or remedy, and will not affect the validity of the whole or any part of this Agreement, or prejudice such party's right to take subsequent action.
- h) Neither party shall be held liable for delays in any of its performance resulting from acts of God, war, civil disturbance, court order, labor dispute or any other cause beyond its control.
- i) The relationship of the Parties shall be solely that of independent contractors. No partnership, joint venture, employment, agency or other relationship is formed, intended or to be inferred under this Agreement. Neither party to this Agreement shall attempt to bind the other, incur liabilities on behalf of the other, act as agent of the other, or authorize any representation contrary to the foregoing.
- j) This Agreement is binding upon and shall inure to the benefit of the parties, their successors and assigns. However, this Agreement is not assignable by you. This Agreement is personal to you and neither the Agreement, nor the rights or duties hereunder, may be voluntarily or involuntarily, directly or indirectly, assigned or otherwise transferred without the prior written consent of Caselle. Any unauthorized assignment or transfer shall constitute a breach hereof and shall be voidable by Caselle.

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