

## TECHNOLOGY MAINTENANCE ADDENDUM

This Technology Maintenance Addendum (“Addendum”) is entered into as of \_\_\_\_\_, 2020, between the County of Madera ("County"), and \_\_\_\_\_ ("Contractor") County and Contractor are sometimes referred to herein individually as a (“Party”) and collectively as the (“Parties”).

### AGREEMENT

#### 1. DEFINITIONS

Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Addendum shall have the respective meanings set forth below; (b) the singular shall include the plural and vice versa.

**Agreement** shall mean the complete contract as entered into between the County and the Contractor for the Services and any related items as described therein including this Addendum and any Exhibits.

**Applicable Law** shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, consent or requirement of such Governmental Authority, as construed from time to time by any Governmental Authority.

**Computer Security Incident** shall mean an adverse event that negatively impacts the confidentiality, integrity, and availability of information that is processed, stored, and transmitted using a computer.

**Force Majeure Event** shall mean, when used in connection with the performance of a Party's obligations under this Agreement, any act or event (to the extent not caused by such Party or its agents or employees) which is unforeseeable, or being foreseeable, unavoidable and outside the control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its obligations under this Agreement. In particular, any of the following shall be considered a Force Majeure Event:

(a) war (whether or not war is declared), hostilities, revolution, rebellion, insurrection against any Governmental Authority, riot, terrorism, acts of a public enemy or other civil disturbance;

(b) acts of God, including but not limited to, storms, floods, lightning, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, landslides, volcanic eruptions, fires, winds in excess of ninety (90) miles per hour, and objects striking the earth from space (such as meteorites);

(c) acts of sabotage or destruction by a third party (other than any Contractor retained by or on behalf of the Party) of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;

(d) regional or national strikes, walkouts, lockouts or similar industrial or labor actions or disputes; and

(e) acts of any Governmental Authority that materially restrict or limit a Party's performance under this Agreement.

**Governmental Authority** shall mean any national, autonomic, state, regional, province, town, city, or municipal government, whether domestic or foreign, or other administrative, regulatory or judicial body of any of the foregoing.

**Industry Standards** shall mean those standards of care and diligence normally practiced by comparable firms offering the same or similar services to those offered in this Agreement in jurisdictions in which Services will be performed and in accordance with good security practices, Applicable Laws, and other standards established for such work. Industry Standards are not intended to be limited to optimum practice or methods to the exclusion of all others, but rather to be a spectrum of reasonable and prudent practices and methods that must take the conditions specific to any given facility into consideration.

**Person** means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association, or Governmental Authority.

**Project** means the task the County requires be completed through the work specified in the Statement of Work.

**Subcontractor** means any Person to whom Contractor subcontracts any of its obligations under this Agreement pursuant to a Subcontract, including any suppliers and any Person to whom such obligations are further subcontracted of any tier.

**Services** means the ongoing operation and maintenance done in support of the Project.

**Term** has the meaning given in Section 3.1(a).

## 2. SERVICES

2.1. Throughout the Term of this Agreement, Contractor shall provide technical support for the Project **(as defined in Contractor's Statement of Work)**.

- (a) Services shall be performed in accordance with Industry Standards and shall meet the minimum standards reasonably necessary to perform the work required by the County and as known by the Contractor including, but not limited to, performance, storage capacity, redundancies, data security, and availability. Minimum standards shall include any professional services rendered to the County to create any customizations as needed for the successful implementation of Services. Contractor shall maintain these standards for the duration of this Addendum.

- (b) In the event of a Computer Security Incident, Contractor shall perform response procedures as set out in the current version of National Institute of Standards and Technology Special Publication 800-61 to be found at the NIST's website (<https://csrc.nist.gov/publications/sp800>) and Applicable Law.
- (c) Any other County requested services not defined in this Agreement shall be billed separately.

2.2. Insurance. The Vendor's comprehensive general liability insurance with coverage at least as broad as:

- (a) A. Errors and Omissions Liability Insurance: Errors and Omissions Liability coverage not less than one million (\$1,000,000) per occurrence and two million (\$2,000,000) in the aggregate.
- (b) B. General Liability Insurance: General Liability coverage not less than one million (\$1,000,000) per occurrence and two million (\$2,000,000) in the aggregate.
- (c) C. Workers' Compensation insurance as required by the State of California.
- (d) D. Cyber Liability with limits no less than two million (\$2,000,000) per occurrence and two million (\$2,000,000) policy aggregate. General Obligations of County

Each policy of insurance above shall operate as primary insurance. The County, its Board of Supervisors, employees and agents shall be named as additional insureds under the policies. A copy of the policies shall be provided before any work is commenced under this Addendum. Policies shall not be canceled or reduced in coverage without thirty (30) days prior written notice to County.

2.3. County shall ensure that Contractor and its authorized agents, employees or Subcontractors shall have reasonable access to the appropriate County facilities in order to provide scheduled or unscheduled maintenance activities, emergency services, or to conduct other Services, in all cases, to the extent that such activities and/or services are within the scope of this Agreement and are provided in accordance with the terms of this Agreement. Except in the case of an emergency, Contractor shall give 48 hours prior written notice to the appropriate client contact, whose name and contact information shall be provided to Contractor, before any maintenance necessary to continue the terms of the Agreement is completed.

2.4. Duty to Cooperate

County shall cooperate with Contractor in taking all actions reasonably requested by Contractor to ensure that parties with whom County has agreements or relationships that are essential to System Services are available and able to perform as contemplated in this Agreement.

### 3. TERM

#### 3.1. Term

- (a) The term of this Agreement ("Term") shall commence when the Project has achieved final completion indicated in the Professional Services Addendum or, if this Addendum is not entered into in conjunction with a Project completed by the Vendor, the terms shall commence upon execution of this Addendum for a term of twenty-four (24) months with for automatic renewal for additional twenty-four (24) month terms. If either party desires to terminate the contract at the end of any given term, written notice shall be given to the other party at least sixty (60) days' before the start of a new term that the contract will terminate at the end of the new term.
- (b) The Term shall be subject to the provisions of Section 3.2(c) (Termination).
- (c) Termination of this Agreement shall be without prejudice to Contractor's right to receive a proportional amount of the Service Fees that have accrued up to the date of Termination.

#### 3.2. Termination

- (a) County may terminate this Agreement in the event of any of the following:
  - (i) Failure by Contractor to perform any of its material obligations under this Agreement, which failure is not remedied within thirty (30) calendar days of written notice of such failure from County to Contractor; provided that such failure can be remedied, or if such failure cannot reasonably be remedied within such thirty (30) calendar day period, County may terminate if 1) Contractor fails to diligently seek to remedy such failure within the (30) calendar days or 2) Contractor diligently seeks to remedy such failure within thirty (30) days but either ceases to reasonably seek a remedy for such failure or the failure continues for a period of a ninety (90) calendar days from the original written notice from County;
  - (ii) A Force Majeure Event occurs which prevents Contractor from providing a material part of Services or renders Services under this Agreement impractical or unusable for a continuous period of at least thirty (30) calendar days and County reasonably concludes such prevention is not reasonably likely to be remedied within a further period of ninety (90) calendar days. Subject to Section 6.2, County shall compensate Contractor for all System Services completed prior to the termination date; or

- (iii) The end of a Term as described in Section 3.1(a).
- (b) Contractor may terminate this Agreement in the event of any of the following:
  - (i) County fails to pay to Contractor any amounts due under this Agreement (other than any amounts which are the subject of a good faith dispute) within sixty (60) calendar days of receipt of bill and after thirty (30) calendar days of written notice that payment is untimely from Contractor to County, provided that failure to pay shall not be on account of the negligence or willful action or inaction of Contractor; or
  - (ii) Failure by County to perform any of its material obligations under this Agreement, which failure is not remedied within thirty (30) calendar days of written notice of such failure from Contractor to County; provided that such failure can be remedied, or if such failure cannot reasonably be remedied within such thirty (30) calendar day period, Contractor may terminate if 1) County fails to diligently seek to remedy such failure within the (30) calendar days or 2) County diligently seeks to remedy such failure within thirty (30) days but either ceases to reasonably seek a remedy for such failure and/or the failure continues for a period of a ninety (90) calendar days from the original written notice from Contractor; or
  - (iii) The end of a Term as described in Section 3.1(a).
- (c) A notice of termination given pursuant to the foregoing provisions of this Section ("Termination Notice") shall specify in reasonable detail the circumstances giving rise to the Termination Notice. Except to the extent otherwise provided herein, this Agreement shall terminate on the date specified in the Termination Notice, which date shall not be earlier than the date upon which the applicable Party is entitled to effect such termination as provided above.
- (d) Termination of this Agreement shall not affect any rights or obligations as between the Parties which may have accrued prior to such termination or which expressly or by implication are intended to survive termination whether resulting from the event giving rise to termination or otherwise, including, without limitation, Sections 6.4 and 6.5.

#### 4. SERVICE FEES

##### 4.1. Compensation

As compensation for provision of Services by Contractor, County shall pay Contractor an annual fee of \_\_\_\_\_ ("Service Fees"). Service Fees are due within sixty (60) calendar days of Invoice Date.

#### 4.2. Disputed Payments

In the event that County disputes any portion of an invoice submitted by Contractor, County shall pay the undisputed portion thereof when due. All disputed payments shall be resolved in accordance Section 6.4.

### 5. CONTRACTOR'S GUARANTEE

5.1. During the term of this Agreement Supplier will provide County with ongoing technical support for the Services at no less than the levels and in the manner(s) specified herein.

5.2. County acquires the right to use technical support acquired under this Agreement at any location under the direct control in County.

5.3. County shall receive at its option the general help desk technical support offered by Supplier to its other customers. Irrespective of Supplier's general technical support offerings, Supplier shall provide County at County's option with the following minimum technical support:

- (a) Supplier shall provide technical support to County for the purpose of answering questions relating to the Services, including (a) clarification of functions and features of the Services; (b) clarification of the Documentation; (c) guidance in the operation of the Services; and (d) error verification, analysis, and correction, including the failure to produce results in accordance with Services as required by the County.
- (b) Supplier shall provide a current list of contact information for County to contact to enable County to escalate its support requests for issues that cannot be resolved by a help desk technician or for circumstances where a help desk technician does not respond within the time specified given the urgency of the request as set forth in the Agreement, or if not adequately addressed in the Agreement, a Service Level Addendum shall be attached and incorporated by reference ("Exhibit A").
- (c) The Project Managers, or such persons as otherwise designated by County and Supplier, shall serve as said parties' contacts for all communications relating to technical support. Each party may change its own contact person by written notice to the other party.

5.4. The following provisions shall set forth Supplier's obligations to provide Enhancements:

- (a) Supplier shall generally enhance and improve the Services for as long as County elects to receive and pays for the Services.

- (b) Supplier shall provide to County during the Agreement term, (a) any and all Enhancements which it develops with respect to the Services; (b) any and all Enhancements required by federal or state governmental, or professional regulatory mandates related to County's use of the Services; and (c) the Documentation associated with any Enhancements.
- (c) Supplier shall provide Enhancements to County upon their general release and no later than the time when the first five percent (5%) of Supplier's customers receive those Enhancements.
- (d) Except as otherwise provided in a signed addendum to this Agreement, nothing herein shall obligate Supplier to enhance the Services in any particular respect or on any particular date. The decision as to whether and/or when, to enhance the Services will be within Supplier's discretion.

5.5. Supplier will provide County with ninety (90) calendar days advance written notice of proposed product changes as well as product road maps relating to the Services provided to County under this Agreement.

6. MISCELLANEOUS

6.1. No Partnership

This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between or among the Parties or to impose any such obligation or liability upon any Party. No Party shall have any right, power or authority to enter into any contract or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party or Parties.

6.2. Notices and Demands.

Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (a) if personally delivered; (b) three (3) days after deposit in the mail if mailed by certified or registered air mail, post prepaid, with a return receipt requested; or (c) if sent by facsimile with confirmation. Mailed notices and facsimile notices shall be addressed as follows to:

**County:**

Name:

Attention:

Address:

With a copy to:

Name:

Attention:

Address:

**Contractor:**

Name:

Attention:

Address:

Fax:

6.3. Force Majeure Event

- (a) Neither Party shall be considered to be in default of its obligations under this Agreement when and to the extent that performance of such obligations is prevented by any Force Majeure Event which arises after the date of this Agreement.
- (b) If either Party shall rely on the occurrence of a Force Majeure Event as a basis for being excused from the performance of its obligations under this Agreement, then the Party relying on the event or condition shall (i) provide prompt notice to the other Party of the occurrence of the Force Majeure Event, giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder; (ii) exercise all commercially reasonable efforts to continue to perform its obligations hereunder; (iii) expeditiously take any action within its reasonable control to correct or cure the Force Majeure Event excusing performance; (iv) exercise all commercially reasonable efforts to mitigate or limit damages to the other Party to the extent such action will not adversely affect its own interests; and (v) provide periodic notices to the other Party with respect to its actions and plans for actions in accordance with (ii), (iii) and (iv) above and promptly notify to the other Party of the cessation of the event or condition giving rise to it being excused from performance.
- (c) Contractor shall document any Force Majeure Event and its consequences so that costs which are directly attributable to such Force Majeure Event may be claimed by County from any insurance carried by County.

6.4. Dispute Resolution

- (a) Good Faith Negotiations. In the event that any question, dispute, difference or claim arises out of or in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a “Dispute”), which either Party has notified to the other, senior management personnel from both Contractor and County shall meet and diligently attempt in good faith to resolve the Dispute for a period of thirty (30) days following one Party’s written request to the other Party for such a meeting. If, however, either Party refuses or fails to so meet, or the Dispute is not resolved by negotiation, the provisions of Subsections (b) or (c) of this Section shall apply to the extent applicable to the Dispute.



- (b) Non-Binding Mediation. If the Dispute remains unresolved, a Party may require that a non-binding mediation take place with a mediator mutually chosen by County and Contractor. If County and Contractor are unable to agree on a mediator, then either may request that the American Arbitration Association (the “AAA”) to appoint a mediator. The mediator’s fee and expenses shall be paid one-half by County, and one-half by Contractor. In any such mediation, representatives of the Parties with authority to resolve the dispute shall meet for at least three hours with mediator. The obligation to mediate shall not be binding upon any Party with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute; (ii) actions to collect payments not subject to bona fide Dispute; or (iii) claims involving third parties who have not agreed to participate in the mediation of the Dispute. The provisions of this Section 6.4 shall survive any termination of this Agreement.
- (c) Attorneys’ Fees. The prevailing Party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys’ fees expended in connection with such an action from the other Party.

6.5. Indemnification.

The Parties hereto agree to defend, indemnify and hold one another harmless from and against any and all liability, loss, expense, attorneys’ fees, or claims for injury and/or damages arising from or in any way connected to the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys’ fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents or employees.

6.6. Governing Law.

The formation, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event of any Dispute that is not resolved pursuant to Section 6.4, the Parties hereto agree to submit to the jurisdiction of any court of competent jurisdiction within Madera County, California and shall comply with all requirements necessary to give such court jurisdiction.

6.7. No Waiver.

No provision of this Agreement shall be considered waived by either Party except when such waiver is made in writing. The failure of either Party to insist, on one or more occasions, upon strict performance of any of the provisions of this Agreement or to take advantage of its rights hereunder or the delay or failure in exercising totally or partially any right or remedy under this

Agreement, shall not be construed as a waiver of any such provisions or the relinquishment of any such rights or any other rights for the future, but the same shall continue and remain in full force and effect.

6.8. Validity.

The provisions contained in each section, subsection and clause of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others are invalid. If any of those provisions is void but would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid. The Parties shall, if necessary, negotiate in good faith and make any necessary amendments to ensure the enforceable terms of this Agreement reflect the true intent of the Parties as of the date of execution of this Agreement.

6.9. Time of Essence.

Time is expressly agreed to be of the essence of this Agreement and each, every and all of the terms, conditions and provisions herein.

6.10. Headings.

The headings in this Agreement are for convenience of reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

6.11. Binding Effect.

This Agreement shall be binding on the Parties hereto and on their respective permitted successors, heirs and assigns.

6.12. Counterparts; Signature Pages.

This Agreement may be executed in counterparts which, taken together, shall constitute a single instrument. Facsimile and other electronically transmitted signature pages shall be effective to bind a Party to this Agreement.

6.13. Complete Agreement.

- (a) This Agreement together with any Exhibits hereto completely and exclusively states the agreement of the Parties regarding its subject matter and its terms govern, all prior proposals, agreements, or other communications between the Parties, oral or written, regarding such subject matter. No verbal, or written agreement nor conversation with any officer or employee of either Party nor any or all prior proposals shall affect or modify any of the terms and conditions of this Agreement. This Agreement shall not be modified except by written amendment signed on behalf of the County and Contractor by their duly authorized

representatives. Any purported oral amendment to the Agreement shall have no effect.

- (b) Each Party acknowledges that it has not relied on any representation, warranty, collateral contract or other assurance made by or on behalf of any other party at any time before the signature of this Agreement. Each Party waives all rights and remedies which, but for this clause (ii), might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

**[Signature page follows]**

IN WITNESS WHEREOF, the Parties have executed this Operation and Maintenance Agreement as of the date first above written.

County:

Contractor:

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