

Attachment "B"

**SYSTEM UPGRADE AGREEMENT
BETWEEN
SANTA BARBARA COUNTY
AND
ACCELA, INC.**

DATED January 8, 2008

Attachment "B"

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	5
2. TERM	11
3. FINANCIAL MATTERS.	12
3.1 Purchase Prices	12
3.2 Charges	12
3.3 Maximum Amount.....	12
3.4 Transportation and Insurance Charges.....	12
3.5 Taxes.....	12
3.6 Contractor Expenses	12
3.7 Invoices	12
3.8 Funding.	13
3.9 Most Favored Customer.....	14
3.10 Overpayments to Contractor.....	14
3.11 Advance Payments Prohibited.....	14
3.12 Credits.....	14
3.13 No Increases.....	14
4. PROJECT MANAGEMENT.....	15
4.1 Reports and Meetings.	15
4.2 Contractor Project Manager.....	15
4.3 Contractor Staff.....	16
4.4 County Project Manager	17
4.5 Records Retention and Access Requirements.....	17
4.6 Accounting Requirements.....	17
4.7 Supplemental Contracts	18
5. SERVICES AND RESOURCES.....	18
5.1 Performance	18
5.2 Necessary Resources.....	18
5.3 Ownership	18
5.4 Use of Property	18
5.5 Damage to Property	18
5.6 Notice of Damage	19
5.7 Surrender of Property.....	19
5.8 County Property and Facility	19
6. EQUIPMENT.	19
6.1 Contractor Equipment.....	19
6.2 County Equipment	19
6.3 Equipment Compatibility.....	18
7. DELIVERABLES.....	20
7.1 General	20
7.2 Work Plan.	20
7.3 General Acceptance Process for Deliverables.....	21

Attachment "B"

7.4	Final Acceptance Tests	16
7.5	Protection	21
7.6	Delivery.....	21
7.7	Representation.....	22
7.8	Knowledge Transfer.....	22
8.	LICENSES.....	22
8.1	Grants.....	22
8.2	Term.....	23
8.3	Title.....	24
8.4	Documentation.....	24
8.5	Copies	24
8.6	Restrictions	24
8.7	Replacements	24
8.8	Third-Party Software Licenses	24
8.9	Versions	25
9.	OWNERSHIP	25
10.	IMPLEMENTATION.....	25
10.1	Implementation Phases	25
10.2	Conversion	25
10.3	Training.....	25
11.	WARRANTIES.....	25
11.1	Deliverables	25
11.2	Services.....	25
11.3	Date/Time Compliance Warranty.....	26
11.4	No Surreptitious Code.....	26
11.5	Physical Media Warranty.....	26
11.6	Safety and Health.....	27
11.7	Authorization	27
11.8	Ability to Perform	27
11.9	Disclaimers	28
12.	SUPPORT AND MAINTENANCE SERVICES.....	28
12.1	General Responsibilities	28
12.2	Inquiry Assistance.....	29
12.3	Additional Assistance.....	30
12.4	Database.....	30
12.5	Bug Reports	31
12.6	Enhancements.....	31
12.7	Exclusion.....	31
13.	DISPUTE RESOLUTION.....	32
13.1	Good Faith Efforts	32
13.2	Continued Performance	33
14.	CHANGES.....	33
14.1	Changing Government Programs.....	33
14.2	Identifying Changes	33

Attachment "B"

14.3	Notice From County	33
14.4	Issuance of Change Requests	33
14.5	Contractor Response to Change Request	33
14.6	Agreement on Change Order	34
14.7	Disagreement	34
14.8	Termination	34
14.9	Contractor Submission of Change Request	34
15.	ADDITIONAL RIGHTS AND REMEDIES	35
15.1	Withholding Payments	35
15.2	Reductions in Payments Due	35
15.3	Cover	35
15.4	Suspension for Convenience	35
15.5	Performance Standards	33
16.	INSURANCE	36
16.1	Liability and Auto Insurance	36
16.2	Extended Coverage	37
16.3	Worker's Compensation Coverage	37
16.4	Subcontractors	37
16.5	Premiums	37
16.6	Cancellation	37
16.7	Insurance Documents	38
16.8	Increased Coverage	38
16.9	Subrogation	38
16.10	Cross-Liability	38
17.	CONFIDENTIAL INFORMATION	38
17.1	Protection Obligations	38
17.2	Audit	39
17.3	Return	39
17.4	Injunctive Relief and Indemnity	39
17.5	Nondisclosure of Other County Information	40
17.6	Exceptions	40
17.7	Survival	40
18.	ADDITIONAL INDEMNIFICATIONS	40
18.1	Intellectual Property	40
18.2	General	41
19.	DAMAGES DISCLAIMERS AND LIMITATIONS	41
19.1	County's Disclaimer of Damages	41
19.2	County's Limitation of Liability	41
19.3	Contractor's Limitation of Liability	42
20.	TERMINATION	42
20.1	Termination for Material Breach	42
20.2	Termination for Rejection of Deliverables	42
20.3	Termination for Conflict of Interest	42
20.4	Termination Remedies	43

Attachment "B"

20.5	Termination for Convenience.....	43
20.6	Termination for Withdrawal of Authority.....	43
20.7	Termination for Nonallocation of Funds.....	44
20.8	Termination Procedure.....	44
21.	GENERAL CONDITIONS.....	45
21.1	Anti-Trust Violations.....	45
21.2	Assignment.....	45
21.3	Authority.....	45
21.4	Binding Effect.....	46
21.5	Claims.....	46
21.6	Compliance With Civil Rights Laws.....	46
21.7	Conflicts Between Documents; Order of Precedence.....	47
21.8	Counterparts.....	47
21.9	Covenant Against Contingent Fees.....	47
21.10	Cooperation of Parties.....	47
21.11	Debarment and Suspension.....	48
21.12	Entire Agreement; Acknowledgement of Understanding.....	48
21.13	Force Majeure.....	48
21.14	Governing Law.....	48
21.15	Headings.....	48
21.16	Independent Status of Contractor.....	48
21.17	Legal and Regulatory Compliance.....	49
21.18	Licensing Standards.....	49
21.19	Lobbying Activities.....	49
21.20	Modifications and Amendments.....	49
21.21	Nonwaiver.....	49
21.22	Notice of Delay.....	50
21.23	Notices.....	50
21.24	Publicity.....	50
21.25	Remedies.....	50
21.26	Severability.....	51
21.27	Sovereign Immunity.....	51
21.28	Subcontractors.....	51
21.29	Subpoena.....	52
21.30	Survival.....	52
21.31	UCC Applicability.....	52
21.32	Waiver.....	52

- Exhibit A - Purchase Price
- Exhibit B - Payment Schedule
- Exhibit C - Proposed Project Teams
- Exhibit D - Statement of Work
- Exhibit E - Version Release Taxonomy
- Exhibit F - Equipment and Software Configuration
- Exhibit G - Project Plan
- Exhibit H - Escrow Agreement

Attachment "B"

SYSTEM UPGRADE AGREEMENT

This System Upgrade Agreement (the "Agreement") is entered into as of the 8th day of January, 2008 (the "Execution Date"), by and between the County of Santa Barbara, California ("County"), and Accela, Inc. ("Contractor", as described further below).

RECITALS

The Planning and Development department of the County of Santa Barbara ("Department") requested the Contractor provide a proposal for upgrading the existing Accela Enterprise Land Use Permit Tracking Information System used by the Department and other County departments involved in the land use and building permit application review process.

Contractor submitted a Statement of Work in response to request, dated 19th day of July, 2007;

The Department evaluated the Statement of Work and determined the Contractor had submitted a reasonable proposal for the upgrade project;

Contractor desires to enter into an agreement with County to meet the needs of County for the Accela Enterprise upgrade and associated services; and

County and Contractor have agreed that the terms and conditions of this Agreement shall govern Contractor's furnishing to County the Accela Automation system and associated services; and

The parties agree they will perform their respective obligations as described below in this Agreement, subject to approval and funding by applicable government agencies for the term of the Agreement and the occurrence of other contingencies, if any, as described in Exhibit A.

Therefore, in consideration of the foregoing premises and the mutual promises and covenants as set forth below, the parties agree as follows:

1. Definitions. The following terms as used throughout this Agreement shall have the meanings as set forth below.

1.1 "Acceptance": A Notice from County to Contractor that a Deliverable or Service has conformed to its applicable Acceptance Criteria in accordance with the process described in Section 7.3.

1.2 "Acceptance Criteria": The Specifications against which each Deliverable shall be evaluated in accordance with Section 7.3 and Exhibit D and County's satisfaction for Services which are not subsumed in a Deliverable.

Attachment "B"

1.3 "Acceptance Tests": The tests or reviews that are performed by County to determine there are no Deficiencies in the Deliverables and that must be satisfied before Acceptance can occur as set forth in Section 7.3 and Exhibit D, including without limitation User Acceptance Tests on Functions and on the System.

1.4 "Application Software": The Proprietary Software, Custom Software, and Third-Party Software licensed or sublicensed to County from Contractor.

1.5 "Certification": County's receipt of notice and full supporting and written documentation (including without limitation test results) from Contractor that Contractor has, as applicable: completed a Deliverable in accordance with its Acceptance Criteria or pre-tested the System for compliance with the Specifications; and confirmed the Deliverable, including but not limited to the System, is ready for applicable Acceptance Tests.

1.6 "Change Order": A written form, in response to a Change Request, that is mutually agreed to in writing by County and Contractor, that modifies, deletes or adds to the Deliverables or Services, in whole or in part, and that is made in accordance with the terms of Section 14.

1.7 "Change Request": A written form used to modify, delete or add to the Deliverables or Services, in whole or in part, made in accordance with the terms of Section 14.

1.8 "Charges": The amount(s) to be paid for reasonable travel and out of pocket expenses incurred for visits to County as authorized under this Agreement, in whole or in part, as described in Exhibit A (Purchase Prices).

1.9 "Confidential Information": Various trade secrets and information of each party that either Contractor or County desires to protect against unrestricted disclosure, including without limitation; with respect to Contractor, the Contractor Technology; with respect to County, the Configuration and County non-publicly available Data; nonpublic Specifications; the Software; any nonpublic information or documentation concerning either party's business or future products or plans that are learned by the other party during the performance of this Agreement; and information that is designated as confidential by the disclosing party and, subject to Section 17.1.2, that may be exempt from disclosure to the public or other unauthorized persons under either State or federal statutes. The following are also hereby designated County Confidential Information: client and employee personal information, including but not limited to names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, and law enforcement records, and such other Confidential Information as is described in this definition.

1.10 "Configuration(s)": Set up and customization of the following objects to be delivered by the Application Software: tables, schema (i.e., the program language with processes and business logic), County calculation rules, functions, features, operations, infotypes (i.e., screens) and reports for the Application Software produced by Contractor.

1.11 "Contractor": Accela, Inc., its employees and agents.

Attachment "B"

1.12 "Contractor Project Manager": The individual chosen by Contractor and approved by County with management responsibilities for Contractor, as described in Section 4.2.

1.13 "Contractor Technology": Intellectual property owned by Contractor prior to the Effective Date (including modifications, enhancements or improvements to such intellectual property developed hereunder), including Contractor's proprietary methodologies, project management and other tools, deliverable examples, procedures, processes, techniques, data models, templates, general purpose consulting and software tools, utilities, and routines; the Proprietary Software; and Contractor's Confidential Information.

1.14 "Conversion": The Services performed by Contractor for converting historical and other Data for Processing by the Software and System as described in Exhibit D.

1.15 "Converted Data": The Data which has been successfully converted by Contractor, from the existing Accela Enterprise system, for Processing by the System.

1.16 "County Project Director": The person designated by County to be responsible for financial and contractual matters regarding the Agreement, including but not limited to, the person to whom County signature authority has been delegated in writing. The terms includes, except as otherwise provided herein, an authorized representative of the Project Director acting within the limits of his/her authority.

1.17 "County Project Manager": The person designated by County to be responsible for day-to-day management of County resources for the Project and monitoring the status of Contractor's performance under the Agreement.

1.18 "Critical Event(s)": The events and Deliverables listed as such in Exhibit B.

1.19 "Custom Software": The modifications and changes to the Application Software and other software, including without limitation Interfaces, designed, developed or produced by Contractor under the Agreement.

1.20 "Data": County's records, files, forms, data and other documents, including but not limited to Converted Data.

1.21 "Date Warranty": The warranty provided in Section 11.3.

1.22 "Days": Calendar days, unless otherwise indicated.

1.23 "Deficiency": A failure of a Deliverable or an omission, defect or deficiency in a Deliverable, which causes it not to conform to its Specifications.

1.24 "Deliverables": Contractor's products which result from the Services and which are prepared for County (either independently or in concert with County or third parties) during the course of Contractor's performance under this Agreement, including

Attachment "B"

without limitation deliverables which are described in Exhibit A, in Change Orders, and Reports, as well as all designs, structures, and models developed in the course of rendering the Services and incorporated into such products.

1.25 "Delivery Date(s)": The dates described in the Work Plan for the delivery of the Deliverables and Services to County.

1.26 "Detailed System Design Deliverable": The Deliverable containing the detailed design for the System. The Deliverable will include but not be limited to the user interface designs, detailed design Specifications for each Software module inclusive of purpose, logical flow, inputs, outputs, Interfaces and Function test conditions, the physical database design based on detailed design Specifications, Software module designs and associated planned test conditions, and the design for the System to meet Performance Standards.

1.27 "Dispute Resolution": The process for resolving disputes as described in Section 13.

1.28 "Documentation": All operations, technical and User manuals used in conjunction with the System, in whole and in part, including without limitation manuals provided by licensors of the Application Software.

1.29 "Effective Date": The date of written approval of the Agreement by the County as evidenced by the Board of Supervisor's approval of the Agreement.

1.30 "Enhancements": All updates, upgrades, additions, and changes to, and future releases for the Application Software in whole or in part, including without limitation: (1) updated versions of the Application Software to operate on upgraded versions of firmware or upgraded versions of Equipment; and (2) updated versions of Application Software that encompass improvements, extensions, Maintenance updates, error corrections, or other changes that are logical improvements or extensions of the Application Software supplied to County.

1.31 "Equipment": The computer hardware on which the Software shall operate following its delivery, all operating system software for use with the Equipment, and telecommunications facilities and services as listed in Exhibit F.

1.32 "Execution Date": The date of execution of the Agreement by County and Contractor representatives, as noted in the preamble to the Agreement.

1.33 "Final Acceptance": Acceptance of the System following successful completion of the Final Acceptance Tests.

1.34 "Function(s)": A discrete capability or function of the Software as described in Exhibit D.

Attachment "B"

1.35 "Go-Live": For particular Deliverables or Services, the event that occurs after Acceptance of such Deliverables or Services; for the System as a whole, the event that occurs after Final Acceptance.

1.36 "Holdback": The payment amounts held back by County from each Deliverable Purchase Price, as documented in Exhibit B.

1.37 "Implementation": The process for making the System fully Operational in County for Processing the Data in County's normal business operations. Implementation shall be completed when Contractor has completed the Implementation Services according to the Work Plan and Statement of Work.

1.38 "Interfaces": Custom Software that is developed by Contractor for transmitting Data between the System and other systems.

1.39 "Key Staff": Contractor's key personnel.

1.40 "Maintenance": Services which will be performed by Contractor pursuant to Section 12 of this Agreement and existing and future Support and Maintenance Agreements.

1.41 "Material Software Error": A Software error where the System or application (component) is non-functional or seriously affected and there is no reasonable workaround available.

1.42 "Maximum Amount": The maximum amount payable by County to Contractor under this Agreement as described in Exhibit A.

1.43 "Migrated Data": The Data which has been successfully migrated by Contractor, from the existing Accela Enterprise system, for Processing by the System.

1.44 "Notice": A written document given by a party to the other in accordance with Section 22.23.

1.45 "Object Code": The binary code version of a Software program loaded into a computer's memory to enable it to perform a program function.

1.46 "Operational": The condition when the System is totally functional in accordance with its Specifications and usable for its purposes in the daily operations of County, and all of the Data has been loaded into the System and is available for use by County.

1.47 "Operations": Services which will be performed by Contractor following User Acceptance.

1.48 "Processing": The performance by the Software residing on the Equipment of logical operations and calculations on the Data.

Attachment "B"

1.49 "Project": The planned undertakings regarding the activities during the Agreement.

1.50 "Property": All County Equipment and other County real and personal property.

1.51 "Proprietary Software": All computer programs which were developed and owned by Contractor or Subcontractors prior to the Effective Date or which are developed during the term by Contractor Staff in performing work that is for the County, and any modifications thereof and derivative works based therein, and the documentation used to describe, maintain and use such Proprietary Software.

1.52 "Purchase Price(s)": The price(s) for the purchase of each Deliverable, in whole or in part, as described in Exhibit A.

1.53 "Report(s)": Documents provided by Contractor to County regarding Project activities, events and Services provided.

1.54 "Schedule": The dates described in the Work Plan for deadlines for performance of Services and other Project events and activities.

1.55 "Self-Help Code": Any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. Self-Help Code does not include software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g., remote access via modem) solely for purposes of Maintenance or technical support.

1.56 "Services": The tasks and services to be performed by Contractor on the Project, as described in the Agreement, including without limitation Project management, testing, production and delivery of the Deliverables, Conversion, Implementation, Training, Warranty Services, Operations, Support, and Maintenance.

1.57 "Site(s)": The location(s) for the County or Contractor Equipment and Software, as agreed to by County.

1.58 "Software": The Application Software, the Configuration, and all Enhancements thereto all in Source Code and Object Code formats. Enhancements provided by Contractor prior to completion of the Project and during Operations, Support, and Maintenance shall be included as part of the Software.

1.59 "Source Code": The series of instructions and statements written by a computer programmer that are converted into computer language by compilers, assemblers or interpreters to direct the computer to perform its functions.

1.60 "Specifications": The technical and other written specifications that define the requirements: as described in subsequent Deliverables which have received

Attachment "B"

Acceptance, the Documentation; and as listed on Exhibit D. Such Specifications shall include and be in compliance with all applicable County, State and federal policies, laws, regulations, and codes. The Specifications are, by this reference, made a part of this Agreement, as though completely set forth herein.

1.61 "Staff": Contractor's employees, Subcontractors and agents who shall provide the Services on behalf of Contractor.

1.62 "State": The State of California.

1.63 "Subcontractor": A person, partnership, or company, not in the employment of or owned by Contractor, which is performing Services under this Agreement under a separate Agreement with or on behalf of Contractor.

1.64 "Support": The technical and customer support Services which are described in Section 12 of this Agreement and Support and Maintenance Agreements.

1.65 "System": The complete collection of all Software, integrated and functioning together with the Data in accordance with the applicable Specifications and on the Equipment. The System, in whole and in part, is considered a good under applicable provisions of the Uniform Commercial Code as promulgated in the State of California, for purposes of this Agreement.

1.66 "Third-Party Software": Software which is developed by third parties (not including Subcontractors) and generally distributed for commercial use, and not specifically designed or developed for County, including without limitation operating system software, tools, utilities, and commercial-off-the-shelf software.

1.67 "Training": The training Services to be provided by Contractor to County, as described in Exhibit D and any Training Deliverable.

1.68 "Unauthorized Code": Any virus, Trojan horse, worm or other software routines or equipment components designed to permit unauthorized access to disable, erase, or otherwise harm Software, Equipment, or Data or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

1.69 "User(s)": Parties who will have use of and access to the System.

1.70 "User Acceptance Tests": Preliminary and Final Acceptance Tests of the entire System.

1.71 "Work Plan": The overall plan of activities for the Project, and the delineation of tasks, activities and events to be performed and Deliverables to be produced with regard to the Project, as submitted in accordance with Section 7.2 of this Agreement. The Work Plan shall be incorporated herein as part of the Deliverables, and each revised Work Plan shall be incorporated herein upon its Acceptance by County.

Attachment "B"

2. **Term.** The term shall begin on the Effective Date and shall continue for so long as County observes the terms and conditions of the Software licenses granted hereunder or until terminated by either party in accordance with the termination provisions of this Agreement.

3. **Financial Matters.**

3.1 **Purchase Prices.** Except as otherwise provided herein, and subject to County's receipt of a correct invoice, County shall pay Contractor the fixed Purchase Price for each Deliverable as described in Exhibit A.

3.2 **Charges.** Except as otherwise provided herein and upon County's receipt of a correct invoice and supporting receipts, County shall pay the reasonable, undisputed Charges for the Services which are not included in the Purchase Prices and which are described in Exhibit A within 30 days of receipt of such an invoice for Services provided in the previous month.

3.3 **Maximum Amount.** The Maximum Amount payable under the terms of this Agreement shall be as set forth in Exhibit A.

3.4 **Transportation and Insurance Charges.** The costs associated with transportation, delivery and insurance for each Deliverable, if any, shall be paid for by Contractor.

3.5 **Taxes.** County shall pay Contractor for any sales or use taxes imposed on the Deliverables if County receives an invoice from Contractor for such taxes within one year of the due date. Contractor must pay all other applicable taxes including, but not limited to, taxes based on Contractor's income or revenue or personal property taxes levied or assessed on Contractor's personal property to which County does not hold title.

3.6 **Contractor Expenses.** County shall pay Contractor's reasonable out-of-pocket expenses which are pre-approved in writing and which are incurred in connection with providing the Services, and such expenses shall be subject to the Maximum Amount. However, Contractor shall be responsible for payment of all expenses related to salaries, benefits, employment taxes, insurance, travel and per diem for its Staff.

3.7 **Invoices.** Contractor shall submit correct invoices to the County Project Manager during the Project and the County Project Director during Maintenance for all Charges, Purchase Prices and other amounts to be paid by County hereunder. All invoices submitted must meet with the approval of the County Project Manager during the Project and the County Project Director during Operations, Support and Maintenance or their designees prior to payment. Contractor shall only submit invoices for Services or Deliverables as permitted by this Section 3.7 of the Agreement. Incorrect or incomplete invoices will be returned by County to Contractor for correction and reissue. The Agreement and purchase order number must appear on all invoices, bills of lading, packages, and correspondence relating to this Agreement. Invoices must reference this Agreement and provide detailed information and in a format as requested by County, including without limitation:

Attachment "B"

- 3.7.1 Contractor name, address, telephone number and federal tax identification number;
- 3.7.2 An itemization of each Deliverable;
- 3.7.3 The Deliverable for which payment is sought, and the Acceptance date triggering payment;
- 3.7.4 Applicable Purchase Prices and Charges;
- 3.7.5 Date of delivery and/or date of installation, as applicable;
- 3.7.6 Any other Project costs with a detailed, itemization of such costs, if applicable;
- 3.7.7 Sales or use taxes, if applicable;
- 3.7.8 Credits, if any; and
- 3.7.9 Total amount due.

3.8 Funding.

3.8.1 The parties acknowledge and agree that this Agreement is dependent upon the availability of County, State, and/or federal funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the County, State and/or federal governments for the Agreement, or is not allocated or allotted to County by the County, State and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of County to make payments after the effective date of such nonallocation or nonfunding, as provided in the notice, will cease and terminate.

3.8.2 If funding, to make payments in accordance with the provisions of this Agreement, is delayed or is reduced from the County, State, and/or federal governments for the Agreement, or is not allocated or allotted in full to County by the County, State, and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of County to make payments will be delayed or be reduced accordingly or County shall have the right to terminate the Agreement as provided in Section 20.5. If such funding is reduced, County in its sole discretion shall determine which aspects of the Agreement shall proceed and which Services shall be performed, with Contractor's Charges for such Services and Purchase Prices for associated Deliverables determined in accordance with those in the Statement Of Work. In these situations, County will pay Contractor for Services and Deliverables and certain of its costs in accordance with the terms of Section 20.5.3 and Section 20.7. Any obligation to pay by County will not extend beyond the end of County's then-current funding period, except as otherwise provided in Section 20.5 and Section 20.7.

Attachment "B"

3.8.3 Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, County in the event that the necessary funding to pay under the terms of this Agreement is not available, not allocated, not allotted, delayed or reduced.

3.9 Most Favored Customer. Contractor agrees all the prices, terms, rates, warranties, and benefits granted by Contractor are comparable to or better than the terms, prices, warranties and benefits, being offered by Contractor to any present customer meeting similar qualifications or requirements as County as of the Effective Date. Except as otherwise herein provided, if Contractor shall, during a period of six(6) months following the Effective Date of this Agreement, enter into arrangements with any other customer providing greater benefits or more favorable terms, Contractor shall be obligated to provide the same to County.

3.10 Overpayments to Contractor. Contractor shall promptly pay to County the amount of any erroneous payment or overpayment which remains after County and Contractor agree that there are no other outstanding amounts owed to Contractor by County, provided that a) County provides to Contractor a Notice of an erroneous payment or overpayment to which Contractor is not entitled, b) Contractor is able to verify that an erroneous payment or overpayment has occurred. If Contractor fails to make a timely refund within thirty (30) calendar days after occurrence of the foregoing conditions, County may charge Contractor one percent (1%) per month on the amount due until paid in full.

3.11 Advance Payments Prohibited. No advance payment shall be made for goods or Services furnished by Contractor pursuant to this Agreement.

3.12 Credits. Any credits due County under this Agreement may be applied against Contractor's invoices with appropriate information attached, upon giving of Notice required herein, if any, by County to Contractor.

3.13 No Increases. Contractor shall not increase the Maximum Amount due from County under this Agreement for all Services and Deliverables, Purchase Prices, or other Charges during the term of this Agreement as described in Exhibit A except pursuant to a change order negotiated by the parties as provided in this Agreement.

4. Project Management.

4.1 Reports and Meetings.

4.1.1 Contractor shall produce the Reports and the parties shall participate in the meetings described below in person, except that such meetings may be conducted by telephone conference call, videoconference, and/or web conference. All Reports shall be produced in formats approved by County and delivered in accordance with the Schedule and the terms of this Agreement.

4.1.2 The Contractor Project Manager and other Key Staff shall attend weekly status meetings with the County Project Manager and other members of County's Project team during the Project. These weekly status meetings shall follow a preset agenda jointly prepared by the Contractor Project Manager and County Project Manager, but will also allow both Contractor and County to discuss other issues that may concern either party. Every other

Attachment "B"

week, written status reports shall be provided. The format and level of detail for the status Reports will be jointly established by the project managers for the parties.

4.1.3 The Contractor Project Manager shall attend, at a minimum, bi-weekly change control and work plan review meetings of County for the Project.

4.1.4 As reasonably requested by County, the Contractor Project Manager shall assist the County Project Manager in preparing and shall prepare special Reports and presentations related to the Project management. The Contractor Project Manager shall also provide or produce such Reports or information as are reasonably requested by the County Project Manager regarding the Project.

4.2 Contractor Project Manager.

4.2.1 Contractor shall assign to the Project a Contractor Project Manager of a management level sufficient to assure timely responses from all Contractor personnel and whose resume and qualifications will be reviewed and approved by County prior to his or her appointment as Contractor Project Manager. The approval process may include, at County's discretion, an interview with the proposed Contractor Project Manager. County will not unreasonably delay or deny approval of the Contractor Project Manager. The Contractor Project Manager shall be responsible for acting as a liaison with the County Project Manager.

4.2.2 Contractor agrees and represents that the Contractor Project Manager shall be fully qualified to perform the tasks required of that position under this Agreement. The Contractor Project Manager shall function as Contractor's authorized representative for all management and administrative matters not inconsistent with the provisions contained herein. The Contractor Project Manager shall be able to make binding decisions pursuant to this Agreement for Contractor. The Contractor Project Manager or other substitute Project management personnel for Contractor shall be at the Site as reasonably requested by County until Final Acceptance of the System.

4.2.3 The Contractor Project Manager shall not be changed from the person proposed in Exhibit C, except as provided in Section 4.3.2. If the Contractor Project Manager is removed or replaced, Contractor will promptly provide Notice to County, submit a resume, and obtain approval of the replacement Contractor Project Manager from County, prior to his or her beginning work on the Project.

4.2.4 Any written commitment by the Contractor Project Manager and persons designated by him or her in writing for this purpose, within the scope of this Agreement, shall be binding upon Contractor.

4.3 Contractor Staff.

4.3.1 Contractor shall have provided to County an organization chart of Contractor's Staff, including names of Key Staff for the Project and positions during Operations, Support, and Maintenance. Contractor shall also provide to County job descriptions for Key Staff positions.

Attachment "B"

4.3.2 Except in the case of a legally required leave of absence, sickness, death, termination of employment or unpaid leave of absence, Key Staff shall not be changed during the Project from the people who were described in Section 4.3.1 and until Final Acceptance of the System without the prior written approval of County, which approval will not be unreasonably denied or delayed. During the term of the Agreement, County reserves the right to approve or disapprove Contractor's and any Subcontractor's Key Staff assigned to this Agreement, to approve or disapprove any proposed changes in Key Staff, or to require the removal or reassignment of any Contractor or Subcontractor Staff found unacceptable by County, which approval will not be unreasonably denied or delayed. Contractor shall provide County with a resume of any member of its Key Staff or a Subcontractor's Key Staff assigned to or proposed to be assigned to any aspect of the performance of this Agreement prior to commencing any Services.

4.3.3 All Staff proposed by Contractor as replacements for other Staff shall have comparable or greater skills for performing the activities as performed by the Staff being replaced.

4.3.4 Contractor assumes sole and full responsibility for its acts and the acts of its personnel. Contractor understands and agrees that County does not assume liability for the actions of Contractor's Subcontractors or agents. Contractor agrees that it has no right to indemnification or contribution from County for any judgments rendered against Contractor, its Subcontractors or agents.

4.3.5 Contractor agrees that any claim on behalf of any person arising out of employment or alleged employment by Contractor (including, but not limited to, claims of discrimination against Contractor, its officers, or its agents) are the sole responsibility of Contractor and are not the responsibility of County. Contractor will indemnify and hold County harmless from any and all such claims asserted against County. Any person who alleges a claim arising out of employment or alleged employment by Contractor will not be entitled to any compensation, rights, or benefits from County (including, but not limited to, tenure rights, medical and hospital care, sick and annual/vacation leave, severance pay, or retirement benefits).

4.4 County Project Manager. The Contractor Project Manager's primary point of contact in matters of Project management shall be the County Project Manager. The County Project Manager or his or her designee or successor will manage this Agreement on behalf of County and will be the principal point of contact for the Contractor concerning Contractor's performance under this Agreement.

4.5 Records Retention and Access Requirements.

4.5.1 Contractor shall agree to the conditions of all applicable County, State and federal regulations, which are incorporated herein by this reference, regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, and other records of this Agreement. In addition, Contractor shall agree to the following terms regarding retention of records and access for County, State and federal government officials.

Attachment "B"

4.5.2 Contractor and its Subcontractors shall maintain books, records, documents and other evidence which sufficiently and properly reflects the accuracy of amounts billed to County during the performance of this Agreement and shall retain all such records for six years after the expiration or termination of this Agreement. Records involving matters in litigation related to this Agreement shall be kept for one year following the termination of litigation, including all appeals if the litigation has not terminated within six years from the date of expiration or termination of this Agreement.

4.5.3 All such records shall be subject at reasonable times and upon prior Notice to examination, inspection, copying, or audit by personnel so authorized by the County Project Director and/or County, State and federal officials so authorized by law, rule, regulation or contract, when applicable. Access to these items will be provided within Santa Barbara County. Contractor shall be responsible for any audit exceptions or disallowed costs incurred by Contractor or any of its Subcontractors.

4.5.4 The records retention and review requirements of this section shall be included by Contractor in any of its subcontracts with Subcontractors. County's personnel shall be accompanied by Contractor personnel at all times during any examination, inspection, review or audit.

4.5.5 Contractor shall provide right of access to its facilities to County, or any of County's officers or to any other authorized agent or official of the State of California or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance and/or quality assurance under this Agreement.

4.6 Accounting Requirements. Contractor shall establish and maintain an accounting system with procedures and practices in accordance with generally accepted accounting principles. The accounting system shall maintain records pertaining to the Services and all other costs and expenditures made under this Agreement, and the costs properly applicable to the Agreement shall be readily ascertainable therefrom.

4.7 Supplemental Contracts. County may undertake or award supplemental contracts for work related to this Agreement, or any portion thereof. Contractor shall cooperate with such other contractors and County in all such cases. Contractor shall ensure that all Subcontractors shall abide by this provision. It is understood and agreed by the parties hereto that Contractor shall not be responsible for the acts or failures to act of any such other contractors or for any delays which may be caused by any such other contractors, except that Contractor shall be responsible for delays of, or acts or failures to act of, such other contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of Contractor.

5. Services and Resources.

5.1 Performance. Contractor shall begin to perform the Services on the Effective Date. Contractor shall perform the Services as described in this Agreement and in accordance with the Work Plan.

5.2 Necessary Resources. Contractor shall provide the personnel and all other materials and resources necessary to perform its obligations hereunder.

Attachment "B"

5.3 Ownership. It is not intended that Contractor shall purchase any Property on County's behalf during the term of this Agreement. Contractor acknowledges that title to all Property furnished by County shall remain in County.

5.4 Use of Property. Any Property furnished to Contractor shall, unless otherwise provided herein, or approved in writing by the County Project Manager, be used only for the performance of its obligations under and subject to the terms of this Agreement.

5.5 Damage to Property. Contractor shall protect and be responsible for any loss, destruction, or damage to Property which results from or is caused by Contractor's willful misconduct or negligent acts or omissions. Contractor shall ensure that the Property is returned to County in like condition to that in which it was furnished to Contractor, reasonable wear and tear excepted.

5.6 Notice of Damage. Upon the loss of, destruction of, or damage to any of the Property, Contractor shall notify the County Project Manager thereof and shall take all reasonable steps to protect that Property from further damage.

5.7 Surrender of Property. Contractor shall surrender to County all Property upon the earliest of completion, termination, or cancellation of this Agreement.

5.8 County Property and Facility. County will provide Contractor access to and use of the County Equipment for development, testing and Implementation of the System and other Property as described in Exhibit A. Contractor's use of the County Equipment shall be subject to County's security, administrative and other requirements, and County's Acceptable Use Policy.

6. Equipment.

6.1 Contractor Equipment. Contractor shall not provide any Equipment for this Project.

6.2 County Equipment. County shall provide Equipment at County's Sites as described in Exhibit F. Contractor shall install Software on County's Equipment as indicated in the Work Plan.

6.3 Equipment Compatibility

6.3.1 Contractor's Proprietary Software will function in accordance with the Specifications and Documentation for the System on the Equipment specified in Exhibit F of this Agreement. Contractor shall not be responsible for the performance of Contractor's Propriety Software in combination with other product elements or components not supplied by Contractor except to the extent that Contractor has provided the interface between such equipment and such third-party products, elements or components pursuant to this Agreement.

Attachment "B"

6.3.2 For any Equipment County wishes to use that is not specified in Exhibit E, Contractor shall provide minimum criteria for the Proprietary Software to run and will review and will be available to discuss that criteria with County's Equipment suppliers or consultants.

7. Deliverables.

7.1 General.

7.1.1 Contractor shall provide County with the Detailed System Design Deliverable and the other Deliverables according to the Work Plan and as described in the Statement of Work and other parts of this Agreement. Contractor shall utilize the Specifications, the Work Plan, the Statement of Work, the Deliverables for which County has previously granted Acceptance, Contractor's professional knowledge, and this Agreement as the basis of subsequent Deliverables. Contractor shall retain backup copies in writing and on electronic media of all Deliverables until Go-Live and shall provide County on its request with a copy thereof until that time.

7.1.2 To the extent indicated in the Statement of Work and Work Plan, Deliverables shall be subject to County's Acceptance, including without limitation Deliverables provided pursuant to Change Orders. County's review of Deliverables shall be in accordance with the time frames therefore set forth in the Work Plan.

7.2 Work Plan.

7.2.1 The Work Plan is attached hereto as part of Exhibit D.

7.2.2 Contractor shall provide updates to the Work Plan regularly (no less than monthly) and as otherwise necessary throughout the Project to accurately reflect the status of activities, tasks, events, Services, and projected Schedule for such activities, tasks, events and Services. The Work Plan shall provide detailed information, in a Microsoft Project (Version 2000 or later) document, including but not limited to tasks, Deliverables, Schedule, task dependencies, identification of resource requirements, and Payment Schedule. The Work Plan shall be inclusive of the mutual expectations and of the work to be performed by County and Contractor in order to complete the Project successfully. Any such update changes must be agreed upon by County prior to their final incorporation into the Work Plan. However, County's agreement on a change to the official Work Plan shall not relieve Contractor of liability for damages arising from such failures to perform its obligations as required herein unless County otherwise specifically agrees in writing to waive such damages. Contractor shall maintain updated copies of its detailed work plans in a common server drive accessible by County.

7.2.3 The Schedule shall not change as a result of time required by Contractor to correct Deficiencies, unless otherwise agreed beforehand in writing by County. Approval for schedule adjustments proposed by Contractor hereunder, other than those related to correcting Deficiencies, will not be unreasonably denied or delayed by County. However, the Schedule may, in County's discretion, be extended on a day-to-day basis to the extent that County's review of a Deliverable and review of corrections of Deficiencies in accordance with

Attachment "B"

the Acceptance process and Acceptance Criteria is longer than described in the Schedule. County recognizes that delays during the Implementation period may have adverse collateral effects on Contractor's overall work schedule. Although Contractor will use its best efforts to immediately resume work following such a delay, the Schedule may be delayed by more than the number of days delayed by County.

7.3 General Acceptance Process for Deliverables. As provided in the Statement of Work and Work Plan, Contractor will notify County upon completion of those Implementation services subject to testing. For a period not to exceed thirty (30) Days in duration ("Test Period"), County shall evaluate the operation of the implemented Contractor Software Deliverables in a test environment or using test data. If County reasonably determines that its Operational use of the Deliverables is substantially impaired by one or more Material Software Errors in the Deliverables, County will notify Contractor in writing prior to the completion of the Test Period ("Adverse Notification"), specifying in sufficient detail the nature of the error(s). Upon receipt of an Adverse Notification, Contractor will correct any identified and reproducible Material Software Error in the Deliverables within a reasonable time and County may retest the Deliverables for as many as fifteen (15) additional Days. Acceptance will be deemed to occur when a) County notifies Contractor that the Deliverables have successfully completed County's Acceptance Tests; or b) the Test Period or subsequent retesting period(s) are completed without an Adverse Notification being received by Contractor from County, whichever first occurs.

7.4 Final Acceptance Tests.

Upon System Go-Live, County will use the System for Live Operations for a minimum period of thirty (30) Days. Final Acceptance of the System shall occur when the System performs in accordance with the Acceptance Criteria specified in the Statement of Work (Exhibit D) and the System operates without any Material Software Errors. Acknowledgement of Final Acceptance will trigger payment of the final milestone as provided in Exhibit B. However, if during this final testing period, the System does not perform in accordance with the Acceptance Criteria or if the System contains one or more Material Software Errors, County shall immediately notify Contractor of the defect. Upon notification of such defect, Contractor shall have a reasonable time to correct the non-conformance. Within five (5) business days after receipt of a correction from Contractor, County shall retest the corrected function(s) for another ten (10) business days and report further non-compliance, if any, with the Acceptance Criteria. If the System has passed the Acceptance Criteria without any new or uncorrected Material Software Errors within the ten (10) business day period, the System shall be deemed to be accepted and Contractor may issue an invoice for the final payment in accordance with Section 3.7 (Invoices) of this Agreement.

7.5 Protection. Contractor shall continuously protect all Deliverables and backups for such Deliverables from damage, destruction or loss caused by the acts or omissions of Contractor and its Staff. During the period Deliverables are in transit and in possession of Contractor, its carriers or County prior to their Acceptance, Contractor and its insurers, if any, shall bear the risk of loss or damage to such Deliverables, unless such loss or damage is caused by the negligence or intentional misconduct of County. Except as otherwise specifically provided herein, after County provides Acceptance for a Deliverable, the risk of loss or damage

Attachment "B"

will be borne by County, except loss or damage attributable to the negligence or willful misconduct of the Contractor.

7.6 Delivery. Contractor shall deliver the Deliverables pursuant to this Agreement on or before the applicable Delivery Dates in the Work Plan. All such deliveries made pursuant to this Agreement must be complete. Contractor shall deliver the Deliverables in formats agreed to by the parties. All packages must be accompanied by a packing slip which identifies all items included with the shipment and County's purchase order number. Contractor's delivery receipt must be signed by an authorized representative of County for all deliveries made hereunder.

7.7 Representation. By submitting a Deliverable, Contractor represents that, to the best of its knowledge, it has performed the associated tasks in a manner that will, in concert with other tasks, meet the Specifications and objectives stated or referred to in this Agreement. By unconditionally giving Acceptance for a Deliverable, County represents only that it has reviewed the Deliverable and detected no Deficiencies of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding of Acceptance for the work completed.

7.8 Knowledge Transfer. While constructing and developing the Deliverables, Contractor shall demonstrate and provide information to staff designated by County about the functions and operations of all such Software in accordance with the Specifications and the Work Plan.

7.9 Source Code.

Subject to County's execution of the applicable escrow documents, Contractor shall, on or before the occurrence of Go Live for the Contractor Software, enroll County as a Preferred Beneficiary of the applicable Contractor Source Code escrow account with Iron Mountain Intellectual Property Management ("Iron Mountain") (formerly known as DSI Technology Escrow Services) (the "Escrow Agent"), as further defined in Exhibit H. A copy of Contractor's Master Preferred Escrow Agreement with Iron Mountain is attached at Exhibit H. The location of the escrow shall be Iron Mountain's storage facilities in Norcross, GA.

8. Licenses.

8.1 Grants. Contractor retains full ownership in the software and hereby grants to County a limited, nonexclusive, perpetual license to use, demonstrate, modify, and reproduce the Contractor Technology and the Specifications for County's internal purposes and for Processing data for other County agencies and other County tax-supported entities, subject to the following terms and conditions:

8.1.1 The Software may be installed on one or more computers but may not be used by more than the number of users for which the County has named user licenses. The Software is deemed to be in use when a user is logged into the System, regardless of whether a user is actively working with the Software. Contractor may audit County's use of

Attachment "B"

the Software to ensure that County has paid for an appropriate number of licenses. Should the results of any such audit indicate that County's use of the Software exceeds its licensed allowance, County agrees to pay all costs of its overuse as determined using Contractor's then-current pricing; any such assessed costs will be due and payable by County upon assessment. County agrees that Contractor's assessment of overuse costs pursuant to this Subsection is not a waiver by Contractor of any other remedies available to Contractor in law and equity for County's unlicensed use of the Software.

8.1.2 County may make backup copies of the Software only to protect against destruction of the Software. County may copy Contractor's documentation only for internal use for County purposes.

8.1.3 County may not make any form of derivative work from the Software, although County is permitted to develop additional or alternative functionality for the Software using tools and/or techniques licensed to County by Contractor.

8.1.4 County may not obscure, alter, or remove any confidentiality or proprietary rights notices.

8.1.5 County is liable to Contractor for any losses incurred as the result of unauthorized reproduction or distribution of the Software which occur while the Software is in County's possession or control.

8.1.6 County may use the Software only to process transactions relating to properties within its own geographical boundaries and may not sell, rent, assign, sublicense, lend, or share any of its rights under this Agreement.

8.1.7 County is entitled to receive the Software compiled (object) code and is licensed to use any data code produced through implementation and/or normal operation of the Software; County is not entitled to receive source code for the Software except pursuant to the Intellectual Property Escrow Agreement set forth in Exhibit H. All rights not expressly granted to County are retained by Contractor.

8.1.8 Contractor hereby grants to County a nonexclusive, perpetual license to use, demonstrate, modify, and reproduce the Third-Party Software, which Contractor provides to County or makes available to County in Object Code format, for County's internal purposes and for Processing data for other County agencies and other County tax-supported entities, subject to any terms and conditions expressed in click-through, shrinkwrap, or other application-level licensing contained within such software.

8.2 Term. The licenses hereunder are granted as of the date of delivery to or availability for County and continue until County returns the Contractor Technology and Third-Party Software and copies thereof to Contractor, erases such Contractor Technology and Third-Party Software from its Equipment's storage media, or decides to cease accessing the Software on Contractor's Equipment, as applicable.

8.3 Title. Contractor and its suppliers hold all right, title and interest in the Contractor Technology and Third-Party Software.

Attachment "B"

8.4 Documentation. Contractor shall provide two sets of Documentation for use in electronic format compatible with Microsoft Corporation's then-generally available Office products and written format in accordance with the terms of this Agreement. Upgrades and revisions to this Documentation shall be provided while Contractor is providing Services to County. There shall be no additional charge for the Documentation or updates thereto, in whatever form provided. Contractor's Documentation shall be comprehensive, well structured, and indexed for easy reference. If Contractor maintains its technical, maintenance and installation documentation on a web site, Contractor may fulfill the obligations set forth in this section by providing County access to its web-based Documentation information. Contractor may also provide such information on CD-ROM. Contractor grants County a nonexclusive, perpetual, nonterminable, irrevocable right to use, make derivative works based upon, modify, and reproduce the Documentation furnished pursuant to this Section at no additional charge.

8.5 Copies. County will reproduce and include the copyright and other proprietary notices and product identifications provided by Contractor on such copies, in whole or in part, or on any form of the Application Software and its Documentation. County will maintain records of all copies it makes of the Proprietary Software.

8.6 Restrictions. Except as otherwise permitted in this Agreement, County agrees not to: otherwise copy, display, transfer, adapt, modify, reverse engineer, decompile, disassemble, or distribute to any third party or lease the Software or any copy of it which is provided in Object Code format.

8.7 Replacements. County shall be entitled to exercise its rights to Application Software on the Equipment or any replacement equipment used by County, and with any replacement Third-Party Software chosen by County without payment of additional Charges, Purchase Prices or other amounts.

8.8 Third-Party Software Licenses. Prior to utilizing any Third-Party Software product that may be included as part of a Software Deliverable to County and that could be licensed directly to County by the licensor if the Third-Party Software would be installed on County Equipment, Contractor shall provide to County copies of any applicable license agreement from the licensor of the Third-Party Software to allow County to pre-approve such license agreement. Contractor shall assign to County such applicable licenses for the Third-Party Software upon Acceptance of the System.

8.9 Versions. Unless otherwise mutually agreed to in writing, Contractor shall, during the term of this Agreement, maintain any and all Software products at their most current version or no more than one version back from the most current version at no additional charge. Versions are categorized according to the Contractor's Release Taxonomy, incorporated herein as Exhibit E.

9. Ownership of County Items. County shall own all right, title and interest in and to its Confidential Information, County's intellectual property, the County Equipment and the other Deliverables, including without limitation the Configuration(s). Contractor shall take all actions necessary to transfer ownership of the Deliverables to County upon their Acceptance.

Attachment "B"

10. Implementation.

10.1 Implementation Phases. Contractor shall complete Implementation Services as described in the Work Plan, Exhibit D, and other parts of this Agreement.

10.2 Conversion. Contractor shall participate in and perform Services for Conversion as described in Exhibit D and the Work Plan.

10.3 Training. Contractor shall provide Training Services as described in Exhibit D and the Work Plan.

11. Warranties.

11.1 Deliverables. Contractor represents and warrants that each Deliverable, including without limitation the System, shall meet its material Specifications as provided herein following its Acceptance and during the term of paid Maintenance. In accordance with the terms and conditions of said paid Maintenance, Contractor shall immediately repair or replace each of the Deliverables that does not meet its material Specifications as provided herein.

11.2 Services.

11.2.1 Contractor represents and warrants that:

11.2.1.1 It shall perform all Services required pursuant to this Agreement in a professional manner, with high quality;

11.2.1.2 It shall give high priority to the performance of the Services; and

11.2.1.3 Time shall be of the essence in connection with performance of the Critical Events.

11.2.2 Contractor shall, within five (5) business days, re-perform Services which are not in compliance with such representations and warranties at no cost to County.

11.3 Date/Time Compliance Warranty.

11.3.1 Contractor warrants that the System and all data-related output or results produced by the System: (i) shall not have a life expectancy limited by date or time format; (ii) shall correctly record, store, process, and present calendar dates; (iii) shall lose no functionality, data integrity, or performance with respect to any date; and (iv) shall be interoperable with other software used by County that may deliver date records from the Software, or interact with date records of the Software.

11.3.2 In the event of a breach of these warranties, Contractor shall immediately assign at least one knowledgeable and qualified Staff representative, who will begin

Attachment "B"

work after telephonic notice by County on curing such breaches. This representative will be dedicated to remedy the Deficiency, failure, malfunction, defect, or problem.

11.4 No Surreptitious Code.

11.4.1 Contractor warrants to County that the Software and Contractor Technology provided to County under this Agreement shall contain no Self-Help Code or unauthorized Code. Contractor further warrants that Contractor shall not introduce, via modem or otherwise, any code or mechanism that electronically notifies Contractor of any fact or event, or any key, node, lock, time-out, or other function, implemented by any type of means or under any circumstances, that may restrict County's use of or access to the Software, Data, or Equipment, in whole or in part, based on any type of limiting criteria, including without limitation frequency or duration of use for any copy of the Software provided to County under this Agreement.

11.4.2 Contractor will defend County against any claim, and indemnify and hold harmless County against any loss, liability, claim, damages or expense arising out of any breach of this warranty. No limitation of liability, whether contractual or statutory, shall apply to a breach of this warranty.

11.5 Physical Media Warranty. For a period of ninety (90) calendar days following provision of physical media to County, Contractor warrants that each copy of the Software provided by Contractor is and will be free from physical defects in the media that tangibly embodies the copy. Contractor shall replace, at Contractor's expense including shipping and handling costs, any Software provided by Contractor that does not comply with this warranty.

11.6 Safety and Health. Contractor represents and warrants that the Deliverables, when delivered to County, are designed and manufactured to comply with then current federal and State safety and health regulations. Contractor agrees to indemnify, defend, and hold County harmless from all damages assessed against County as a result of the failure of the Deliverables furnished under this Agreement to so comply.

11.7 Authorization. Contractor represents and warrants that:

11.7.1 Contractor is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement;

11.7.2 It has the full power and authority to grant to County the rights described in this Agreement without violating any rights of any third party and that there is currently no actual or threatened suit by any such third party based on an alleged violation of such rights by Contractor;

11.7.3 The execution, delivery and performance of this Agreement has been duly authorized by Contractor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Contractor to enter into this Agreement and perform its obligations under this Agreement;

Attachment "B"

11.7.4 The person executing this Agreement for Contractor has actual authority to bind Contractor to each and every term, condition and obligation to this Agreement, and that all requirements of Contractor have been fulfilled to provide such actual authority;

11.7.5 Contractor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Contractor will conduct business in connection with this Agreement;

11.7.6 Contractor has obtained all licenses, certifications, permits, and authorizations necessary to perform the Services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of Contractor's performance of the Services; and

11.7.7 It shall comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services; and Contractor will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement at its own expense.

11.8 Ability to Perform. Contractor represents and warrants that:

11.8.1 Contractor has the financial stability to carry out at least six months of Services, including Operations, Support and Maintenance during any period of this Agreement without reimbursement for the Services or expenses;

11.8.2 Contractor has the financial resources to fund the capital expenditures required under the Agreement without advances by County or assignment of any payments by County to a financing source;

11.8.3 Each Subcontractor providing a substantial amount of the Services under this Agreement has the financial resources to carry out its duties under this Agreement; and

11.8.4 Contractor's methods of accounting are consistent with generally accepted accounting principles and are capable of segregating costs by stage, segment, or cost objective in order to support Change Order accounting.

11.9 Disclaimers. WARRANTIES EXPRESSLY MADE IN THIS AGREEMENT ARE CONTRACTOR'S ONLY WARRANTIES CONCERNING THE SERVICES, DELIVERABLES AND ANY WORK PRODUCT, AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

12. Support and Maintenance Services.

12.1 General Responsibilities. Contractor shall perform the Services described in this Section 12 through June 30, 2008 pursuant to the existing Support and Maintenance agreement previously entered into between the parties for the Accela Enterprise System, and

Attachment "B"

after June 30, 2008 shall provide the Services set forth in this Section 12 during each paid Support and Maintenance term at Charges described in Exhibit A. Contractor's Service responsibilities shall include but not be limited to the following while assisting County in Support and Maintenance of the System:

12.1.1 Promptly repair or replace the System, or any portion thereof, that has Deficiencies;

12.1.2 Maintain the System in accordance with the Specifications and terms of this Agreement;

12.1.3 Re-perform any Service that fails to meet the requirements of this Agreement at no additional cost;

12.1.4 Propose revisions to the Software as necessary to meet County's Processing needs;

12.1.5 Coordinate with County all tasks related to correcting problems and Deficiencies connected with the Software or the Equipment; and

12.1.6 Execute on-line diagnostics from a remote Contractor location solely to assist in the identification and isolation of suspected Deficiencies.

12.1.7 Contractor will provide Support and Maintenance for the current release (major and/or minor releases) of each of its maintained Software Applications and for the release immediately preceding such current release. All other releases are deemed to be "Legacy Releases". Contractor will respond to Maintenance requests concerning Legacy Releases only using currently-available information. Services requiring additional research, engineering-level support, or coding or programming by Contractor will not be provided pursuant to this Agreement, but may be separately available at rates and on terms which may vary from those described herein.

12.2 Inquiry Assistance. Contractor will provide County with a telephone number to contact the Customer Resource Center (CRC), Contractor's live technical support facility, which is available from 4:00 a.m. until 6:00 p.m. Pacific Time, Monday through Friday, excluding Contractor's observed holidays. Contractor shall, within 30 minutes for a critical inquiry (in County's judgment) or within two hours of any other County inquiry, respond to the inquiry, subject to the incident priorities set forth in Section 12.2.5 below, as applicable:

12.2.1 Responses to questions relating to the Software, including without limitation isolating problems to the Software, Data or Equipment;

12.2.2 The development, on a best efforts basis, of a temporary solution to or an emergency bypass of a Deficiency;

12.2.3 Corrections and repairs of errors, problems or Deficiencies with the Software, to the extent technically feasible; and

Attachment "B"

12.2.4 Clarification of Documentation.

Contractor will provide County with one or more electronic mail addresses to which County may submit routine or non-critical support requests during periods when live technical support is unavailable. Contractor will provide County with access to archived software updates and other technical information in Contractor's online support databases, which are continuously available.

12.2.5 Incident Priorities:

Contractor will assign incident priorities and address inquiries in accordance with the following guidelines:

Issue Priority	Criteria	Examples
Critical	System or application is non-functional or seriously affected and there is no reasonable workaround available, resulting in a work stoppage.	<ul style="list-style-type: none"> —Users cannot log on —Corrupted data —Business process is halted
High	System or application is affected and there is a workaround available but the workaround is impractical	<ul style="list-style-type: none"> —Cannot print receipts —Application response times prohibitively slow
Medium	System or application feature is non-functional and a workaround exists	<ul style="list-style-type: none"> —A non-critical feature is unavailable —Feature still works but requires additional User intervention
Low	System or application feature works, but there is a minor problem	<ul style="list-style-type: none"> —Incorrect labels on forms or reports

12.3 Additional Assistance.

12.3.1 When required to properly resolve a Maintenance request, Contractor shall first provide the option of remote assistance to County via the WebEx™ Meeting Center™ environment or another mutually-acceptable remote communications method.

12.3.2 Contractor shall dispatch trained and qualified Services Staff to County's applicable Site in the event that: (i) such assistance as described above in Section 12.2 does not resolve Deficiencies or problems related to County's inquiries regarding Equipment or

Attachment "B"

Software at such Site within 12 hours after Contractor's response to County; (ii) the System is non-Operational; and (iii) County requests additional assistance. If the System is non-Operational, such Contractor staff shall remain at the Site on a 12-hour, five-days-a-week basis repairing the applicable parts of the System until it operates in accordance with its Specifications.

12.3.3 Contractor shall provide a plan to resolve Deficiencies no later than eight hours after notice by County to Contractor of such Deficiency or problems.

12.4 Database. Contractor shall maintain and make available online to County a database of all Change Requests, Deficiencies, other problems reported by County under Section 12.2 or known to Contractor in the Software, and each visit by such Services Staff as described in Section 12.3. The database shall include, as a minimum, the following:

12.4.1 Date and time Contractor was notified;

12.4.2 Date and time of arrival or inquiry response;

12.4.3 Time spent for resolution of Deficiencies;

12.4.4 Description of Deficiency;

12.4.5 Description of severity level of Deficiency, e.g., Critical;

12.4.6 Description of Deficiency resolution; and

12.4.7 Date of resolution.

12.5 Bug Reports. Contractor shall provide to County, within 15 days of the Effective Date and the end of each calendar quarter thereafter, a list and description of all potential or actual problems, bugs, errors and Deficiencies known by Contractor to be in any version of the Proprietary Software and Third-Party Software used by County, along with a schedule for resolution thereof. Deficiencies, problems, errors and bugs causing crashes or corruption of the Data shall be reported by Contractor to County within eight hours of their becoming known to Contractor.

12.6 Enhancements.

12.6.1 Contractor shall provide County with all Enhancements, including major releases, minor releases, and hot fix patches, and associated Documentation that are provided as general releases to the Software, in whole or in part, at no additional cost. Such Documentation shall be adequate to inform County of the problems resolved including any significant differences resulting from the release which are known by Contractor. Contractor warrants that each such Enhancement general release shall have been tested and shall perform according to the Specifications. Contractor agrees to correct corrupted Data that may result from any System Deficiency introduced by the Enhancement.

Attachment "B"

12.6.2 In addition, Contractor shall produce such Enhancements as County requests in a commercially reasonable time and form at an additional charge in accordance with the Change Order process described herein. Enhancements to correct any Deficiency shall be provided to County at no additional cost and without the need for a Change Order prior to Final Acceptance of the System.

12.7 Exclusion. Contractor shall have no obligation or liability to County under this Section 12 to the extent that a Deficiency results from modifications to the System by County where such modification was not made pursuant to the Documentation or Contractor's guidance, instruction, training or recommendation. In addition, the following are not covered by this Agreement, but may be separately available at rates and on terms which may vary from those described herein:

12.7.1 Services required due to misuse of the Contractor-maintained Software;

12.7.2 Services required due to Software corrections, customizations, or modifications not developed or authorized by Contractor;

12.7.3 Services required by County to be performed by Contractor outside of Contractor's usual working hours;

12.7.4 Services required due to external factors including, but not necessarily limited to, County's use of software or Equipment not authorized by Contractor;

12.7.5 Services required to resolve or work-around conditions which cannot be reproduced in Contractor's support environment. Notwithstanding the foregoing, Contractor will troubleshoot all errors involving the Operations of the maintained Application Software; to the extent that such troubleshooting assistance determines that the origin of a given error is not a fault within Contractor's Software, but is instead due to external factors not covered by these Maintenance terms, Contractor's troubleshooting assistance and any follow-up support efforts requested by County will be charged to County at Contractor's then-current time-and-materials consulting rates;

12.7.6 Services which relate to tasks other than Support and Maintenance of County's existing implementation and configuration of the Contractor-maintained Software including, but not necessarily limited to, enhancing or adapting such Software for specific operating environments;

12.7.7 Services requested by County to implement Software updates provided by Contractor pursuant to this Agreement;

12.7.8 New or additional applications, modules, or functionality released by Contractor during the term of this Agreement. For purposes of this Agreement, new or additional applications, modules, or functionality will be comprised of Software functions: 1) not present in the release proceeding the most recent release of a the Application Software licensed by the County; 2) that address a business function not directly addressed by a prior

Attachment "B"

release of the Application Software; and 3) designated by Contractor as part of a new or existing Application Software product which is not licensed b the County.

13. Dispute Resolution.

13.1 Good Faith Efforts. Except for the right of either party to apply to a court of competent jurisdiction for a temporary restraining order or other provisional remedy to preserve the status quo or prevent irreparable harm, the parties agree to attempt in good faith to promptly resolve any dispute, controversy or claim arising out of or relating to this Agreement, including but not limited to payment disputes, through negotiations between senior management of the parties and their designees. If the dispute cannot be resolved within 15 Days of initiating such negotiations or such other time period mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies.

13.2 Continued Performance. Contractor and County agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement.

14. Changes.

14.1 Changing Government Programs.

14.1.1 The parties acknowledge that the government programs supported by this Agreement will be subject to continuous change during the term of this Agreement. Contractor has provided for or will provide for adequate resources to reasonably accommodate such changes during the term, in accordance with the Change Order process of this Section 14.

14.1.2 The parties also acknowledge that Contractor was selected, in part, because of its expertise, experience, and knowledge concerning applicable Federal, State and/or County laws, regulations, codes, policies, or guidelines that affect the performance of the Services and System.

14.2 Identifying Changes. In keeping with County's reliance on Contractor's knowledge, experience and expertise, Contractor will assist in identifying changes in applicable federal or State legislative enactments and regulations and the impact of such changes on the performance of the Services or Deliverables or County's use of the Services or Deliverables. Contractor must timely notify County of such changes and must work with County to identify the impact of such changes on how County uses the Services or Deliverables.

14.3 Notice From County. In the ordinary course of business, if County becomes aware of any material changes in applicable law, regulation, codes, policy, or guidelines affecting the Agreement, County will promptly notify Contractor of the changes.

14.4 Issuance of Change Requests. County may, at any time by a written Change Request, request changes within the scope of the Agreement. Such changes may include, without limitation, revisions to Deliverables or Services.

Attachment "B"

14.5 Contractor Response to Change Request. Contractor shall respond in writing to a Change Request within fifteen (15) business days of receipt, advising County of any cost and Schedule impacts. When there is a cost impact, i.e., increase or decrease in Charges or Purchase Prices, Contractor shall advise County in writing of the increase or decrease involved, including a breakdown of the number of Staff hours by level of Contractor and County personnel needed to effect this change.

14.6 Agreement on Change Order. The Contractor Project Manager and the County Project Manager shall negotiate in good faith and in a timely manner as to the price for amounts over the limitations specified in Exhibit A and the impact on the Schedule of any Change Request. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the parties, the terms of this Agreement shall be modified accordingly. The parties will execute a formal Agreement amendment for any Change Order that increases or decreases the Maximum Amount. Nonfinancial Change Orders may be approved in writing by the County Project Manager. However, all other Change Orders must be executed by the County Project Director. Contractor will incorporate all Change Orders affecting the Services and Deliverables into applicable System Documentation. In no event shall the Charges or Purchase Prices be increased nor shall the Schedule be extended in a Change Order to correct errors or omissions in the System. Contractor shall not be obligated to perform any additional work or incur additional expense in connection with a Change Order until the Change Order has been mutually agreed upon in writing.

14.7 Disagreement. If federal, State or County laws, rules, regulations, codes, policies or guidelines are adopted, promulgated, judicially interpreted or changed, the effect of which is to alter the ability of either party to fulfill its obligations under this Agreement, the parties will promptly negotiate in good faith appropriate modifications or alterations to the Agreement and any appropriate Change Orders for amounts over the limitations specified in Exhibit A. If County submits to Contractor a Change Request to comply with such laws, rules, regulations, codes, policies or guidelines and if the parties are unable to reach an agreement in writing within 15 days of Contractor's response to such a Change Request, the County Project Manager may make a determination of the revised price and Schedule, and Contractor shall proceed with the work according to such price and Schedule which shall be included in the resulting Change Order, subject to Contractor's right to appeal the County Project Manager's determination of the price and/or Schedule to the dispute resolution process under Section 13. Nothing in this Section 14.7 shall in any manner excuse Contractor from proceeding diligently with the Agreement as changed by the Change Order.

14.8 Termination. If Contractor fails or refuses to perform its Services pursuant to a Change Order, Contractor shall be in material breach of this Agreement, and County shall have the right to terminate the Agreement for such a breach.

14.9 Contractor Submission of Change Request. Contractor may also submit a Change Request to County to propose changes that should be made within the scope of the Agreement. Any such Change Request shall include proposed costs and Schedule impacts, including a breakdown of the number of Staff hours by level of Contractor and County personnel needed to effect this change. County shall respond to such Change Requests from Contractor

Attachment "B"

within fifteen (15) business days of receipt. If the parties reach an agreement on a Change Order in writing, and the Change Order is executed by authorized representatives of the Parties, the terms of this Agreement shall be modified accordingly. If the parties are unable to reach an agreement in writing on a Change Request submitted by Contractor, the County Project Manager will be deemed to have rejected the requested Change Request.

15. Additional Rights and Remedies.

15.1 Withholding Payments. If Contractor fails to deliver Deliverables or to provide Services which satisfy Contractor's obligations hereunder, County shall have the right to withhold any and all payments due hereunder, but only to the extent of the amount in dispute. County may withhold any and all such payments due hereunder to Contractor, without penalty or work stoppage by Contractor, until such failure to perform is cured.

15.2 Reductions in Payments Due. Amounts due County by Contractor, including but not limited to damages, or claims for damages, may be deducted or set-off by County from any money payable to Contractor pursuant to this Agreement.

15.3 Cover. If, in the reasonable judgment of County, a default by Contractor is not so substantial as to require termination, reasonable efforts to induce Contractor to cure the default are unavailing, Contractor fails to cure such default within thirty (30) Days of receipt of Notice from County, and the default is capable of being cured by County or by another resource without unduly interfering with continued performance by Contractor, County may, without prejudice to any other remedy it may have, provide or procure the Services reasonably necessary to cure the default, in which event Contractor shall reimburse County for the reasonable cost of the Services in default. In addition, Contractor must cooperate with these resources in allowing access to the Software.

15.4 Suspension for Convenience. County shall have the right at any time to order the Services of Contractor fully or partially stopped for its own convenience for up to 15 consecutive days. Contractor will receive Notice of the reasons for such an order. Although Contractor will use its best efforts to immediately resume work following such a delay, County acknowledges that schedules for the professional services may be delayed by more than the number of days delayed by County. Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, County in the event that it provide ten (10) Days advance written Notice of its need to temporarily suspend performance of Services. If County does not provide Notice within this time-frame, Contractor shall have the right to submit claims in accordance with the terms of Section 20.5, as a result of stop work orders issued under this Section.

15.5 Performance Standards. For so long as Contractor is providing Support and Maintenance Services, Contractor shall modify, reconfigure, upgrade or replace the Software at no additional cost to County in order to provide a System solution that maintains the System in a manner consistent with its Specifications. Contractor will make all reasonable efforts to assist the County in testing the database and System when performance is found to be deficient and shall tune the database and System to ensure the best possible System performance. However, since the System will be fully contained

Attachment "B"

within the County's network, Contractor maintains no control over that network. If the parties determine that the Accela Automation application is the cause of deficient performance, Contractor will make all reasonable efforts to correct the issue at hand.

16. Insurance.

16.1 Liability and Auto Insurance. Contractor shall, at its sole cost and expense, obtain, and, during the term of this Agreement, maintain, in full force and effect, the insurance coverage described in this Section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of California and approved by the County. Contractor shall include County, its boards, agencies, contractors, offices, employees, agents and volunteers as a named insured party in Contractor's commercial general insurance policy obtained hereunder. If Contractor fails to buy and maintain the insurance coverage described in this Section 16, County may terminate this Agreement under Section 20.1 (Termination for Contractor's Material Breach). The minimum acceptable limits shall be as indicated below with no deductible except as indicated below:

16.1.1 Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

16.1.2 Business Automobile Liability (owned, hired, or nonowned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;

16.1.3 Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;

16.1.4 Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;

16.1.5 Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000, subject to Section 16.2, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate; and

16.2 Extended Coverage. If the policy providing liability coverage is on a "claims made" form, the Contractor is required to maintain such coverage for a minimum of three years following termination of this Agreement, naming County as an additional insured and providing County with certificates of insurance on an annual basis. Said policy or policies shall provide that the County shall be given thirty (30) Days written Notice prior to cancellation or expiration of the policy or reduction in coverage.

16.3 Worker's Compensation Coverage. Prior to providing Services under this Agreement, Contractor shall, in full compliance with State law, provide or purchase worker's compensation coverage for its employees and Employer's Liability in the minimum amount of \$1 million during the course of this Agreement. County will not be responsible for payment of premiums or for any other claim or benefit for Contractor, or any Subcontractor or

Attachment "B"

employee of Contractor, which might arise under applicable laws during the performance of duties and Services under this Agreement. However, should Contractor fail to secure insurance coverage or fail to pay premiums on behalf of its employees, County may deduct the amount of premiums owing from the amounts payable to Contractor under this Agreement and transmit the same to the responsible State agency.

16.4 Subcontractors. Contractor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

16.5 Premiums. Premiums on all insurance policies shall be paid by Contractor or its Subcontractors. Such insurance policies provided for County pursuant to this Section shall expressly provide therein that County be named as additional insured, and that it shall not be revoked by the insurer until 30 Days Notice of intended revocation thereof shall have first been given to County by such insurer.

16.6 Cancellation. Contractor's insurance policies shall not be canceled or nonrenewed in scope of coverage without provision for equivalent substitute insurance and such cancellation or nonrenewal shall not take place or reduced in scope of coverage until five business days' written Notice has been given to County, attention Project Director, and Contractor has replacement insurance polic(ies) in place that satisfy the requirements set forth in this Section 16. Contractor's insurance policies shall not be reduced in scope without County's prior written consent.

16.7 Insurance Documents. Contractor shall furnish to County copies of certificates of all required insurance within 30 calendar days of the Effective Date, and copies of renewal certificates of all required insurance within 30 days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section. Failure to provide these documents shall be grounds for immediate termination or suspension of this Agreement by County for material breach.

16.8 Increased Coverage. County is to be notified by Contractor immediately if any aggregate insurance limit is exceeded. In such event, additional coverage must be purchased to meet requirements.

16.9 Subrogation. Contractor agrees to waive all rights of subrogation against County, its boards, agencies, departments, officers, employees, agents, and volunteers for losses arising from services performed by Contractor under this Agreement.

16.10 Cross-Liability. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the County and shall include a severability of interests or cross-liability provision in the following form:

Attachment "B"

"Such insurance as is afforded by this policy shall be primary and if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory."

17. Confidential Information.

17.1 Protection Obligations.

17.1.1 Access and Protection. During the term of the Agreement, Contractor and County will have access to and become acquainted with each party's Confidential Information. Except for disclosure pursuant to Section 17.1.2, County and Contractor, and each of their officers, employees and agents, shall, subject to State laws and regulations and in accordance with this Section 17.1.1, maintain all Confidential Information of the other party in confidence and at least to the extent as it protects the confidentiality of its own proprietary information of like kind, but in no event with less than reasonable care. Neither party will at any time use, publish, reproduce or disclose any Confidential Information, except to authorized employees, contractors and agents requiring such information under confidentiality requirements no less restrictive than this Section 17.1.1, as authorized in writing by the other party, as otherwise specifically permitted herein, or to perform its obligations as authorized hereunder. Both parties shall take all steps necessary, including without limitation oral and written instructions to all staff to safeguard, in accordance with applicable federal, State and County law, regulation, codes, and this Section 17.1.1, the other party's Confidential Information against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Agreement. Except for disclosures pursuant to Section 17.1.2 below, each party agrees that prior to disclosing any Confidential Information of the other party to any third party, it will obtain from that third party a written acknowledgment that such third party will be bound by the same terms as specified in this Section 17.1.1 with respect to the Confidential Information. In addition to the requirements expressly stated in this Section 17.1.1, Contractor and its Subcontractors will comply with any policy, rule, or reasonable requirement of County, the State and the federal government that relates to the safeguarding or disclosure of information relating to applicants and recipients of County's Services, Contractor's operations, or the Services performed by Contractor under this Agreement.

17.1.2 Public Records. Notwithstanding the above, Contractor acknowledges that this Agreement shall be a public record under State law. Any specific information that is claimed by Contractor to be Confidential Information must be clearly identified as such by Contractor. To the extent consistent with State law, County will maintain the confidentiality of all such information marked Confidential Information. If a request is made to view Contractor's Confidential Information, County will notify Contractor of the request and of the date that any such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, County will release the identified requested information on the date specified.

17.1.3 Security Requirements. Each party, and its officers, employees, subcontractors and agents shall at all times comply with all security standards, practices, and procedures which are equal to or exceed those of County and which the other party

Attachment "B"

may establish from time-to-time, with respect to information and materials which come into each party's possession and to which such party gains access under this Agreement. Such information and materials include without limitation all Confidential Information.

17.2 Audit. County reserves the right to monitor, audit or investigate Contractor's use of County Confidential Information collected, used, or acquired by Contractor under this Agreement.

17.3 Return. Subject to record retention laws and to County's rights under Section 8.1, each party shall promptly return to the disclosing party, on termination of this Agreement, all of the disclosing party's Confidential Information, including copies thereof.

17.4 Injunctive Relief and Indemnity.

17.4.1 Contractor shall immediately report to County any and all unauthorized disclosures or uses of County's Confidential Information of which it or its Staff is aware or has knowledge. Contractor acknowledges that any publication or disclosure of County's Confidential Information to others may cause immediate and irreparable harm to County. If Contractor should publish or disclose such Confidential Information to others without authorization, County shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. Contractor shall indemnify, defend, and hold harmless County from all damages, costs, liabilities and expenses (including without limitation reasonable attorneys' fees) caused by or arising from Contractor's failure to protect County's Confidential Information. As a condition to the foregoing indemnity obligations, County will provide Contractor with prompt notice of any claim of which County is aware and for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with Contractor in connection with any such claim.

17.4.2 County will immediately report to Contractor any and all unauthorized disclosures or uses of Contractor's Confidential Information of which County is aware or has knowledge. County acknowledges that any publication or disclosure of Contractor's Confidential Information to others may cause immediate and irreparable harm to Contractor. If County should publish or disclose such Confidential Information to others without authorization, Contractor shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period.

17.5 Nondisclosure of Other County Information. The use or disclosure by Contractor of any County information not necessary for, nor directly connected with, the performance of Contractor's responsibility with respect to Services is prohibited, except upon the express written consent of County.

17.6 Exceptions. The following information shall not be considered Confidential Information for the purposes of this Agreement: information previously known when received from the other party; information freely available to the general public; information which now is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one party independently of any disclosures made by the other

Attachment "B"

party of such information; or information which is disclosed by a party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the general public.

17.7 Survival. The provisions of this Section shall remain in effect following the termination or expiration of this Agreement.

18. Additional Indemnifications.

18.1 Intellectual Property.

18.1.1 Contractor shall, at its expense, defend, indemnify, and hold harmless County and its employees, officers, directors, contractors and agents from and against any third-party claim or action against County which is based on a claim that any Deliverable or any part thereof under this Agreement infringes a patent, copyright, utility model, industrial design, mask work, trademark, or other proprietary right or misappropriates a trade secret, and Contractor shall pay all losses, liabilities, damages, penalties, costs, fees (including reasonable attorneys' fees) and expenses caused by or arising from such claim. County shall promptly give Contractor notice of any such claim.

18.1.2 In case the Deliverables, or any one or part thereof, are in such action held to constitute an infringement or misappropriation, or the exercise of County's rights thereto is enjoined or restricted, Contractor shall, at its own expense and in the following order of priorities: (i) procure for County the right to continue using the Deliverables; (ii) modify the Deliverables to comply with the Specifications and to not violate any intellectual property rights; (iii) or retrieve any or all Deliverables upon receipt of notice from County and refund the Purchase Price of each Deliverable, as applicable.

18.1.3 However, Contractor shall not be liable to the extent claims of misappropriation or infringement arise from Contractor's compliance with any designs, Specifications or written instructions of County and Contractor could not have avoided such claims through alternative products.

18.2 General. Contractor shall, at its expense, indemnify, defend, and hold harmless County, its employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from any claim or action, including without limitation for property damage, bodily injury or death, caused by or arising from the negligent acts or omissions or willful misconduct of Contractor, its officers, employees, agents, or Subcontractors. County shall promptly give Contractor notice of such claim.

19. Damages Disclaimers and Limitations.

19.1 County's Disclaimer of Damages. COUNTY SHALL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS AND LOST BUSINESS OPPORTUNITIES.

Attachment "B"

19.2 County's Limitation of Liability. IN NO EVENT SHALL COUNTY'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, EXCEED THE MAXIMUM AMOUNT.

19.3 Contractor's Limitation of Liability. Contractor will not be liable to County to the extent of any loss, damage, or liabilities:

19.3.1 Caused by the failure of County, another County agency, or a County contractor to perform in connection with this Agreement and such nonperformance prevented Contractor from performing in accordance with this Agreement; or

19.3.2 Resulting from Contractor acting prudently in accordance with instructions given by authorized representatives of County or other authorized County agencies.

19.3.3 Except for claims of breach of confidentiality or intellectual property infringement, in no event will Contractor be liable to County or any other party, above the insurance coverage amounts described in Section 16 hereinabove, for any amount in excess of the amounts paid to Contractor by County hereunder.

20. Termination.

20.1 Termination for Material Breach. If either party fails to cure any material breaches of this Agreement which are described in a written Notice from the non-breaching party within thirty (30) Days of receipt of such Notice, this Agreement may be terminated immediately, in whole or in part, by Notice from the non-breaching party to the breaching party. The option to terminate shall be at the sole discretion of the non-breaching party.

20.2 Termination for Rejection of Deliverables. If Contractor is unable to correct Deficiencies in a Deliverable, as described in Section 7.3 and Section 7.4, County shall have the right to immediately terminate this Agreement, in whole or in part, without penalty or liability to County, with such a termination being deemed a termination due to the default of Contractor hereunder, and return the Deliverable to Contractor. If County terminates this Agreement under this Section, Contractor shall, within 20 Days thereafter, refund to County all payments made to Contractor for the returned Deliverable and Services rendered therefor and all previous Deliverables which have received Acceptance and Services rendered therefor and which are returned with the rejected Deliverable.

20.3 Termination for Conflict of Interest. County may terminate this Agreement under Section 20.1 (Termination for Contractor's Material Breach) by Notice to Contractor if County determines, after due notice and examination, that any party has violated any laws regarding ethics in public acquisitions and procurement and performance of contracts.

Attachment "B"

20.4 Termination Remedies.

20.4.1 In the event of termination of this Agreement by County under Sections 20.1-20.3, County shall, in addition to its other available remedies, have the right to procure the Services and Deliverables that are the subject of this Agreement on the open market and, subject to the provisions of Section 19.3, Contractor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Agreement price for the Deliverables and/or Services and the replacement costs of such Deliverables and/or Services acquired from another vendor; and (ii) if applicable, all administrative costs directly related to the replacement of this Agreement, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs.

20.4.2 If it is determined for any reason the failure to perform is not within the Contractor's control, fault, or negligence, the termination by County under Sections 20.1-20.3 shall be deemed to be a termination for convenience under Section 20.5.

20.5 Termination for Convenience.

20.5.1 In addition to its other rights to terminate, County may terminate this Agreement, in whole or in part for County's convenience, by thirty (30) Days Notice to Contractor. Invocation of Section 20.6 (Termination for Withdrawal of Authority), or Section 20.7 (Termination for Nonallocation of Funds), shall be deemed a Termination for Convenience but will not require such thirty Days Notice.

20.5.2 During this thirty (30) Days period, Contractor shall wind down and cease its Services as quickly and efficiently as reasonably possible, without performing unnecessary Services or activities and by minimizing negative effects on County from such winding down and cessation of Services. If this Agreement is so terminated, County shall be liable only for payment in accordance with the terms of this Agreement for Services satisfactorily rendered prior to the effective date of termination.

20.5.3 In case of such termination for convenience, County will pay to Contractor the agreed upon price, if separately stated, for Deliverables for which Acceptance has been given by County, amounts for Services provided prior to the date of termination for which no separate price is stated and which are not associated with or related to a specific Deliverable for which Acceptance has been given, and amounts for Deliverables which are in development but which have not received Acceptance. The amounts for such Services and Deliverables in development but not accepted will be costs actually and reasonably incurred by Contractor therefor, as based on the hourly rates in Exhibit A, but such costs shall be no greater than the final Purchase Price for each Deliverable. In addition, County agrees to compensate Contractor for reasonable and necessary costs that were incurred by Contractor on this Project, as a result of County's termination for convenience, for undepreciated or unamortized Equipment and Software licenses, early termination of leases, and other reasonable and necessary Project-related expenses, subject to County's reasonable judgment and the availability of County, State and Federal funds and receipt of supporting documentation from Contractor.

Attachment "B"

20.6 Termination for Withdrawal of Authority. In the event that the authority of County to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement and prior to normal completion, County may terminate this Agreement under Section 20.5 (Termination for Convenience), in whole or in part. This Section shall not be construed so as to permit County to terminate this Agreement in order to acquire similar Services from a third party.

20.7 Termination for Nonallocation of Funds. If funds are not allocated to continue this Agreement in any future period, County may terminate this Agreement under Section 20.5 (Termination for Convenience). County will not be obligated to pay any further Charges for Services or Purchase Prices for such future period, but County shall make payments for Services, Deliverables and Contractor's costs as provided in Section 20.5.3, subject to County's availability of funding therefor. County agrees to notify Contractor of such nonallocation at the earliest reasonable time. No penalty shall accrue to County in the event this Section shall be exercised.

20.8 Termination Procedure.

20.8.1 Upon termination of this Agreement, County, in addition to any other rights provided in this Agreement, may require Contractor to deliver to County any Property, including but not limited to Deliverables and Data, for such part of this Agreement as has been terminated.

20.8.2 After receipt of a Notice of termination, and except as otherwise directed by County, Contractor shall:

20.8.2.1 Stop work under this Agreement on the date, and to the extent specified, in the Notice;

20.8.2.2 Place no further orders or subcontracts for materials, Services, or facilities except as may be necessary for completion of such portion of the work under this Agreement that is not terminated;

20.8.2.3 As soon as practicable, but in no event longer than 30 days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of County to the extent required, which approval or ratification shall be final for the purpose of this Section;

20.8.2.4 Complete performance of such part of this Agreement as shall not have been terminated by County;

20.8.2.5 Take such action as may be necessary, or as the County Project Director may direct, for the protection and preservation of the Property related to this Agreement which is in the possession of Contractor and in which County has an interest;

Attachment "B"

20.8.2.6 Transfer title to County and deliver in the manner, at the times, and to the extent directed by the County Project Director, any Property which is required to be furnished to County and which has been accepted or requested by County; and

20.8.2.7 Provide written certification to County that Contractor has surrendered to County all such property.

20.8.3 Upon Contractor's receipt of Notice of termination of the Agreement by County, Contractor will provide any turnover assistance Services necessary to enable County or its designee to effectively close out the Agreement and move the work to another vendor or to perform the work by itself. Within ten Days of receipt of the Notice of termination, Contractor shall provide, in machine readable form, an up-to-date, usable copy of the Data and a copy of all documentation needed by County to utilize the Data. Contractor will ensure that all consents or approvals to allow Contractor and Subcontractors to provide the assistance required following termination have been obtained, on a contingent basis, in advance and will be provided by the applicable third parties at no cost or delay to County.

21. General Conditions.

21.1 Anti-Trust Violations. Contractor and County recognize that overcharges resulting from antitrust violations are in actual economic practice usually borne by County. Therefore, Contractor hereby assigns to County any and all claims for such overcharges as to goods and services purchased in connection with this Agreement, except as to overcharges not passed on to County resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Purchase Prices and Changes under this Agreement.

21.2 Assignment. Contractor may not assign or transfer this Agreement or any of its rights hereunder, or delegate any of its duties hereunder, without the prior written consent of the County Project Director, provided that any permitted assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to County that may arise from any breach of the provisions of this Agreement or warranties made herein including but not limited to, rights of setoff. Notwithstanding the above, Contractor may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets. County may assign this Agreement to any public agency, commission, board, or the like, within the political boundaries of the County and may delegate its duties in whole or in part without the consent of Contractor. Any attempted assignment, transfer or delegation in contravention of this Section of the Agreement shall be null and void. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

21.3 Authority. Neither party shall have authority to bind, obligate or commit the other party by any representation or promise without the prior written approval of the other party.

21.4 Binding Effect. Each party agrees that the Agreement binds it and each of its employees, agents, independent contractors, and representatives.

Attachment "B"

21.5 Claims. Contractor must submit claims against County within the earlier of six months of the date upon which Contractor knew of the existence of the claim or six months from the end of the County's prior fiscal year. No claims shall be allowed unless Notice of such claim has been given within the above-described time period. Such claims must be submitted to the County Project Manager or his or her designee by Contractor in the form and with the certification prescribed by the County Project Manager or his or her designee. Upon failure of Contractor to submit its claim within the time allowed, all rights to seek amounts due on account of such claims shall be waived and forever barred. Submission of such claims against County shall be, except as provided in Sections 17.4.2 and 20.5, Contractor's sole and exclusive remedy in the event that County breaches this Agreement.

21.6 Compliance With Civil Rights Laws.

21.6.1 No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any program provided by this Contract because of race, color, creed, marital status, religion, sex, sexual orientation, national origin, Vietnam era or disabled veteran's status, age, the presence of any sensory, mental or physical disability, or political affiliation or belief.

21.6.2 During the performance of this Contract, Contractor shall comply with all federal and applicable State nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. § 12101, *et seq.*; the Americans with Disabilities Act (AD); and the provisions of the Fair Employment and Housing Act (Government Code Section 12900, *et seq.*) and the applicable regulations promulgated thereunder in the California Code of Regulations (Title 2, Section 7285.0, *et seq.*). In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part under Section 20.1 (Termination for Material Breach), and Contractor may be declared ineligible for further contracts with County. Contractor shall be given a reasonable time in which to cure noncompliance. In addition to the cancellation of this Contract, Contractor may be subject to penalties under federal and state law.

21.6.3 Contractor shall promptly notify the Equal Opportunity Office of County of any administrative enforcement actions or lawsuits filed against it alleging discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief. The Equal Opportunity Office will notify the Director, Directorate of Civil Rights, Office of the Assistant Secretary for Administration and Management, U.S. County of Labor.

21.7 Conflicts Between Documents; Order of Precedence. In the event that there is a conflict between the documents comprising the Agreement, the following order of precedence shall apply:

21.7.1 Applicable federal and State laws, regulations and policies;

21.7.2 Change Orders;

21.7.3 The terms and conditions in the body of this Agreement;

Attachment "B"

- 21.7.4 Exhibit A, Purchase Price;
- 21.7.5 Exhibit B, Payment Schedule;
- 21.7.6 Exhibit C, Proposed Project Teams;
- 21.7.7 Exhibit D, Statement of Work;
- 21.7.8 Exhibit E, Version Release Taxonomy;
- 21.7.9 Exhibit F, Equipment and Software Configuration;
- 21.7.10 Exhibit G, Project Plan;
- 21.7.11 Exhibit H, Escrow Agreement
- 21.7.12 Other Deliverables;

21.8 Counterparts. This Agreement may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Agreement signed by each party, for all purposes.

21.9 Covenant Against Contingent Fees.

21.9.1 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any contract or understanding for a commission, percentage, brokerage, or contingent fee, *except* bona fide employees or a bona fide established commercial or selling agency of Contractor.

21.9.2 In the event of breach of this Section by Contractor, County shall have the right to either annul this Agreement without liability to County, or, in County's discretion, deduct from payments due to Contractor, or otherwise recover from Contractor, the full amount of such commission, percentage, brokerage, or contingent fee.

21.10 Cooperation of Parties. The parties agree to fully cooperate with each other in connection with the performance of their respective obligations and covenants under this Agreement.

21.11 Debarment and Suspension. Contractor certifies to County that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State or county government contracts. Contractor certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

21.12 Entire Agreement; Acknowledgement of Understanding. County and Contractor acknowledge that they have read the Agreement and the attached Exhibits which are incorporated herein by this reference, understand them and agree to be bound by their terms and conditions. Further, County and Contractor agree that the Agreement and the Exhibits are the complete and exclusive statement of the Agreement between the parties relating to the subject

Attachment "B"

matter of the Agreement and supersede all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Agreement.

21.13 Force Majeure. Neither Contractor nor County shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing.

21.14 Governing Law. This Agreement shall be governed in all respects by the law and statutes of the State of California, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the State of California, said statute will not govern any aspect of this Agreement or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The exclusive jurisdiction and venue of any action hereunder shall be in the State courts in the County. Contractor accepts the personal jurisdiction of such courts.

21.15 Headings. The headings throughout the Agreement are for reference purposes 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.

21.16 Independent Status of Contractor. The parties hereto, in the performance of this Agreement, will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Agreement. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under applicable California law.

21.17 Legal and Regulatory Compliance. The Services and System shall comply with all applicable federal, State, and County laws, regulations, codes, standards and ordinances during the term. In the event that any Services performed or the System provided by Contractor are subsequently found to be in violation of such laws, regulations, codes, standards and ordinances, it shall be the sole responsibility of Contractor to bring the Services and System into compliance at no additional cost to County.

21.18 Licensing Standards. Contractor shall comply with all applicable County, State, and federal licensing requirements and standards necessary in the performance of this Agreement.

21.19 Lobbying Activities. Contractor shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.

Attachment "B"

21.20 Modifications and Amendments.

21.20.1 No modification, amendment, alteration, addition or waiver of any Section or condition of this Agreement shall be effective or binding unless it is in writing and signed by an authorized representative of Contractor and County.

21.20.2 Only the purchasing agent(s) authorized by County Project Director or authorized delegate by writing (with the delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement on behalf of County. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding until made in writing and signed by the purchasing agent(s) authorized by County Project Director or authorized delegate in writing as aforesaid and Contractor, unless otherwise provided herein.

21.20.3 Contractor shall notify County of the names of individuals who have authority to bind Contractor to modifications to the Agreement and of the limits of such authority at the time Contractor submits its Response and at such other times as required.

21.21 Nonwaiver. Except as otherwise specifically provided herein, any failure or delay by either party to exercise or partially exercise any right, power or privilege under the Agreement shall not be deemed a waiver of any such right, power, or privilege under the Agreement. Any waivers granted by County for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches. Contractor agrees that County's pursuit nor nonpursuit of a remedy under this Agreement for Contractor's breach of its obligations will neither constitute a waiver of any such remedies or any other remedy that County may have at law or equity for any other occurrence of the same or similar breach, nor estop County from pursuing such remedy.

21.22 Notice of Delay. When either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within five working days, give notice thereof, including all relevant information with respect thereto, to the other party.

21.23 Notices.

21.23.1 Any notice or demand or other communication required or permitted to be given under this Agreement or applicable law shall be effective if and only if it is in writing, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class certified mail, postage prepaid, certified mail, return receipt requested, via facsimile or by electronic mail, to the parties at the addresses and fax number, and email addresses provided below the signatures to this Agreement.

21.23.2 Notices shall be effective upon receipt or four business days after mailing, whichever is earlier. The Notice address as provided herein may be changed by Notice given as provided above.

Attachment "B"

21.24 Publicity. The award of this Agreement to Contractor is not in any way an endorsement of Contractor or Contractor's Services by County and shall not be so construed by Contractor in any advertising or publicity materials. Contractor agrees to submit to the County Project Director all advertising, sales promotion, and other publicity matters relating to this Agreement wherein County's name is mentioned or language used from which the connection of County's name therewith may, in County's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion, or publicity matter without the prior written consent of County. Contractor shall not in any way contract on behalf of or in the name of County. Nor shall Contractor release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this project without obtaining the prior written approval of County.

21.25 Remedies. Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provisions of the Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

21.26 Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

21.27 Sovereign Immunity. The parties expressly agree that no provision of this Agreement is in any way intended to constitute a waiver by County of any immunities from suit or from liability that County may have by operation of law.

21.28 Subcontractors.

21.28.1 Contractor may, with prior written permission from the County Project Manager, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Contractor's duties and obligations. Any such approval may be rescinded in County's sole discretion.

21.28.2 Contractor is responsible and liable for the proper performance of and the quality of any work performed by any and all Subcontractors. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to County for any breach in the performance of Contractor's duties. In addition, Contractor's use of any Subcontractor shall not cause the loss of any warranty from Contractor. All subcontracts will be made in writing and copies provided to County upon request. County has the right to refuse reimbursement for obligations incurred under any subcontract that do not comply with the terms and conditions of this Agreement.

21.28.3 For purposes of this Agreement, Contractor agrees to indemnify, defend, and hold County harmless from and against any and all claims, actions, losses, liabilities, damages, costs and expenses (including reasonable attorney fees) arising out of or related to acts

Attachment "B"

or omissions of Contractor's Subcontractors, their agents, or employees. At County's request, Contractor shall forward copies of subcontracts and fiscal, programmatic and other material pertaining to any and all subcontracts.

21.28.4 For any Subcontractor, Contractor shall:

21.28.4.1 Be responsible for Subcontractor compliance with the Agreement and the subcontract terms and conditions; and

21.28.4.2 Ensure that the Subcontractor follows County's reporting formats and procedures as specified by County.

21.28.4.3 Include in the Subcontractor's subcontract substantially similar terms as are provided in Sections 3.8 (Funding), 4.5 (Records Retention and Access Requirements), 4.6 (Accounting Requirements), 9 (Ownership), 16 (Insurance), 17 (Confidential Information), 21.6 (Compliance With Civil Rights Laws), 21.9 (Covenant Against Contingent Fees), 21.11 (Debarment and Suspension), and 21.19 (Lobbying and Activities).

21.28.5 Upon expiration or termination of this Agreement for any reason, County will have the right to enter into direct agreements with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct agreements with County.

21.29 Subpoena. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Deliverables or Services provided pursuant to this Agreement is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

21.30 Survival. All Services performed and Deliverables provided pursuant to the authority of this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive. In addition, the terms of Sections 4.5 (Records Retention and Access Requirements), Section 4.6 (Accounting Requirements), Section 8.1 (Grants), Section 8.4 (Documentation), Section 9 (Ownership), Section 11.3 (Date/Time Compliance Warranty), Section 11.6 (Safety and Health), Section 13 (Dispute Resolution), and Sections 15-22 shall survive the termination of this Agreement.

21.31 UCC Applicability. Except to the extent the sections of this Agreement are clearly inconsistent, this Agreement shall be governed by the California Uniform Commercial Code. To the extent this Agreement entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when to do so would result in an absurdity. In the event of any clear inconsistency or

Attachment "B"

contradiction between this Agreement and the Uniform Commercial Code, the terms and conditions of this Agreement shall take precedence and shall prevail unless otherwise provided by law.

21.32 Waiver. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written instrument signed by the parties hereto.

Attachment "B"

The parties hereto, having read this Agreement in its entirety, including all attachments hereto do agree thereto in each and every particular. In witness thereof, the parties have set their hands hereunto as of the Execution Date.

COUNTY

CONTRACTOR

By: [Signature]
 Printed Name: SALUD CARBAJAL
 Title: CHAIR, BOARD OF SUPERVISORS
 Date: 12/10/08
 Notice Address: _____
 Mailing Address _____
 Street Address _____
 Telephone: _____
 Fax: _____
 E-mail: _____

By: [Signature]
 Printed Name: Colin M. Samuels
 Title: Assistant Corporate Secretary
 Date: 12.12.2007
 Notice Address: Accela, Inc.
2633 Camino Ramon, Suite 120
Bishop Ranch 3
San Ramon, California 94583
 Mailing Address: Same as above.
 Street Address: Same as above.
 Telephone: 925.659.3200
 Fax: 925.659.3291
 E-mail: csamuels@accela.com

APPROVED AS TO FORM:
COUNTY COUNSEL OFFICE

By: [Signature]
 Printed Name: Celeste E. Andersen
 Title: Deputy County Counsel
 Date: 12/13/07

APPROVED AS TO FORM:
RISK MANAGEMENT OFFICE

By: [Signature]
 Printed Name: Ray Aromatorio
 Title: RISK PROGRAM ADMINISTRATOR
 Date: 12/18/07

APPROVED AS TO FORM:
AUDITOR-CONTROLLER OFFICE

By: [Signature]
 Printed Name: MARK A. PAUL
 Title: DIVISION CHIEF
 Date: 12/19/07

Attachment "B"

EXHIBIT A

PURCHASE PRICE

I. Service Fees

Deliverables	Fees
Professional Services — Initiation	\$5,420.00
Professional Services — System Setup	\$6,480.00
Professional Services — Configuration Analysis	\$94,500.00
Professional Services — Configuration	\$65,810.00
Professional Services — Custom Scripts	\$18,900.00
Professional Services — Reports	\$54,940.00
Professional Services — Address, Parcel Owner (APO) Interface	\$12,480.00
Professional Services — Accela Enterprise Conversion	\$60,480.00
Professional Services — Training	\$21,600.00
Professional Services — Deployment	\$18,900.00
Professional Services — Project Management	\$95,900.00
Professional Services — Accela Citizen Access™	\$39,130.00
Consultant Travel Expenses Estimate	\$60,000.00
Contingency Fund Estimate	\$65,000.00
Total of Fees	\$619,540.00

Contingency Fund. A contingency fund amount of \$65,000.00 has been set aside to cover any additional scope of services not yet contemplated during contract execution. The contingency fund may not be used towards any increase in price for services already identified in the Purchase Price. The contingency fund may only be released after there has been a validly executed, mutually agreed-upon Change Order between Accela and the County of Santa Barbara for Services not originally contracted for. The Change Order shall detail a description of the additional Services to be provided and the costs for such Services as specified in Section 14 of the Agreement. Additional Services to be performed as a result of a Change Order may not exceed the contingency fund amount. If additional Services are expected to exceed the contingency fund amount, parties will need to negotiate an amendment to the Agreement for those Services.

Consultant Travel Expenses. It is expected that Accela will incur some travel expenses during the performance of this Agreement. The County of Santa Barbara will reimburse all reasonable travel expenses incurred by Accela during the term of this Project. Travel expenses must be pre-approved in writing by the County and may not exceed the maximum amount allowable as identified in the Purchase Price. Reasonable travel expenses include air and ground transportation, lodging, and meals (excluding alcoholic beverages).

II. License Fees

Deliverables	Quantity	Fees
Accela Automation® Server License	1	\$49,995.00
Accela Automation Included Named User Licenses	5	\$0.00 ¹
Accela Automation Additional Named User Licenses	160	\$319,840.00
Accela Citizen Access Use License (Based Upon 75,000 Population)	1	\$18,995.00
County Discount	N/A	(\$369,835.00)
Total of Fees		\$18,995.00

Attachment "B"

- 1 Included Named User Licenses are included with associated product server license at no additional cost to County.

III. Maintenance Fees

Deliverables	Fees
First-Term Annual Maintenance for Accela Automation® (1 Server License and 165 Named User Licenses)	\$73,967.00
First-Term Annual Maintenance for Accela Citizen Access™ (1 Server License and 1 Use License [Based Upon 75,000 Population])	\$3,799.00
Second-Term Annual Maintenance for Accela Automation (1 Server License and 165 Named User Licenses)	1 st term cost + CPI
Second-Term Annual Maintenance for Accela Citizen Access (1 Server License and 1 Use License [Based Upon 75,000 Population])	1 st term cost + CPI
Third-Term Annual Maintenance for Accela Automation (1 Server License and 165 Named User Licenses)	2 nd term cost + CPI
Third-Term Annual Maintenance for Accela Citizen Access (1 Server License and 1 Use License [Based Upon 75,000 Population])	2 nd term cost + CPI
Fourth-Term Annual Maintenance for Accela Automation (1 Server License and 165 Named User Licenses)	3 rd term cost + CPI
Fourth-Term Annual Maintenance for Accela Citizen Access (1 Server License and 1 Use License [Based Upon 75,000 Population])	3 rd term cost + CPI
Fifth-Term Annual Maintenance for Accela Automation (1 Server License and 165 Named User Licenses)	4 th term cost + CPI
Fifth-Term Annual Maintenance for Accela Citizen Access (1 Server License and 1 Use License [Based Upon 75,000 Population])	4 th term cost + CPI
Total of Fees	\$77,766.00 (1st term)
	with CPI annual increases thereafter

CPI increases are measured by the Consumer Price Index, All Urban Consumers, Los-Angeles-Anaheim-Riverside, and shall use the percent change of that index from January to December of each year.

Hourly Rates for Excluded Services: \$185.00/hr.

MAXIMUM AMOUNT: \$573,535 (Licenses + Services (excluding contingency amount))

EXHIBIT B
Attachment "B"
PAYMENT SCHEDULE

1. Deliverables and Purchase Prices.

Purchase Price is set forth in Exhibit A.

- a. **License Fees.** Full payment on license fees is due upon contract signing.
- b. **Maintenance.** First term maintenance is due on **July 1, 2008** (upon expiration of the existing maintenance agreement for the Accela Enterprise System). During this first term, maintenance will cover the Accela Enterprise System and the Accela Automation (once Accela Automation Goes-Live). Maintenance costs on subsequent terms are due on July 1st following expiration of the previous maintenance term.

2. Payment Schedule for Services. Contractor shall have the right to issue invoices in the amounts noted above following performance of the Critical Events specified below. County shall pay undisputed amounts on such invoices that are issued in accordance with the terms of this Agreement within thirty (30) calendar days of receipt of such invoices.

Critical Event ¹	Fees Paid at Event
Due Upon Signing	\$130,000.00
Upon Completion of Software Installation and Setup	\$26,454.00
Upon Acceptance of Configuration Document	\$31,744.80
Upon Acceptance of Accela-Provided Configuration	\$34,390.20
Upon Approval of Data Conversion (From Accela Enterprise to Accela Automation)	\$23,808.60
Upon Approval of APO Conversion in Support Environment	\$23,808.60
Upon Approval of Event Scripts in Support Environment	\$23,808.60
Upon Approval of Reports in Support Environment	\$23,808.60
Upon Completion of all Training Courses	\$23,808.60
Upon Approval of Citizen Access Configuration	\$52,908.00
Final Acceptance (HOLDBACK for 30 days past System Go-Live)	\$100,000.00
Consultant Travel Expenses (Billed as Incurred)	\$60,000.00
Contingency Fund	\$65,000.00
Total of Fees	\$619,540.00

1. Events may not occur in order indicated.