

CASCADE SOFTWARE SYSTEMS, INC. MAINTENANCE AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 10th day of January, 2017, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and Cascade Software Systems, Inc. an Oregon corporation, whose address is P.O. Box 10723, Eugene, Oregon 97440, hereinafter referred to as "CONTRACTOR".

RECITALS

WHEREAS, COUNTY is in need of maintenance and support services and annual upgrades for the WIN-CAMS Software System (hereinafter "System"); and

WHEREAS, CONTRACTOR is willing and able to provide such upgrades and maintenance and support services pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of their mutual covenants and conditions, the parties hereto agree as follows:

I. TERM

This Agreement shall become effective upon execution and shall be effective for an initial term of three years. Thereafter, this Agreement shall automatically renew for two (2) additional one (1) year periods upon the same terms and conditions herein set forth, unless written notice of non-renewal is given by either CONTRACTOR or COUNTY or COUNTY's Public Works and Planning Director or his designee, no later than sixty (60) days prior to the close of the then current term.

II. DEFINITIONS**Acceptance Criteria:**

The performance and operating specifications the System must meet at a minimum, as set out or referred to in this Agreement.

Acceptance Test:

The process of testing a specific function or functions to determine if the operation or operations are as stated in this Agreement.

Change Control Process:

Process used by COUNTY's Internal Services Department (ISD) to inform staff of new or updated production use systems.

County System Hardware:

The central processing units owned or leased by COUNTY which are described in this Agreement on which COUNTY is licensed to use the System Software, any back-up equipment for such central processing units, and any peripheral hardware such as terminals, printers, and Personal Computers as described in this Agreement.

License:

The meaning assigned to the term "License" is as defined in Section III-A of this Agreement and the rights and obligations it creates under the laws of the United States of America and the State of California including without limitation, copyright and intellectual property law.

Public Records:

Public Records includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

System:

The System Software and System Documentation, collectively. Reference to the "System" shall include any component thereof. All modifications and enhancements to the System shall be deemed to be part of the System as defined herein and shall be subject to all terms and conditions set forth herein.

System Operation:

The general operation of COUNTY's hardware and all software including, but not limited to, system restarts, configuration and operation of system peripherals (such as printers, modems, and terminals), installation of new software releases, and other related activities.

System Software:

WIN-CAMS, that certain computer software described in this Agreement, and all coding, tapes, disks, modules and similar materials comprising such software or on which it is stored.

System Documentation:

The documentation relating to the System Software, and all manuals, reports, brochures, sample runs, specifications and other materials comprising such documentation provided by CONTRACTOR in connection with the System Software pursuant to this Agreement.

User:

The terms "User", "Customer", "COUNTY" and "Licensee" are considered to be equivalent throughout this Agreement.

III. LICENSE TERMS AND CONDITIONS

A. SOFTWARE LICENSE

1) GRANT OF LICENSE

CONTRACTOR grants to COUNTY and COUNTY accepts a non-exclusive, non-transferable, perpetual license to use the WIN-CAMS Software System that is subject to the terms and conditions set forth in this Agreement.

2) SCOPE OF LICENSE

The license granted herein shall consist solely of the non-exclusive, non-transferable right of COUNTY to operate the System Software in support of COUNTY's Public Works and Planning Department.

3) OWNERSHIP

a. The parties acknowledge and agree that, as between CONTRACTOR and COUNTY, title and full ownership of all rights in and to the System Software, System Documentation, and all other materials provided to COUNTY by CONTRACTOR under the terms of this Agreement shall remain with CONTRACTOR.

b. The parties acknowledge and agree that, as between CONTRACTOR and COUNTY, full ownership of all rights in and to all COUNTY data,

whether in magnetic or paper form, including without limitation printed output from the System, are the exclusive property of COUNTY.

4) POSSESSION, USE AND UPDATE OF SOFTWARE

a. COUNTY agrees that only COUNTY will use the System Software for its own internal purposes. CONTRACTOR may, at reasonable times, inspect COUNTY's premises and equipment to verify that all of the terms and conditions of this license are being observed.

b. CONTRACTOR may create, from time to time, updated versions of the System Software and System Documentation and CONTRACTOR shall make such System Updates available to COUNTY. All System Updates shall be licensed under the terms of this Agreement. COUNTY agrees to follow the prescribed instructions for updating System Software and System Documentation provided to COUNTY by CONTRACTOR. COUNTY must authorize all System Updates in writing.

5) TRANSFER OF SOFTWARE

a. COUNTY shall not rent, lease, license, distribute, sell, transfer, or assign this license, the System Software, or the System Documentation, or any of the information contained therein other than COUNTY data, to any other person or entity, whether on a permanent or temporary basis, and any attempt to do so will constitute a breach of this Agreement.

b. No right or license is granted under this Agreement for the use or other utilization of the licensed programs, directly or indirectly, for the benefit of any other person or entity, except as provided in this Agreement.

6) POSSESSION AND USE OF SOURCE CODE

a. Source code and other material resulting from custom programming by CONTRACTOR released to COUNTY under this license shall be deemed CONTRACTOR software subject to all of the terms and conditions of the software license set forth in this Agreement. The scope of COUNTY's permitted use of the custom source code under this license shall be limited to maintenance and support of

the System Software. For purposes of this Section, the term "maintenance and support" means correction of System Software errors and preparation of System Software modifications and enhancements. If COUNTY creates new computer code in the process of enhancing the System Software, that specific new code shall be owned by COUNTY and may be used by COUNTY's employees, officers, or agents for COUNTY's own internal business operations. However, if COUNTY's enhancement results in the creation of a derivative work from the System Software, the copyright to such derivative work shall be owned by CONTRACTOR and COUNTY's rights to use such derivative work shall be limited to those granted with respect to the System Software in this Agreement.

IV. OBLIGATIONS OF CONTRACTOR

A. SERVICES TO BE PROVIDED BY CONTRACTOR TO COUNTY

1) CONTRACTOR shall provide maintenance and support and annual upgrades for the System as set forth in this Agreement.

2) CONTRACTOR shall provide enhancements to the System as requested by COUNTY and agreed to in writing by both parties in accordance with section VI of this Agreement.

B. CONTRACTOR RESPONSE COMMITMENT

1) Unlimited technical assistance by phone will be made available by CONTRACTOR Monday through Friday, 8 a.m. to 5 p.m., Pacific Time, except COUNTY and CONTRACTOR holidays. Phone calls will be answered as received, and to the best of CONTRACTOR'S ability, messages will be answered within twenty-four (24) hours.

2) User problems which cause a delay or stoppage of the System as determined by COUNTY and are attributable to software deficiency shall be given "emergency" priority by CONTRACTOR and shall be pursued continuously until the problem is resolved by CONTRACTOR which shall not exceed two (2) working days from the first contact.

3) User problems, which do not cause a delay or stoppage of the System as determined by COUNTY and cannot be resolved through immediate telephone interaction, will be evaluated by CONTRACTOR. An estimate of time needed to solve the problem will be provided in writing to COUNTY no later than ten (10) days after the first contact.

4) In the event of any decrease in System functionality or accuracy related to time and/or date data related codes and/or internal subroutines that impede the System from operating correctly, CONTRACTOR shall restore or repair the System to the same level of functionality as warranted herein, so as to minimize interruption to COUNTY's ongoing business process, time being of the essence. In the event that such warranty compliance requires the acquisition of additional programs, the expense for any such associated or additional acquisitions, which may require, including, without limitation, data conversion tools, shall be borne exclusively by CONTRACTOR. Nothing in this warranty shall be construed to limit any rights or remedies the COUNTY may otherwise have under this Agreement with respect to defects.

C. SYSTEM UPDATES AND NEW PRODUCTS

1) SYSTEM UPDATES

From time to time CONTRACTOR will develop and provide System Updates to COUNTY. System Updates shall be subject to the terms and conditions of this Agreement and shall be deemed licensed System Software hereunder and will be made available to COUNTY at no additional charge to COUNTY. System Updates will be made available to COUNTY at the discretion of CONTRACTOR but will not be unreasonably withheld.

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2) NEW PRODUCTS

CONTRACTOR may from time to time release new software with capabilities substantially different from or greater than the System Software ("New Products") and which therefore do not constitute System Updates. These New Products will be made available to COUNTY at a cost not to exceed CONTRACTOR's then standard rates for customers similarly situated.

D. OPERATING SYSTEM UPDATES

The application must run on an operating system ("O/S") that is consistently and currently supported by the operating system vendor. Applications under maintenance are expected to always be current in regards to the O/S. Outdated or unsupported O/S will not be implemented on the production network.

With approval from CONTRACTOR, COUNTY will apply patches to both the operating system, and security subsystems as releases are available from operating system vendors. The application is expected to perform in this environment. CONTRACTOR is expected to keep its software current in order to operate in this environment. These patches include critical O/S updates and security patches. Should the patches cause an issue with the application, the CONTRACTOR is expected to immediately work on the issue, and provide application fixes to ensure it will operate successfully in the patched environment.

E. ANTI-VIRUS MANAGEMENT

COUNTY will actively run anti-virus management, where appropriate, on all application servers and PCs. The application is expected to perform adequately while anti-virus management is active.

F. ADHERE TO CHANGE CONTROL PROCESS

CONTRACTOR must adhere to COUNTY's Change Control Process, as hereinafter described. COUNTY's ISD employs a procedure to implement updates, upgrades, and version releases to a system that is in production use. This forum allows ISD to inform staff (Help Desk, Network, Server, Database, Security, and Analysts) of

upcoming changes to a production system. CONTRACTOR must inform ITSD a minimum of one (1) week prior to any planned, non-emergency changes so that the Change Control Process may be followed.

V. OBLIGATIONS OF THE COUNTY

A. COUNTY CONTRACT ADMINISTRATOR

COUNTY appoints its Director of Public Works and Planning, or his designee, as COUNTY's Contract Administrator with full authority to deal with CONTRACTOR in any way and every regard concerning this Agreement.

B. SAFEGUARDING SYSTEM SOFTWARE

COUNTY will follow the established Information Technology (IT) Standards and Preferences to safeguard System Software delivered to COUNTY by CONTRACTOR. A copy of the "Information Technology (IT) Standards and Preferences" will be made available upon request.

VI. TERMINATION

A. Non-Allocation of Funds - The terms of this Agreement, and the services to be provided there under, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated, at any time by giving the CONTRACTOR thirty (30) days advance written notice.

B. Breach of Contract - The COUNTY may immediately suspend or terminate this Agreement in whole or in part, where in the determination of the COUNTY there is:

- 1) An illegal or improper use of funds;
- 2) A failure to comply with any term of this Agreement;
- 3) Improperly performed service.

In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default. The COUNTY shall have

the right to demand of the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

C. Without Cause - Under circumstances other than those set forth above, this Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written notice of an intention to terminate to CONTRACTOR.

VII. COMPENSATION/INVOICING

COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive compensation as follows:

A. Base Annual Maintenance and Support/ Yearly up-grade ("Annual Fee"):

\$34,714.05

1) System Software and Maintenance Releases –Annual Fees are not taxable due to System Software and Maintenance Releases transmitted by remote telecommunications from CONTRACTOR to COUNTY.

2) Fee Changes –CONTRACTOR may increase the Annual Fee for each one year period of this Agreement , provided that COUNTY is given sixty (60) days' advance written notice of such an increase. CONTRACTOR shall not increase such fee more than once in any one year period. Further, each such increase will not exceed the previous fee by the cumulative percentage increase in the Consumer Price Index, All Urban Consumers for the U.S., during the previous year.

B. ENHANCEMENTS – Enhancements to the system may include: modifications to the System to meet future reporting needs, updates to the interface with the County's PeopleSoft Financial System when upgrades to the system are implemented, and modifications necessary to improve efficiencies. When a need for a enhancement is identified, the COUNTY will ask the CONTRACTOR for a quote on the requested change. Before the CONTRACTOR can proceed with the modification process, the

proposed change to the System and the compensation amount must be approved in writing by the Director of Public Works and Planning or his designee. Any enhancement will be at the request of the County. In no event shall total fees for Enhancements exceed \$25,000 per year.

C. INVOICING /PAYMENT – CONTRACTOR shall invoice the COUNTY quarterly and in arrears for upgrades and maintenance and support fees. Invoices shall be submitted to Fresno County, Public Works and Planning, 2220 Tulare Street, 6th Floor, Fresno, California, 93721. COUNTY shall make payment within sixty (60) days of receipt of the invoice. Payment shall be mailed to Cascade Software System, P.O. Box 10723, Eugene, Oregon 97440-2723.

In no event shall the maximum compensation under this Agreement exceed the amount of Three Hundred Seven Thousand Four Hundred Sixty Eight and 45/100 dollars (\$307,468.45) over the potential five (5) year term of this Agreement. It is understood that all expenses incidental to CONTRACTOR'S performance of services under this Agreement shall be borne by CONTRACTOR.

VIII. INDEPENDENT CONTRACTOR

In performance of the work, duties and obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and employees will at all times be acting and performing as an independent CONTRACTOR, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venture, partner, or associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over

matters the subject thereof.

Because of its status as an independent CONTRACTOR, CONTRACTOR shall have absolutely no right to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

IX. MODIFICATION

Any matters of this Agreement may be modified from time to time by the written consent of all the parties without, in any way, affecting the remainder.

X. NON-ASSIGNMENT

Neither party shall assign, transfer or sub-contract this Agreement nor their rights or duties under this Agreement without the prior written consent of the other party.

XI. HOLD HARMLESS

CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR, its officers, agents, or employees under this Agreement, and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of CONTRACTOR, its officers, agents, or employees under this Agreement.

XII. INSURANCE

A. Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain

in full force and effect, the following insurance policies or a program of self-insurance, throughout the term of the Agreement:

B. Commercial General Liability - Commercial General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars (\$2,000,000). This policy shall be issued on a per occurrence basis. COUNTY may require specific coverage's including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed necessary because of the nature of this contract.

C. Automobile Liability: - Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred Thousand Dollars (\$500,000.00) per accident and for property damages of not less than Fifty Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred Thousand Dollars (\$500,000.00). Coverage should include owned and non-owned vehicles used in connection with this Agreement.

D. Professional Liability: - If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

E. Worker's Compensation: - A policy of Worker's Compensation insurance as may be required by the California Labor Code.

CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance naming the COUNTY of Fresno, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance provided under CONTRACTOR's policies herein. This insurance shall

not be cancelled or changed without a minimum of thirty (30) days advance written notice given to COUNTY.

Within Thirty (30) days from the date CONTRACTOR executes this Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required herein, to the COUNTY of Fresno, Financial Services Manager, Public Works and Planning, County of Fresno – 2220 Tulare Street, 6th Floor, Fresno, CA, 93721, stating that such insurance coverage have been obtained and are in full force; that the COUNTY of Fresno, its officers, agents and employees will not be responsible for any premiums on the policies; that such Commercial General Liability insurance names the COUNTY of Fresno, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees, shall be excess only and not contributing with insurance provided under CONTRACTOR's policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to COUNTY.

In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

All policies shall be with admitted insurers licensed to do business in the State of California. Insurance purchased shall be purchased from companies possessing a current A.M. Best, Inc. rating of A FSC VII or better.

XIII. AUDITS AND INSPECTIONS

The CONTRACTOR shall at any time during business hours, and as often as the COUNTY may deem necessary, make available to the COUNTY for examination all of its records and data with respect to the matters covered by this Agreement. The CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to audit and

inspect all of such records and data necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under contract (Government Code Section 8546.7).

XIV. NOTICES

The persons and their addresses having authority to give and receive notices under this Agreement include the following:

COUNTY

County of Fresno
Public Works and Planning
2220 Tulare Street, 6th Floor
Fresno, CA 93721

CONTRACTOR

Cascade Software Systems, Inc.
Aad F. Alkemade
P.O. Box 10723
Eugene, OR 97440

Any and all notices between the COUNTY and the CONTRACTOR provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal services, when deposited in the United States Mail, postage prepaid, addressed to such party.

XV. GOVERNING LAW

Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California. The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

XVI. DISCLOSURE OF SELF-DEALING TRANSACTIONS

This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit or non-profit corporation) or if during the term of this Agreement, the CONTRACTOR changes its status to operate as a corporation.

Member of the CONTRACTOR'S Board of Directors shall disclose any self-dealing transactions that they are a party to while CONTRACTOR is providing goods or performing services under this Agreement. A self-dealing transaction shall mean a

transaction to which the CONTRACTOR is a party and in which one or more of its directors has a material financial interest. Members of the Board of Directors shall disclose any self-dealing transaction that they are a party to by completing and signing a Self-Dealing Transaction Disclosure Form (Exhibit 1) and submitting it to the COUNTY prior to commencing with the self-dealing transaction or immediately thereafter.

XVII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the CONTRACTOR and COUNTY with respect to the subject matter.

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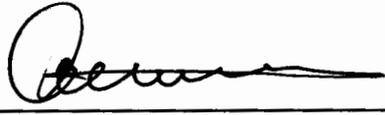
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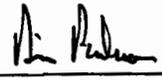
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IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth above.

Cascade Software Systems, Inc.

COUNTY OF FRESNO

By: 
Aad F. Alkemade, President
Cascade Software Systems, Inc.


Brian Pacheco, Chairman
Board of Supervisors

Date: 11/22/2016

Date: January 10, 2017

By: 
Rachelle L. K. Alkemade
Chief Financial Officer

ATTEST:
Bernice E. Seidel, Clerk
Board of Supervisors

By: 
Deputy

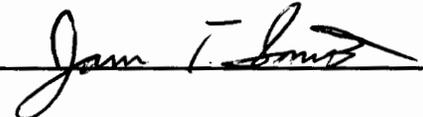
Date: 11/22/2016

Date: January 10, 2017

REVIEWED AND RECOMMENDED
FOR APPROVAL

By: 
Steven E. White, Director
Department of Public Works and
Planning

APPROVED AS TO LEGAL FORM
Daniel C. Cederborg
County Counsel

By: 

FOR ACCOUNTING USE ONLY

Fund: 0010
Subclass: 11000
Org. No: 4510
Account: 7295

APPROVED AS TO ACCOUNTING
FORM

Oscar J. Garcia C.P.A
Auditor-Controller/ Treasurer-Tax
Collector

By: 
Deputy