

A G R E E M E N T

THIS AGREEMENT ("Agreement") is made and entered into this 10th day of December, 2019, by and between the COUNTY OF FRESNO, a political subdivision of the State of California ("COUNTY"), and AssetWorks LLC, a Delaware limited liability company, whose address is 998 Old Eagle School Road, Suite 1215, Wayne, PA 19087 ("CONTRACTOR").

W I T N E S S E T H:

WHEREAS, COUNTY previously purchased from CONTRACTOR a fleet management software system ("FleetFocus FA") and fuel management system ("FuelFocus"), which allow for the management, collection, and reporting of fleet-related components, such as fuel, asset management, parts inventory, labor, motor pool operations, and service writing,

WHEREAS, CONTRACTOR will continue to provide maintenance and support for FleetFocus and FuelFocus; and

WHEREAS, COUNTY and CONTRACTOR desire to execute this Agreement for continued maintenance and support of the FleetFocus and FuelFocus software.

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

1. DEFINITIONS:

The following terms used throughout this Agreement shall be defined as follows:

Acceptance Criteria:

The performance and operating specifications that 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 the Information Services Division of COUNTY's Internal Services Department (ISD) to inform staff of new or updated production use systems.

1 County System Hardware:

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

6 COUNTY System Software:

7 The operating system and database software installed on the COUNTY System Hardware.

8 Final System Acceptance:

9 When it is determined by COUNTY that all necessary deliverables have been delivered, the data
10 has been converted, the base FleetFocus and FuelFocus software has been successfully
11 installed and tested, and FleetFocus and FuelFocus performs all functions in accordance with its
12 specifications.

13 First Production Use:

14 Date of first use of the system in a production environment.

15 License:

16 The meaning assigned to the term 'License,' as defined in Section 2(A) of this Agreement, and
17 the rights and obligations that it creates under the laws of the United States of America and the
18 State of California, including without limitation, copyright and intellectual property law.

19 Monies:

20 The terms "Monies", "Charges", "Price", and "Fees" will be considered to be equivalent.

21 Public Records:

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

25 Supplier:

26 The terms "Supplier", "Vendor", and "[Vendor Name]" all refer to CONTRACTOR, and are
27 considered to be equivalent throughout this Agreement.

28 System:

1 The System Software and System Documentation, collectively. Reference to the "System" shall
2 include any component thereof. All modifications and enhancements to the System shall be
3 deemed to be part of the System, as defined herein, and shall be subject to all terms and
4 conditions set forth herein. The System consists of FleetFocus and FuelFocus, which supports
5 the Fresno County Department of Internal Services, all interfaces, and third-party software
6 required for the System to function.

7 System Documentation:

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

11 System Operation:

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

15 System Installation:

16 All software has been delivered, has been physically loaded on a computer, and COUNTY has
17 successfully executed program sessions.

18 System Software:

19 FleetFocus and FuelFocus, that certain computer software described in this Agreement and
20 provided by CONTRACTOR, and all interfaces, coding, tapes, disks, modules, and similar
21 materials comprising such software or on which it is stored. System Software shall not include
22 operating system software, or any other Third-Party Software.

23 User:

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

26 2. **OBLIGATIONS OF THE CONTRACTOR**

27 A. SOFTWARE LICENSE

28 I. GRANT OF LICENSE

1 CONTRACTOR grants to COUNTY, and COUNTY accepts, a non-exclusive, non-transferable,
2 perpetual License to use FleetFocus and FuelFocus, which are subject to the terms and conditions set
3 forth in this Agreement.

4 II. SCOPE OF LICENSE

5 The License granted herein shall consist solely of the non-exclusive, non-transferable right of
6 COUNTY to operate the System Software in support of various COUNTY departments, including
7 COUNTY's Internal Services Department.

8 III. OWNERSHIP

9 The parties acknowledge and agree that, as between CONTRACTOR and COUNTY, title and
10 full ownership of all rights in and to the System Software, System Documentation, and all other materials
11 provided to COUNTY by CONTRACTOR under the terms of this Agreement, shall remain with
12 CONTRACTOR. COUNTY will take reasonable steps to protect trade secrets of the System Software
13 and System Documentation. CONTRACTOR retains ownership of all copies. COUNTY may not disclose
14 or make available to third parties the System Software or System Documentation or any portion thereof.
15 CONTRACTOR shall own all right, title and interest in and to all corrections, modifications,
16 enhancements, programs, and work product conceived, created or developed, alone or with COUNTY
17 or others, as a result of or related to the performance of this Agreement, including all proprietary rights
18 therein and based thereon. Except and to the extent expressly provided herein, CONTRACTOR does
19 not grant to COUNTY any right or license, express or implied, in or to the System Software and System
20 Documentation or any of the foregoing. The parties acknowledge and agree that, as between
21 CONTRACTOR and COUNTY, full ownership of all rights in and to all COUNTY data, whether in
22 magnetic or paper form, including without limitation printed output from the System, are the exclusive
23 property of COUNTY.

24 IV. POSSESSION, USE, AND UPDATE OF SOFTWARE

25 COUNTY will use the System Software only for its own internal purposes. CONTRACTOR may,
26 at reasonable times, inspect COUNTY's premises and equipment to verify that COUNTY is observing all
27 of the terms and conditions of this License. CONTRACTOR may create, from time to time, updated
28 versions of the System Software and System Documentation, and CONTRACTOR shall make such

1 System Updates available to COUNTY. All System Updates shall be licensed under the terms of this
2 Agreement. COUNTY agrees to follow the prescribed instructions for updating System Software and
3 System Documentation provided to COUNTY by CONTRACTOR. COUNTY must authorize all System
4 Updates in writing.

5 V. TRANSFER OF SOFTWARE

6 COUNTY shall not rent, lease, license, distribute, sell, transfer, or assign this License, the
7 System Software, or the System Documentation, or any of the information contained therein, other than
8 COUNTY data, to any other person or entity, whether on a permanent or temporary basis, and any
9 attempt to do so will constitute a breach of this Agreement. No right or license is granted under this
10 Agreement for the use or other utilization of the licensed programs, directly or indirectly, for the benefit
11 of any other person or entity, except as provided in this Agreement.

12 VI. POSSESSION AND USE OF SOURCE CODE

13 Source code and other material that results from custom programming by CONTRACTOR
14 released to COUNTY under this License shall be deemed to be CONTRACTOR software, subject to all
15 of the terms and conditions of the License set forth in this Agreement. The scope of COUNTY's
16 permitted use of the custom source code under this License shall be limited to maintenance and support
17 of the System Software. For purposes of this Section, the term "maintenance and support" means
18 correction of System Software errors, and preparation of System Software modifications and
19 enhancements.

20 VII. RESTRICTIONS ON USE

21 COUNTY shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise
22 commercially exploit, or make available to any third party the System Software or the System
23 Documentation in any way; (ii) modify or make derivative works based upon the System Software or the
24 System Documentation; (iii) create Internet "links" to the System Software or "frame" or "mirror" any
25 System Documentation on any other server or wireless or Internet-based device; (iv) send spam or
26 otherwise duplicative or unsolicited messages in violation of applicable law; (v) send or store infringing,
27 obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to
28 children or violative of third party privacy rights; (iv) send or store material containing software viruses,

1 worms, Trojan horses, or other harmful computer code, files, scripts, agents or programs; (vii) interfere
2 with or disrupt the integrity or performance of the System Software or the data contained therein,
3 including but not limited to COUNTY Data; (viii) attempt to gain unauthorized access to the System
4 Software or its related systems or networks; (ix) reverse-engineer or access the System Software in
5 order to (a) build a competitive product or service, (b) build a product using similar ideas, features,
6 functions or graphics of the System Software, or (c) copy any ideas, features, functions or graphics of
7 the System Software.

8 VIII. INTELLECTUAL PROPERTY, TRADEMARK, AND COPYRIGHT

9 CONTRACTOR retains ownership of the System Software, any portions or copies thereof, and
10 all rights therein. CONTRACTOR reserves all rights not expressly granted to COUNTY. This License
11 does not grant COUNTY any rights in connection with any trademarks or service marks of
12 CONTRACTOR, its suppliers or licensors. All right, title, interest and copyrights in and to the System
13 Software, and the accompanying System Software Documentation, and any copies of the System
14 Software are owned by CONTRACTOR, its suppliers or licensors. All title and intellectual property rights
15 in and to the content which may be accessed through use of the System Software are the property of
16 the respective content owner, and may be protected by applicable copyright or other intellectual property
17 laws and treaties. This License grants COUNTY no rights to use such content.

18 B. SERVICES TO BE PROVIDED BY CONTRACTOR TO COUNTY

19 I. DOCUMENTATION

20 CONTRACTOR shall provide to COUNTY FleetFocus and FuelFocus System Documentation,
21 which shall consist of electronic media files. The electronic media files must be printable using PC
22 software normally available at COUNTY. CONTRACTOR shall provide new System Documentation
23 corresponding to all new Software Upgrades. COUNTY may print additional copies of all documentation.
24 COUNTY shall only use System Documentation for the purposes identified within this Agreement.

25 II. SYSTEM MAINTENANCE AND SUPPORT BY CONTRACTOR

26 System maintenance and support includes System Updates as they are released by
27 CONTRACTOR, including updates as required as a result of Federal Regulatory Changes. The first day
28

1 of production use will be when Acceptance Testing is completed. CONTRACTOR will support day-to-
2 day operation of the System as follows:

3 III. SUPPORT HOURS/SCOPE:

4 Provide unlimited technical assistance by phone during normal coverage hours
5 (7:30 a.m. to 5:00 p.m. Eastern Standard Time (EST), Monday through Friday, except
6 CONTRACTOR and COUNTY holidays), toll-free telephone assistance to keep the
7 System in, or restored to, normal operating condition. The object of this support will be to
8 answer specific questions related to the System Software and the application thereof.
9 Support provided under this Agreement does not include training of new personnel (after
10 initial staff is trained), operation of hardware, or solving other hardware/software
11 problems unrelated to the System Software.

12 IV. SUPPORT RESPONSE:

13 During the term of this Agreement, CONTRACTOR will (a) correct any error or
14 malfunctions in the System as supplied by CONTRACTOR, which prevent it from
15 operating in conformance with the specifications set forth in this Agreement, or (b)
16 provide a commercially reasonable alternative that will conform to the specifications set
17 forth in this Agreement.

18 In the event that the COUNTY encounters an error and/or malfunction
19 ("Deviation") in the Software, COUNTY shall communicate the circumstances and any
20 supporting information to CONTRACTOR. Upon receipt, CONTRACTOR will respond as
21 follows:

22 In the event that, in the mutual and reasonable opinion of CONTRACTOR and the
23 COUNTY, there exists a Deviation that does not constitute a serious impediment to the
24 normal intended use of the Software, CONTRACTOR will correct the Deviation and
25 distribute the correction to the COUNTY in accordance with CONTRACTOR's normal
26 Software revision schedule.

27 In the event that, in the mutual and reasonable opinion of CONTRACTOR and the
28 COUNTY there exists a Deviation that does constitute a serious impediment to the

normal, intended use of the Software, CONTRACTOR will take such steps as are reasonably required to correct the Deviation, so that it conforms to the description contained in the System Documentation

V. REMOTE VIRTUAL PRIVATE NETWORK (VPN) DIAGNOSTICS

Remote VPN Diagnostics Support includes:

- a. Diagnostic or corrective actions necessary to restore proper FleetFocus and FuelFocus operation;
- b. Diagnostic actions which attempt to identify the cause of system problem;
- c. Correction of data file problem; and
- d. Product modifications.

CONTRACTOR product specialists will provide diagnostics via VPN on FleetFocus and FuelFocus. COUNTY will provide any required hardware and equipment necessary at COUNTY site for CONTRACTOR VPN support.

VI. TECHNICAL INFORMATION

CONTRACTOR will provide technical information to COUNTY as necessary and helpful. Such information may cover areas such as FleetFocus and FuelFocus usage, third party software, and other matters considered relevant to COUNTY by CONTRACTOR. Technical information will be provided at the discretion of CONTRACTOR, but will not be unreasonably withheld.

C. ADDITIONAL SYSTEM MAINTENANCE SERVICES BY CONTRACTOR

CONTRACTOR may provide additional maintenance services ("Additional Maintenance and Support Services" or "Additional Maintenance Services") at an additional charge. Charges will be as identified in Section 6 of this Agreement, or, if not included in this Agreement, charges will be at current prices in effect at the time goods or services are provided. Any Additional Maintenance and Support Services requested by COUNTY and determined by CONTRACTOR to be billable by CONTRACTOR must be identified as a chargeable service prior to the service being performed, and must be approved in writing in advance by COUNTY's Contract Administrator. Additional Maintenance Services include, but are not limited to, the following:

1 I. ADDITIONAL TRAINING

2 A specific amount of training is designated in this Agreement. Additional training
3 at a COUNTY facility is available upon request by COUNTY at an additional charge
4 under the terms of this Agreement. Requests for additional training will be reviewed by
5 CONTRACTOR, and must be requested in writing in advance by COUNTY's Contract
6 Administrator. Charges will be at rates identified in this Agreement.

7 II. DATA AND SYSTEM CORRECTIONS

8 Data and System Corrections include any corrective actions accomplished by
9 CONTRACTOR on-site or via VPN, which are necessary due to COUNTY errors or
10 unauthorized source code or data access by COUNTY. Unauthorized access to the data
11 is defined as any COUNTY editing of data through other than normal system usage, as
12 defined in System Documentation. Unauthorized access to source code is defined as any
13 COUNTY access whatsoever to system source code. Services provided by
14 CONTRACTOR are not billable when they result from errors caused by FleetFocus and
15 FuelFocus or instruction provided by CONTRACTOR.

16 III. CUSTOMER SITE VISITS

17 Site visits to COUNTY sites, as may be requested in writing by COUNTY, and
18 which are within the scope of the project services, are available for reasons including, but
19 not limited to, (1) additional system training on hardware or software usage; (2) resolution
20 of system difficulties not resulting from actions by, or otherwise the responsibility of
21 CONTRACTOR (as determined by mutual agreement between CONTRACTOR and
22 COUNTY); (3) installation of Software Releases; and (4) assistance in equipment
23 maintenance, movement, or diagnosis. CONTRACTOR will review requests for site visits
24 outside of the scope of project services if COUNTY's Contract Administrator provides
25 such a request in writing in advance. Charges will be at rates identified in this Agreement.

26 IV. CUSTOM PROGRAMMING

27 Requests for supplemental programming or customization of system features not
28 covered under this Agreement are available to COUNTY. CONTRACTOR will review

1 such requests, which COUNTY's Contract Administrator must request in writing in
2 advance. Charges will be at rates identified in this Agreement, and in accordance with the
3 Professional Services Agreement, attached as Exhibit C, and incorporated by this
4 reference.

5 D. CONTRACTOR PROJECT COORDINATOR

6 Upon execution of this Agreement, CONTRACTOR shall appoint a Project Coordinator,
7 who will act as the primary contact person to interface with COUNTY for implementation,
8 maintenance and support of FleetFocus and FuelFocus.

9 E. SYSTEM UPDATES AND NEW PRODUCTS

10 CONTRACTOR may revise the Software as a result of the correction of Deviations and/or
11 the release of upgrades or improvements or modifications designed to improve the
12 performance of the Software, and/or to increase the capabilities of the Software
13 ("Revisions"). Revisions shall be subject to the terms and conditions of this Agreement
14 and shall be deemed licensed System Software hereunder. Revisions will be made
15 available to COUNTY at the discretion of CONTRACTOR, but will not be unreasonably
16 withheld.

17 There are two types of Revisions:

- 18 i. Revisions that the COUNTY is obligated to implement ("Mandatory Revisions");
19 ii. Revisions that may be implemented by the COUNTY at its option ("Optional
20 Revisions").

21 No charge shall be made to the COUNTY for either Mandatory Revisions or Optional
22 Revisions while under a current Maintenance Agreement.

23 New products ("New Products") may be added to the Software by CONTRACTOR from
24 time to time. Compared to a Revision, New Products substantially improve the
25 performance of the Software and/or substantially increase its functionality and capability.
26 CONTRACTOR, in its sole discretion, shall decide which upgrades and improvements
27 will be issued as Revisions without charge, and which shall be issued as New Products,
28 for which there may be a charge.

1 All Revisions and New Products will be made available for download by COUNTY via
2 access to CONTRACTOR website or other suitable media, at the option of
3 CONTRACTOR. COUNTY shall be solely responsible for executing the appropriate
4 instructions in order to transfer the Revisions or New Products onto to its system.

5 F. OPERATING SYSTEM UPDATES

6 The application must run on an operating system (O/S) that is consistently and currently
7 supported by the operating system vendor. Applications under maintenance shall always be within one
8 (1) year of current in regards to the O/S. Outdated or unsupported O/S will not be implemented on the
9 production network.

10 COUNTY will notify CONTRACTOR when a critical security patch is released. CONTRACTOR
11 will have thirty (30) days to ensure application can perform in the updated environment. With approval
12 from CONTRACTOR, COUNTY will apply patches to both the operating system, and non-critical
13 security subsystems, as releases are available from operating system vendors. The application shall
14 perform in this environment. CONTRACTOR shall keep its software within one (1) year of current in
15 order to operate in this environment. These patches include critical O/S updates and security patches.

16 G. ANTI-VIRUS MANAGEMENT

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

19 H. ADHERE TO CHANGE CONTROL PROCESS

20 CONTRACTOR must adhere to COUNTY's Change Control Process, which shall be provided to
21 CONTRACTOR in writing. COUNTY employs a procedure to implement updates, upgrades, and version
22 releases to a system that is in production use. This forum allows ISD to inform staff (Help Desk,
23 Network, Server, Database, Security, and Analysts) of upcoming changes to a production system.
24 CONTRACTOR must inform ISD a minimum of one (1) week prior to any planned, non-emergency
25 changes, so that the Change Control Process may be followed.

26 I. OTHER

27 Unless otherwise specified, for third-party software, CONTRACTOR shall provide standard
28 documentation in electronic form (via the Internet or File Transfer Protocol (FTP)).

1 The System runs in a Local Area Network and Web environment. As such, the performance of
2 the System is directly related to, among other things: available network bandwidth, and the performance
3 of other applications. For this reason, CONTRACTOR makes no guarantees as to System response
4 time.

5 3. **OBLIGATIONS OF COUNTY**

6 A. **COUNTY CONTRACT ADMINISTRATOR**

7 COUNTY appoints its Chief Information Officer (CIO), or his or her designee, as COUNTY's
8 Contract Administrator, with full authority to deal with CONTRACTOR in all matters concerning this
9 Agreement.

10 B. **CONTRACTOR RESPONSE COMMITMENT**

11 COUNTY will follow its present practices to safeguard System Software delivered to COUNTY by
12 CONTRACTOR. A copy of COUNTY'S "Information Technology (IT) Standards and Preferences" will be
13 made available upon request.

14 C. **SAFEGUARDING SYSTEM SOFTWARE**

15 COUNTY will follow its present practices to safeguard System Software delivered to COUNTY by
16 CONTRACTOR. A copy of COUNTY'S "Information Technology (IT) Standards and Preferred Practices"
17 will be made available upon request.

- 18 1) COUNTY utilizes a backup and recovery system written and maintained
19 by Commvault Systems. This application requires a backup agent to run
20 on the server.
 - 21 2) COUNTY will provide CONTRACTOR with an account with appropriate
22 administrative rights to administer the application. The account password
23 shall periodically expire.
 - 24 3) In order for the application to run on COUNTY supported servers, the
25 application must not require the users to have administrative rights on the
26 servers.
- 27
28

1 4) COUNTY, at all times, during and after the performance of the installation
2 of the System Software, is responsible for maintaining adequate data
3 backups to protect against loss of data.

4 D. FACILITIES AND PREPARATION

5 COUNTY shall, at its own expense, provide all necessary labor and materials for site
6 preparation, electrical services, and cabling required for System Installation. COUNTY shall receive the
7 System Software, and will follow instructions provided by CONTRACTOR to load it on COUNTY's
8 System Hardware to prepare the System for processing.

9 E. SYSTEM HARDWARE AND SYSTEM SOFTWARE

10 COUNTY shall, at its own expense, provide and properly maintain, and update on an ongoing
11 basis, all necessary COUNTY System Software and County System Hardware required to operate
12 FleetFocus and FuelFocus. Said COUNTY System Software and County System Hardware shall meet or
13 exceed CONTRACTOR's recommendations.

14 G. DATA SECURITY

15 1) As part of COUNTY's responsibility for computer infrastructure, COUNTY is
16 responsible for ensuring that data is secure and protected at all times. CONTRACTOR is not
17 responsible for and cannot be held liable for inadvertent data disclosure or theft from COUNTY facilities.
18 AssetWorks does not guarantee the privacy, security, authenticity or non-corruption of any information
19 transmitted through the internet or any mobile or wireless network, or any information stored in any
20 system connected to the internet or to any mobile or wireless network. AssetWorks shall not be
21 responsible for any claims, damages, costs or losses whatsoever arising out of or in any way related to
22 Customer's connection to or use of the internet or of any mobile or wireless network.

23 2) AssetWorks will not be liable to Customer or any third party for any claims,
24 expenses, damages, costs or losses, whatsoever, arising out of or in any way related to Customer's use
25 of the Software, insofar as such Software may be used to store, transmit, display, disclose or otherwise
26 use data or information which is considered private, confidential, proprietary or otherwise exempt from
27 public disclosure under applicable law.

28 H. COUNTY PROJECT MANAGER

1 Upon execution of this Agreement, COUNTY's Contract Administrator shall designate one
2 individual from ISD who will function as Project Manager with responsibility for day-to-day management
3 of the project for the support and maintenance of FleetFocus and FuelFocus. The Project Manager and
4 COUNTY personnel shall have the necessary and appropriate training and experience to implement the
5 terms of this Agreement. COUNTY acknowledges CONTRACTOR'S reliance on same.

6 I. OTHER COUNTY OBLIGATIONS

7 COUNTY's ISD staff will provide technical assistance during the performance of
8 the installation of the System Software. In particular, COUNTY will provide:

- 9 a. Network connectivity and troubleshooting assistance.
10 b. Ability to monitor network traffic and isolate bottlenecks.
11 c. Technical assistance concerning the integration with existing COUNTY
12 systems (if applicable).
13 d. Expertise to handle issues with PCs, printers, and cabling before,
14 during, and after rollout.

15 4. TERM

16 The term of this Agreement shall be for a period of three (3) years, commencing on January 1,
17 2020, through and including December 31, 2022. This Agreement may be extended for two (2) additional
18 consecutive twelve (12) month periods upon written approval of both parties no later than thirty (30) days
19 prior to the first day of the next twelve (12) month extension period. The Director of Internal Services/Chief
20 Information Officer (CIO) or his or her designee is authorized to execute such written approval on behalf of
21 COUNTY based on CONTRACTOR'S satisfactory performance.

22 5. TERMINATION

23 A. Non-Allocation of Funds - The terms of this Agreement, and the services to be
24 provided hereunder, are contingent on the approval of funds by the appropriating government agency.
25 Should sufficient funds not be allocated, the services provided may be modified, or this Agreement
26 terminated, at any time without penalty by giving the CONTRACTOR thirty (30) days advance written notice
27 of non-allocation of funds.

28 B. Breach of Contract - The COUNTY may immediately suspend or terminate this

Agreement in whole or in part, where in the reasonable and supported 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) A substantially incorrect or incomplete report submitted to the COUNTY;
- 4) 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 reasonable and supported 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 by giving thirty (30) days advance written notice of an intention to terminate to CONTRACTOR. There shall be no refund for amounts pre-paid for any termination under this paragraph.

6. **COMPENSATION/INVOICING**: COUNTY agrees to pay CONTRACTOR, and CONTRACTOR agrees to receive, compensation as follows:

A. ANNUAL MAINTENANCE AND SUPPORT FEES FOR 1,600 ACTIVE EQUIPMENT UNITS

YEAR	COST
YEAR 1	\$45,284.95
YEAR 2	\$46,873.71
YEAR 3	\$48,279.93
YEAR 4	\$49,728.32
YEAR 5	\$51,220.17
TOTAL	\$241,387.08

Modules covered by the Annual Maintenance and Support Fees stated above include: Bar Code, Call Center, Crystal Reports Embedded, Customer Access, Enterprise Portal, Equipment Planning, KPI/Dashboards, Labor Capture, Maxqueue, MobileFocus for 2 (two) devices, Motor Pool, Notifications, Performance Measures & Monitors, Production Planning, Query, Replacement Modeling, Reporting, Reservations, Service Level Agreements, Shop Activity, and Shop Scheduling modules.

B. ADDITIONAL PRODUCTS AND/OR SERVICES FEES:

OPTIONAL MAINTENANCE BUNDLES	COST
1. AssetWorks Academy Users Conference Admission	\$1,250.00 per person
2. Tune-Up Assessment	\$19,150.00
3. Upgrade Assistance	\$4,000.00
4. On-Site System Training Per Day (Three (3) day minimum, excluding travel)	\$1,913.33
5. Billable Services per One (1) Hour	\$205.00
6. Additional FleetFocus Twenty-Five (25) Active Equipment Units, including Modules as listed in section 6.B above	\$1,306.50
7. Additional FleetFocus Annual Maintenance and Support Fees for Twenty-Five (25) New Active Equipment Units	\$325.50
8. Billing Module License (1,600 licenses)	\$2,752.00
9. Mobile Focus/Smart Apps Enterprise License (1,600 licenses)	\$11,024.00
10. Additional Billing Module License (per license)	\$1.72
11. Additional Mobile Focus/Smart Apps Enterprise License (per license)	\$6.89

COUNTY shall only pay for "Additional Products and/or Services Fees" in this Section B to

1 CONTRACTOR if any such products and/or services set forth hereinabove are purchased and/or
2 performed by CONTRACTOR upon COUNTY's written request. In no event shall Additional Products
3 and/or Services Fees exceed \$333,612.92 during the term of this Agreement.

4 Descriptions of the products included in Sections 6(A) and 6(B) are described in the attached
5 Exhibit B, which is incorporated by this reference.

6 C. TOTAL CONTRACT AMOUNT

7 In no event shall services performed under this Agreement exceed \$575,000.00 during the total
8 possible 5-year term of this Agreement. All expenses incidental to CONTRACTOR'S performance of
9 services under this Agreement shall be borne by CONTRACTOR.

10 D. INVOICING

11 CONTRACTOR shall submit monthly invoices referencing the provided contract number, either
12 electronically or via mail, in triplicate to the County of Fresno, Internal Services Department, Attention:
13 Business Office, 333 W. Pontiac Way, Clovis, CA 93612, (isdbusinessoffice@fresnocountyca.gov).

14 COUNTY shall pay CONTRACTOR within forty-five (45) days of receipt of an approved invoice.

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

24 CONTRACTOR and COUNTY shall comply with all applicable provisions of law and the rules and
25 regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

26 Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right
27 to employment rights and benefits available to COUNTY employees. CONTRACTOR shall be solely liable
28 and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In

1 addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating
2 to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all
3 other regulations governing such matters. It is acknowledged that during the term of this Agreement,
4 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement.

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

7 9. **NON-ASSIGNMENT:** Neither party shall assign, transfer or sub-contract this Agreement nor
8 their rights or duties under this Agreement without the prior written consent of the other party.

9 10. **HOLD HARMLESS:** CONTRACTOR agrees to indemnify and at COUNTY'S request,
10 defend the COUNTY, its officers, agents, and employees from any and all costs and expenses (including
11 attorney's fees and costs), damages, liabilities, claims, and losses, and any and all third party claims,
12 damages, costs, fees, regulatory fines and penalties, and forms of legal action involving Cyber Risks,
13 occurring or resulting to COUNTY in to the extent and proportion directly arising from the negligent
14 performance, or failure to perform, by CONTRACTOR, its officers, agents, or employees under this
15 Agreement, and from any and all reasonable costs and expenses (including attorney's fees and costs),
16 thereto.

17 COUNTY agrees to indemnify, save, hold harmless, and at CONTRACTOR'S request, defend the
18 CONTRACTOR, its officers, agents, and employees from any and all costs and expenses (including
19 attorney's fees and costs), damages, liabilities, claims, and losses occurring or resulting to CONTRACTOR
20 in connection with the performance, or failure to perform, by COUNTY, its officers, agents, or employees
21 under this Agreement, and from any and all costs and expenses (including attorney's fees and costs),
22 damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may
23 be injured or damaged by the performance, or failure to perform, of COUNTY, its officers, agents, or
24 employees under this Agreement.

25 In the event of a third party claim of alleged infringement of patent rights, copyright, trade secret
26 rights, or intellectual property rights directly related to the services, software or Equipment and services
27 provided by CONTRACTOR, to the fullest extent permitted by law, CONTRACTOR agrees to and shall
28 indemnify and defend, at its own expense, any action brought against COUNTY, to the extent that it is

1 based on a claim that the Software supplied by CONTRACTOR infringes a United States patent or
2 copyright, and CONTRACTOR will pay those costs and damages finally awarded against COUNTY in any
3 such action that are attributable to any such claim; provided, such defense and payments are conditioned
4 on the following: (1) that CONTRACTOR shall be promptly notified in writing by COUNTY following its
5 receipt of any such claim; (2) that CONTRACTOR shall have sole control of the defense of any action on
6 such claim and all negotiations for its settlement or compromise; (3) should the Software become, or in
7 CONTRACTOR'S opinion is likely to become, the subject of a claim of infringement of a United States
8 patent or copyright, then COUNTY shall permit CONTRACTOR, at CONTRACTOR'S option and expense,
9 either to (A) procure for COUNTY a non-infringing license to use the Software; (B) modify the Software so
10 that it becomes non-infringing; (C) procure for COUNTY a depreciated credit for the Software and accept its
11 return. Depreciation shall be an equal amount per year over the lifetime of the Software, which the parties
12 agree shall be five (5) years. CONTRACTOR shall have no liability to COUNTY under any provision of this
13 clause with respect to any claim of patent or copyright infringement that is based on COUNTY's
14 unauthorized use or combination of the Software with software or data not supplied by CONTRACTOR as
15 part of the Software.

16 The provisions of this Section 10 shall survive the termination of this Agreement.

17 11. **LIMITATION OF LIABILITY**

18 Except for CONTRACTOR's indemnity obligations for personal injury, death, or infringement as
19 outlined in Section 10, herein, CONTRACTOR's liability under this Agreement shall not exceed fees
20 paid to CONTRACTOR in the twelve (12) months preceding the date on which the claim arose. In all
21 other cases, in no event shall CONTRACTOR'S LIABILITY exceed One Million Dollars (\$1,000,000.00).

22 In no event shall CONTRACTOR be liable to COUNTY for any punitive, exemplary, special,
23 indirect, incidental or consequential damages (including, but not limited to, lost profits, lost business
24 opportunities, loss of use or equipment down time, and loss of or corruption to data) arising out of or
25 relating to this Agreement, regardless of the legal theory under which such damages are sought, and
26 even if the parties have been advised of the possibility of such damages or loss and notwithstanding any
27 failure of essential purpose of any limited remedy.

28 12. **INSURANCE**

Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or any third

1 parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect, the following insurance
2 policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement or
3 Joint Powers Agreement (JPA) throughout the term of the Agreement:

4 A. Commercial General Liability

5 Commercial General Liability Insurance with limits of not less than Two Million Dollars
6 (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars (\$4,000,000.00). This
7 policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including
8 completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal
9 liability or any other liability insurance deemed necessary because of the nature of this contract.

10 B. Automobile Liability

11 Comprehensive Non-Owned Automobile Liability Insurance with limits of not less than One Million
12 Dollars (\$1,000,000.00) per accident for bodily injury and for property damages. Coverage should include
13 any auto used in connection with this Agreement.

14 C. Technology Professional Liability (Errors and Omissions)

15 Technology Professional Liability (Errors and Omissions) Insurance appropriate to
16 CONTRACTOR's profession, with limits not less than Two Million Dollars (\$2,000,000) per occurrence
17 or claim, Two Million Dollars (\$2,000,000) aggregate. Coverage shall be sufficiently broad to respond to
18 the duties and obligations as is undertaken by CONTRACTOR in this Agreement and may include, but
19 not be limited to invasion of privacy violations, information theft, damage to or destruction of electronic
20 information, release of private information, alteration of electronic information, extortion and network
21 security. The policy may provide coverage for breach response costs as well as regulatory fines and
22 penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

23 D. Cyber Liability

24 CONTRACTOR shall obtain cyber liability insurance with limits not less than Two Million Dollars
25 (\$2,000,000) per occurrence. Coverage shall include, but not be limited to, claims involving Cyber Risks.
26 The cyber liability policy shall be endorsed to cover the full replacement value of damage to, alteration
27 of, loss of, or destruction of intangible property (including but not limited to information or data) that is in
28 the care, custody, or control of the CONTRACTOR.

1 For purposes of the technology professional liability insurance and the cyber liability insurance
2 required under this Agreement, Cyber Risks include, but are not limited to, (i) security breaches, which
3 include disclosure of, whether intentional or unintentional, information provided by COUNTY; (ii) breach
4 of any of CONTRACTOR's obligations under this Agreement relating to data security, protection,
5 preservation, usage, storage, transmission, and the like; (iii) invasion of privacy, including any release of
6 private information; (iv) information theft by any person or entity, whatsoever; (v) damage to or
7 destruction or alteration of electronic information; (vi) extortion related to CONTRACTOR's obligations
8 under this Agreement regarding electronic information, including information provided by COUNTY; (vii)
9 network security; (viii) data breach response costs, including security breach response costs; (ix)
10 regulatory fines and penalties related to CONTRACTOR's obligations under this Agreement regarding
11 electronic information, including information provided by COUNTY; and (x) credit monitoring expenses.

12 E. Professional Liability

13 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in
14 providing services, Professional Liability Insurance with limits of not less than One Million Dollars
15 (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.

16 F. Worker's Compensation

17 A policy of Worker's Compensation insurance as may be required by the California Labor
18 Code.

19 Additional Requirements Relating to Insurance

20 CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance naming
21 the County of Fresno, its officers, agents, and employees, individually and collectively, as additional
22 insured, but only insofar as the operations under this Agreement are concerned. Such coverage for
23 additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained
24 by COUNTY, its officers, agents and employees shall be excess only and not contributing with insurance
25 provided under CONTRACTOR's policies herein. This insurance shall not be cancelled or changed without
26 a minimum of thirty (30) days advance written notice given to COUNTY.

27 CONTRACTOR hereby waives its right to recover from COUNTY, its officers, agents, and
28 employees any amounts paid by the policy of worker's compensation insurance required by this

1 Agreement. CONTRACTOR is solely responsible to obtain any endorsement to such policy that may be
2 necessary to accomplish such waiver of subrogation, but CONTRACTOR's waiver of subrogation under
3 this paragraph is effective whether or not CONTRACTOR obtains such an endorsement.

4 Within Thirty (30) days from the date CONTRACTOR signs and executes this Agreement,
5 CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the
6 foregoing policies, as required herein, to the County of Fresno, Internal Services Department, Attention:
7 Director of Internal Services/Chief Information Officer, 333 W. Pontiac Way, Clovis, CA 93612, stating that
8 such insurance coverage have been obtained and are in full force; that the County of Fresno, its officers,
9 agents and employees will not be responsible for any premiums on the policies; that for such worker's
10 compensation insurance the CONTRACTOR has waived its right to recover from the COUNTY, its officers,
11 agents, and employees any amounts paid under the insurance policy and that waiver does not invalidate
12 the insurance policy; that such Commercial General Liability insurance names the County of Fresno, its
13 officers, agents and employees, individually and collectively, as additional insured, but only insofar as the
14 operations under this Agreement are concerned; that such coverage for additional insured shall apply as
15 primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents
16 and employees, shall be excess only and not contributing with insurance provided under CONTRACTOR's
17 policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30)
18 days advance, written notice given to COUNTY.

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

22 All policies shall be issued by admitted insurers licensed to do business in the State of California,
23 and such insurance shall be purchased from companies possessing a current A.M. Best, Inc. rating of A
24 FSC VII or better.

25 13. **AUDITS AND INSPECTIONS:** The CONTRACTOR shall at any time during business
26 hours, and upon commercially reasonable prior written notice, and in no case more than once annually,
27 make available to the COUNTY for examination all of its records and data with respect to the matters
28 covered by this Agreement, excluding those of a proprietary, confidential or trade secret nature. The

1 CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of such
2 records and data necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement. Any
3 such examinations or Audits shall be at the COUNTY'S expense.

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

7 14. **NOTICES:** The persons and their addresses having authority to give and receive notices
8 under this Agreement include the following:

9 COUNTY

10 COUNTY OF FRESNO
11 Director of Internal Services/CIO
333 W. Pontiac Way
Clovis, CA 93612

CONTRACTOR

Assetworks LLC
Legal Counsel
998 Old Eagle School Road, Suite 1215
Wayne, PA 19087

12 All notices between the COUNTY and CONTRACTOR provided for or permitted under this
13 Agreement must be in writing and delivered either by personal service, by first-class United States mail or
14 by an overnight commercial courier service. A notice delivered by personal service is effective upon service
15 to the recipient. A notice delivered by first-class United States mail is effective three COUNTY business
16 days after deposit in the United States mail, postage prepaid, addressed to the recipient. A notice delivered
17 by an overnight commercial courier service is effective one COUNTY business day after deposit with the
18 overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day
19 delivery, addressed to the recipient. For all claims arising out of or related to this Agreement, nothing in this
20 section establishes, waives, or modifies any claims presentation requirements or procedures provided by
21 law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code,
22 beginning with section 810).

23 15. **GOVERNING LAW:** Venue for any action arising out of or related to this Agreement shall
24 only be in Fresno County, California.

25 The rights and obligations of the parties and all interpretation and performance of this Agreement
26 shall be governed in all respects by the laws of the State of California.

27 16. **DISCLOSURE OF SELF-DEALING TRANSACTIONS**

28 This provision is only applicable if the CONTRACTOR is operating as a corporation (a for-profit

1 or non-profit corporation) or if during the term of the agreement, the CONTRACTOR changes its status
2 to operate as a corporation.

3 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing transactions
4 that they are a party to while CONTRACTOR is providing goods or performing services under this
5 agreement. A self-dealing transaction shall mean a transaction to which the CONTRACTOR is a party
6 and in which one or more of its directors has a material financial interest. Members of the Board of
7 Directors shall disclose any self-dealing transactions that they are a party to by completing and signing a
8 Self-Dealing Transaction Disclosure Form, attached hereto as Exhibit A and incorporated herein by
9 reference, and submitting it to the COUNTY prior to commencing with the self-dealing transaction or
10 immediately thereafter.

11 17. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the
12 CONTRACTOR and COUNTY with respect to the subject matter hereof, and supersedes all previous
13 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
14 understanding of any nature whatsoever unless expressly included in this Agreement. It is understood that
15 additional or conflicting terms and conditions, if any, included in COUNTY's purchase order or similar
16 document are for COUNTY's internal purposes only, and any provisions contained therein shall have no
17 effect whatsoever upon this Agreement or any Order Form/Statement of Work.

18 ///

19 ///

20 ///

21 ///

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first
2 hereinabove written.

3
4 **CONTRACTOR**

5 Steven Occhiolini
6 (Authorized Signature)

7 Steven Occhiolini
8 Print Name & Title Director of Finance
9 998 Old Eagle School Road, Suite 1215
10 Wayne, PA 19087
11 Mailing Address

COUNTY OF FRESNO

Nathan Magsig
Nathan Magsig, Chairman of the Board of
Supervisors of the County of Fresno

ATTEST:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

12
13
14
15 By: Rose Cuyler
Deputy

16 **FOR ACCOUNTING USE ONLY:**

17 Fund: 1000
18 Subclass: 10000
19 ORG: 8910
20 Account: 7309
21
22
23
24
25
26
27
28

1 **Exhibit A**

2 **Self-Dealing Transaction Disclosure Form**

3 In order to conduct business with the County of Fresno (hereinafter referred to as "County"),
4 members of a contractor's board of directors must disclose any self-dealing transactions that they are
5 a party to while providing goods, performing services, or both for the County. A self-dealing
6 transaction is defined below:

7 *"A self-dealing transaction means a transaction to which the corporation is a party and in which
8 one or more of its board members has a material financial interest"*

9 The definition above will be utilized for purposes of completing this disclosure form.

10 **INSTRUCTIONS**

11 (1) Enter board member's name, job title (if applicable), and date this disclosure is being made.

12 (2) Enter the board member's company/agency name and address.

13 (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the
14 County. At a minimum, include a description of the following:

15 a. The name of the agency/company with which the corporation has the transaction; and

16 b. The nature of the material financial interest in the Corporation's transaction that the
17 board member has.

18 (4) Describe in detail why the self-dealing transaction is appropriate based on applicable
19 provisions of the Corporations Code.

20 (5) Form must be signed by the board member that is involved in the self-dealing transaction
21 described in Sections (3) and (4).
22
23
24
25
26
27
28

(1) Company Board Member Information:			
Name:		Date:	
Job Title:			
(2) Company/Agency Name and Address:			
(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to):			
(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a):			
(5) Authorized Signature			
Signature:		Date:	



Exhibit B

MAINTENANCE RENEWAL

998 Old Eagle School Road | Suite 1215 | Wayne PA 19087-1805
Tel (484) 588-5515 Fax (610) 971-9447

Number 1215 FA MNT19
5 Year Quote

TO: County of Fresno
FROM: AssetWorks LLC
DATE: August 16, 2019
RE: FleetFocus FA Maintenance and Support Renewal

Prices valid through December 31, 2020

Annual Software Maintenance and Support for period 1/1/2020 - 12/31/2020, Year 1 of 5

FleetFocus FA license for up to 1,400 active equipment units Including Bar Code, Call Center, Crystal Reports Embedded, Customer Access, Enterprise Portal, Equipment Planning, KPI/Dashboards, Labor Capture, Maxqueue, MobileFocus for 2 devices, Motor Pool, Notifications, Performance Measures & Monitors, Production Planning, Query, Replacement Modeling, Reporting, Reservations, Service Level Agreements, Shop Activity, and Shop Scheduling modules	\$	42,826.34
200 Additional Licenses, Year 2 for pro-rated period 2/1/2020 - 12/31/2020 (11 months) to co-term with FA	\$	2,458.61
Subtotal, Annual Maintenance billable January 2020	\$	45,284.95

Annual Software Maintenance and Support for period 1/1/2021 - 12/31/2021, Year 2 of 5

FleetFocus FA license for up to 1,600 active equipment units Including Bar Code, Call Center, Crystal Reports Embedded, Customer Access, Enterprise Portal, Equipment Planning, KPI/Dashboards, Labor Capture, Maxqueue, MobileFocus for 2 devices, Motor Pool, Notifications, Performance Measures & Monitors, Production Planning, Query, Replacement Modeling, Reporting, Reservations, Service Level Agreements, Shop Activity, and Shop Scheduling modules		
Subtotal, Annual Maintenance billable January 2021	\$	46,873.71

Annual Software Maintenance and Support for period 1/1/2022 - 12/31/2022, Year 3 of 5

Same configuration as 2021 period. Subtotal, Annual Maintenance billable January 2022	\$	48,279.93
---	----	-----------

Annual Software Maintenance and Support for period 1/1/2023 - 12/31/2023, Year 4 of 5

Same configuration as above. Subtotal, Annual Maintenance billable January 2023	\$	49,728.32
---	----	-----------

Annual Software Maintenance and Support for period 1/1/2024 - 12/31/2024, Year 5 of 5

Same configuration as above. Subtotal, Annual Maintenance billable January 2024	\$	51,220.17
---	----	-----------

Includes product updates and enhancements, unlimited email and telephone support for periods specified

Five Year Budgetary Total, not including tax and options **\$ 241,387.08**

OPTIONAL MAINTENANCE BUNDLES

AssetWorks Academy Users Conference Admission Quantity @ \$1,250.00/person

Tune-Up Assessment \$19,150.00

AssetWorks will perform onsite assessment relating maintenance practices to available system functionality to optimize organizational performance. This review will be scheduled at a mutually convenient time.

Upgrade Assistance \$4,000.00

AssetWorks will provide technical assistance to your organization to complete the upgrade to the next version. This assistance will be scheduled at a mutually convenient time. For details, please contact AssetWorks.

For Visa, MasterCard, and American Express payments, please add 4%.

REMIT TO:

Sales Tax: 0.0000%

\$ -

CHECKS

All software updates are electronically delivered

AssetWorks
PO Box 202525
Dallas TX 75320-2525

GRAND TOTAL DUE, \$ US

ACH, EFT OR DIRECT DEPOSIT

Wells Fargo, 8601 N. Scottsdale Rd., Scottsdale AZ 85253
ABA # 122105278
Account # 5076434348

US Tax ID # 98-0358175

Canada GST/HST # 834113896 RT0001

AssetWorks LLC is a subsidiary of Trapeze Software Group Inc.

If you require a separate invoice, complete this form and return it by email or fax; AssetWorks will issue an invoice as you instruct below. If your organization requires us to reference a purchase order number on our invoice, we must receive that PO by email to Colleen.Boutcher@AssetWorks.com by fax to (610) 971-9447. **Do not mail POs to our remittance address.**

AssetWORKS **Exhibit B** MAINTENANCE RENEWAL

998 Old Eagle School Road | Suite 1215 | Wayne PA 19087-1805
Tel (484) 588-5515 Fax (610) 971-9447

Number 1215 FA MNT19
5 Year Quote

TO: County of Fresno
FROM: AssetWorks LLC
DATE: August 16, 2019
RE: FleetFocus FA Maintenance and Support Renewal

Prices valid through December 31, 2020

Terms

This maintenance renewal is issued pursuant to the terms of the current AssetWorks contract with your organization. The parties will continue to be bound by those terms during any renewal period unless otherwise agreed by both parties through a signed amendment. Notification of termination of maintenance is required 90 days prior to annual renewal date.

SOLE SOURCE

FleetFocus is proprietary property of AssetWorks LLC and protected by law. Another party cannot alter, modify, change, manipulate or provide maintenance for this product without infringing upon AssetWorks' ownership rights. Accordingly, **AssetWorks is the sole source for software, maintenance and services of its products.**

I, the undersigned, accept this maintenance renewal as described above.

Name: _____ Title: _____

Signature: _____ Date: _____

☐ PO REQUIRED: # _____ ☐ NO PO REQUIRED ☐ WILL PAY BY QUOTE - NO
SEPARATE INVOICE NEEDED

☐ Please MAIL invoice to: _____

☐ Please E-MAIL invoice to: _____

→ If you have any questions, please contact Colleen Boutcher at (484) 588-5515 or Colleen.Boutcher@AssetWorks.com. Page 2 of 2 ←

Exhibit B



QUOTATION

AssetWorks LLC

998 Old Eagle School Road, Suite 1215
Wayne, PA 19087

Quote #: Q-04879-1
Date: 9/30/2019
Expires On: 12/29/2019
Salesperson: Tyler Beaty
Email: tyler.beaty@assetworks.com
Phone: (916) 230-4458

Ship To

Ken Christiansen
County of Fresno
4551 E. Hamilton
Fresno, California 93702
United States
(559) 600-7511
kchristiansen@fresnocountyca.gov

Bill To

County of Fresno
4551 E. Hamilton
Fresno, California 93702
United States

Service

Description	Line Total
Project Management Services	USD 820.00
System Configuration Services	USD 2,460.00
Training Services	USD 820.00
Service TOTAL:	USD 4,100.00

TOTAL: USD 4,100.00

Training & Configuration (Remote) Professional Services Terms

All services provided remotely via web conferencing.

Proposed Configuration and Training Topics:

1. Motor Pool Module
2. Motor Pool Reservations
3. Customer Access Module

Training Content Assumptions:

- Pre-training call will be held with Customer and Project Manager to discuss and finalize topics.
- With the AssetWorks Project Manager or trainer's assistance, the customer is responsible for creating and distributing the agenda with desired curriculum to be covered.
- Where applicable, standard training materials will be utilized. Quote does not include customized training materials.

Exhibit B

- Customer to coordinate and troubleshoot attendee access to web conferencing tools for meeting purposes, as necessary
- Minimum time charge for any remote training session is two (2) hours
- Current supported version of FleetFocus/AssetWorks Enterprise Asset Management (EAM) is required.
- Upgrade services for FleetFocus/AssetWorks EAM are not included, unless otherwise noted on the order form.
- Training and consulting services are estimated for a time and materials project and do not include applicable taxes
- Actual costs might be greater or lesser than those presented in this quote
- Project management time includes general project administration and AssetWorks resource coordination.
- Project management services are presented on a fixed fee basis and will be invoiced in full after first training session.
- If training and consulting hours are increased, additional project management will be required on a change order.

AssetWorks Professional Services Standard Terms

- All costs are quoted in USD and do not include applicable taxes.
- FleetFocus license is based on active units in fleet.
- Additional Components can be licensed at a rate of five dollars (\$5.00) per component.
- AssetWorks EAM is provided as an unlimited enterprise license and based on the assets managed by an organization as determined by AssetWorks.
- Additional module(s) are licenses based on a defined percentage of the original base software license.
- Crystal Reports Enterprise is required for FleetFocus/AssetWorks EAM Standard Reports.
- AssetWorks assumes that the customer will install the required Oracle or SQL Server database licenses.
- All software licenses and the first-year maintenance fees will be invoiced upon contract execution.
- AssetWorks will assign a Professional Services Project Manager four (4) to six (6) weeks after a fully executed and processed order. The Project Manager will engage with the customer to kick-off the project and begin scheduling services. The delivery schedule of the project requirements will be set during the project planning phase. When applicable, implementers, consultants and/or trainers for on-site services will be secured by the Project Manager within a six (6) to eight (8) week lead time once the project is kicked off.
- All training sessions will use standard application training materials.
- Customer will have all the necessary and appropriate personnel at meetings for the purpose of defining the project requirements.

Exhibit B

- Customer will appoint a single point of contact for the duration of the project. This person should have project management responsibilities and decision-making authority. This person will be the focal point of contact for the AssetWorks' Professional Services and Customer Support team.
- If additional scope is added or required, a change order will be requested of the customer.
- AssetWorks assumes any individual from the customer who provides document signatures has appropriate signature authority and has been authorized to do so by their organization.
- Travel: If travel is required and quoted, expenses will be reimbursed as incurred, unless otherwise noted. Expenses include actual costs for lodging, air and ground travel and per diem rates for meal expenses (corporate rate/government agreement).
- In the event the customer schedules on-site services and, due to circumstances within its control, AssetWorks' scheduled personnel are unable to perform such services, AssetWorks will be entitled to payment for each such scheduled personnel on the basis of an eight-hour day. AssetWorks provides on-site services on the basis of an eight-hour minimum per day per person.
- If this order is abandoned/paused by the customer for any reason mid-effort, the customer will be billed for all AssetWorks time incurred at the current contracted labor rate.

Exhibit B**QUOTATION****AssetWorks LLC**

998 Old Eagle School Road, Suite 1215
Wayne, PA 19087

Quote #: Q-04882-1
Date: 9/30/2019
Expires On: 12/29/2019
Salesperson: Tyler Beaty
Email: tyler.beaty@assetworks.com
Phone: (916) 230-4458

Ship To

Ken Christiansen
County of Fresno
4551 E. Hamilton
Fresno, California 93702
United States
(559) 600-7511
kchristiansen@fresnocountyca.gov

Bill To

County of Fresno
4551 E. Hamilton
Fresno, California 93702
United States

License

Description	QTY	UNIT PRICE	Line Total
MobileFocus / Smart Apps, Enterprise License	1,600.00	USD 6.89	USD 11,024.00
License TOTAL:			USD 11,024.00

Maintenance

Description	Line Total
Software Maintenance	USD 2,688.00
Maintenance TOTAL:	USD 2,688.00

Year Two Maintenance & Support not to exceed a three percent (3%) increase over Year One.

Service

Description	Line Total
Project Management Services	USD 1,640.00
SmartApps Implementation Services	USD 8,200.00
Service TOTAL:	USD 9,840.00

TOTAL: USD 23,552.00

Exhibit B

SmartApps Project Scope and Assumptions

- AssetWorks will provide services to install SmartApps and perform base FASuite configuration to support the apps used by the customer as well as test the configuration.
- Inspections App and others may require additional FA base setup and configuration.
- All end users must have an FASuite user account (password required on user account) created with an attached operator account.
- Training is for System Administration staff, not Smart Apps end users.
- All services to be provided remotely.
- SmartApps does not support single sign on (SSO).
- The minimum supported version per SmartApp is listed below; all version requirements are subject to change without notice.
 - Reservation Center requires FA version 16.0.12, 17.0.6 or higher
 - MyVehicle requires FA version 16.0.8 or higher
 - Inspections requires FA version 16.0.11, 17.0.5 or higher
 - Dashboards requires FA version 16.0.9 or higher (services do not include setup of dashboards or dashboard module)
 - Yard Check requires FA version 16.0.8 or higher
 - Collisions requires FA version 19.1.0 or higher
 - MyInventory requires FA version 18.0.0 or higher
- Services for MobileFocus Fleet Connect and/or handheld devices are not included
- Estimate does not include any upgrade services for FASuite
- Training and consulting services are estimated for a time and materials project and do not include applicable taxes.
- Actual costs might be greater or lesser than those presented in this quote.
- Project management time includes general project administration and AW resource coordination.
- Project management services are presented on a fixed fee basis and will be invoiced in full after first setup and/or training session. If training and consulting hours are increased, additional project management will be required on a change order.

AssetWorks Professional Services Module Implementation Assumptions

- All services will be performed remotely using web teleconferencing, unless otherwise noted.
- Customer to coordinate and troubleshoot attendee access to web conferencing tools for meeting purposes, as necessary.
- Customer will make appropriate technical resources available to AssetWorks' consultants.
- Customer will have all the necessary and appropriate personnel at meetings for the purpose of defining the requirements of the system, module configuration and project objectives.
- Customer will appoint a single point of contact for the duration of the project. This person should have project management responsibilities and decision-making authority. This person will be the focal point of contact for the AssetWorks' Professional Services and Customer Support team.
- Training is delivered as "train the trainer" for system administrators; end user training is not included.
- Where applicable, standard training materials will be utilized. Quote does not include customized training materials.

Exhibit B

- AssetWorks assumes Customer utilizes an internal system administrator to maintain all aspects of FleetFocus/AssetWorks Enterprise Asset Management (EAM) configuration, user training and system administrator duties as required to support the configuration of the module.
- Customer's non-production and production versions are required to be on a generally available (GA) release per AssetWorks Product documentation.
- Customer may be required to upgrade if new features are available for the module that are considered necessary for the project success.
- Upgrade services for FleetFocus/AssetWorks EAM are not included, unless otherwise noted on the order form.
- **Error! Hyperlink reference not valid.**Module in a non-production and production environment prior to project commencement.
- Customer will be responsible for working with the AssetWorks' Professional Services to move the module into a production environment.
- Professional services are presented on a fixed fee basis and do not include applicable taxes.
- Full amount for integration will be invoiced upon installation in a production environment & is due on existing contract terms.

AssetWorks Professional Services Standard Terms

- All costs are quoted in USD and do not include applicable taxes.
- FleetFocus license is based on active units in fleet.
- Additional Components can be licensed at a rate of five dollars (\$5.00) per component.
- AssetWorks EAM is provided as an unlimited enterprise license and based on the assets managed by an organization as determined by AssetWorks.
- Additional module(s) are licenses based on a defined percentage of the original base software license.
- Crystal Reports Enterprise is required for FleetFocus/AssetWorks EAM Standard Reports.
- AssetWorks assumes that the customer will install the required Oracle or SQL Server database licenses.
- All software licenses and the first-year maintenance fees will be invoiced upon contract execution.
- AssetWorks will assign a Professional Services Project Manager four (4) to six (6) weeks after a fully executed and processed order. The Project Manager will engage with the Customer to kick-off the project and begin scheduling services. The delivery schedule of the project requirements will be set during the project planning phase. When applicable, implementers, consultants and/or trainers for on-site services will be secured by the Project Manager within a six (6) to eight (8) week lead time once the project is kicked off.
- All training sessions will use standard application training materials.
- Customer will have all the necessary and appropriate personnel at meetings for the purpose of defining the project requirements.
- Customer will appoint a single point of contact for the duration of the project. This person should have project management responsibilities and decision-making authority. This person will be the focal point of contact for the AssetWorks' Professional Services and Customer Support team.
- If additional scope is added or required, a change order will be requested of the Customer.

Exhibit B

- AssetWorks assumes any individual from the Customer who provides document signatures has appropriate signature authority and has been authorized to do so by their organization.
- Travel: If travel is required and quoted, expenses will be reimbursed as incurred, unless otherwise noted. Expenses include actual costs for lodging, air and ground travel and per diem rates for meal expenses (corporate rate/government agreement).
- In the event the customer schedules on-site services and, due to circumstances within its control, AssetWorks' scheduled personnel are unable to perform such services, AssetWorks will be entitled to payment for each such scheduled personnel on the basis of an eight-hour day. AssetWorks provides on-site services on the basis of an eight-hour minimum per day per person.
- If this order is abandoned/paused by the customer for any reason mid-effort, the customer will be billed for all AssetWorks time incurred at the current contracted labor rate.

Exhibit B



QUOTATION

AssetWorks LLC

998 Old Eagle School Road, Suite 1215
Wayne, PA 19087

Quote #: Q-04880-1
Date: 9/30/2019
Expires On: 12/29/2019
Salesperson: Tyler Beaty
Email: tyler.beaty@assetworks.com
Phone: (916) 230-4458

Ship To

Ken Christiansen
County of Fresno
4551 E. Hamilton
Fresno, California 93702
United States
(559) 600-7511
kchristiansen@fresnocountyca.gov

Bill To

County of Fresno
4551 E. Hamilton
Fresno, California 93702
United States

License

Description	QTY	UNIT PRICE	Line Total
Billing Module	1,600.00	USD 1.72	USD 2,752.00
License TOTAL:			USD 2,752.00

Maintenance

Description	Line Total
Software Maintenance	USD 672.00
Maintenance TOTAL:	USD 672.00

Year Two Maintenance & Support not to exceed a three percent (3%) increase over Year One.

Service

Description	Line Total
Billing Module Implementation Services	USD 17,220.00
Service TOTAL:	USD 17,220.00

TOTAL: USD 20,644.00

Exhibit B

Module Implementation Project Scope and Assumptions

- AssetWorks will provide services to implement the Billing Module in FleetFocus/AssetWorks EAM and provide technical and functional support for out of the box application functionality. AssetWorks will also install a MAXQueue package, configure module settings, setup billing types, test, train and support remotely.
- Billing Module includes transactions for assets for the following items in FleetFocus/AssetWorks Enterprise Asset Management (EAM): work order (labor, parts, commercial) charges, fuel, direct issues (labor, parts, commercial), recurring charges (depreciation, insurance, lease expense, licensing, monthly, other fixed 1, other fixed 2, other fixed 3, replacement), motor pool, special feeds, base usage (base rate end of period usage charges), and usage ticket charges. All of these items expect to use AssetWorks standard fields and functionality and does not take into account re-purposed data fields or functionality being used in an unintended manner within FleetFocus/AssetWorks EAM.
- Billing Module only bills transactional line items and does not bill based on the header status (ex: closed) of a work order. Customers are able to manually move out any transactions that should not be billed from the current period to the next accounting period. The current period can then be locked to ensure no new transactions go into that period and customers can bill the moved transactions at a later time or continue to move transactions from period to period as needed.
- Billing Module only supports line-item percentage markups
- Billing Module does not support Work Order header overhead costs or small parts markups
- The "Billing Module Implementation Services" line item does not include a custom billing report, custom billing output file of transactions or interface of transactions to a third-party system
- Training assumes train-the-trainer approach
- Training covers module orientation and overview of out of the box Billing Module reports
- Requires supported version of FleetFocus/AssetWorks EAM
- Requires use of MAXQueue and project assumes the base of MAXQueue is installed prior to project start
- Estimate does not include any upgrade services for FleetFocus/AssetWorks EAM
- All Services are to be provided remotely via web conferencing tools
- Professional services are estimated for a time and materials project and do not include applicable taxes.
- Project management time includes general project administration and AW resource coordination. Actual costs might be greater or lesser than those presented in this quote.

AssetWorks Professional Services Standard Terms

- All costs are quoted in USD and do not include applicable taxes.
- FleetFocus license is based on active units in fleet.
- Additional Components can be licensed at a rate of five dollars (\$5.00) per component.
- AssetWorks EAM is provided as an unlimited enterprise license and based on the assets managed by an organization as determined by AssetWorks.
- Additional module(s) are licenses based on a defined percentage of the original base software license.
- Crystal Reports Enterprise is required for FleetFocus/AssetWorks EAM Standard Reports.
- AssetWorks assumes that the customer will install the required Oracle or SQL Server database licenses.

Exhibit B

- All software licenses and the first-year maintenance fees will be invoiced upon contract execution.
- AssetWorks will assign a Professional Services Project Manager four (4) to six (6) weeks after a fully executed and processed order. The Project Manager will engage with the customer to kick-off the project and begin scheduling services. The delivery schedule of the project requirements will be set during the project planning phase. When applicable, implementers, consultants and/or trainers for on-site services will be secured by the Project Manager within a six (6) to eight (8) week lead time once the project is kicked off.
- All training sessions will use standard application training materials.
- Customer will have all the necessary and appropriate personnel at meetings for the purpose of defining the project requirements.
- Customer will appoint a single point of contact for the duration of the project. This person should have project management responsibilities and decision-making authority. This person will be the focal point of contact for the AssetWorks' Professional Services and Customer Support team.
- If additional scope is added or required, a change order will be requested of the customer.
- AssetWorks assumes any individual from the customer who provides document signatures has appropriate signature authority and has been authorized to do so by their organization.
- Travel: If travel is required and quoted, expenses will be reimbursed as incurred, unless otherwise noted. Expenses include actual costs for lodging, air and ground travel and per diem rates for meal expenses (corporate rate/government agreement).
- In the event the customer schedules on-site services and, due to circumstances within its control, AssetWorks' scheduled personnel are unable to perform such services, AssetWorks will be entitled to payment for each such scheduled personnel on the basis of an eight-hour day. AssetWorks provides on-site services on the basis of an eight-hour minimum per day per person.
- If this order is abandoned/paused by the customer for any reason mid-effort, the customer will be billed for all AssetWorks time incurred at the current contracted labor rate.

1
2 **Exhibit C**

3 **PROFESSIONAL SERVICES AGREEMENT**

4 **RECITALS:**

5 A. WHEREAS, County requires professional services; and

6
7 B. WHEREAS, Contractor is willing to provide such services.

8 NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants set forth herein,
9 the parties agree as follows:

10 1. **Services / Statement of Work**

11 Contractor will perform the professional services ("Services") described in the Statement of Work hereto
12 as Attachment 1 ("Statement of Work"). The terms of this Agreement shall control any Additional Scopes
13 of Work that may be executed by the parties during the Term of this Agreement. No Statement of Work
14 shall be of any force and effect unless and until executed by both Contractor and County. A Statement
15 of Work may only be amended by a Change Order ("Change Order"), which shall detail the changes to
16 the Statement of Work as well as any changes to the pricing and shall only be effective when signed by
17 both Parties.

18 2. **Price and Payment Terms**

19 A. Each Statement of Work will either be on a time and material basis or a fixed
20 price basis, specified in the Statement of Work. The Statement of Work may or may not include a
21 definitive list of "Deliverables" that must be completed by Contractor.

22 B. In the event that Services result in greater Contractor duties than
23 contemplated by the Statement of Work, County will work closely and in good faith with Contractor to
24 modify the Statement of Work to ensure that the County's requirements are addressed and Contractor'
25 fees shall be adjusted to reflect increased County requirements.

26 C. Unless specifically addressed in the Statement of Work, all travel and
27 expenses incurred will be extra and billed when incurred.

28 D. Invoiced amounts are due and payable forty-five (45) days from the date of
the invoice. The preferred means of payment is by electronic funds transfer (EFT). EFT payments can
be accomplished as either a Funds Transfer (Fed Wire) or Direct Deposit (ACH).

E. Bill to Address. The invoice will be mailed to the County address specified in
Section 6.D. "Invoicing" of this Agreement unless otherwise indicated in the Statement of Work.

3. **Resources to be Provided by County**

1 A. County shall provide, maintain and make available to Contractor, at County's
2 expense and in a timely manner, the resources described in this Section 3 the Statement of Work, and
3 such other additional resources as Contractor may from time to time reasonably request in connection
4 with Contractor performance of the Services. Delays in the provision of these resources may result in
delays in the performance of the Services, or an increase in the Price.

5 B. County will designate qualified County personnel or representatives to consult
6 with Contractor on a regular basis in connection with the Services. County will furnish such
documentation and other information as is reasonably necessary to perform the Services.

7 C. County shall furnish access to County's premises, and appropriate workspace
8 for any Contractor personnel working at County's premises, as necessary for performance of those
9 portions of the Services to be performed at County's premises.

10 D. County shall meet all assumptions noted on the Statement of Work.

11 4. **Relationship of the Parties**

12 The parties are independent contractors and under no circumstances will either be deemed to be an
13 agent, partner, legal representative, employee or joint venture partner of the other party.

14 5. **Subcontractors**

15 Contractor may engage subcontractors to assist in performing Services without the prior written
16 consent of County; provided, Contractor shall supervise such sub-contractors and the Services
performed by them to the same extent as if Contractor performed the work.

17 6. **Confidentiality**

18 A. Because either party may have access to information of the other party that
19 the other party considers to be confidential or proprietary ("Confidential Information"), each party will
20 maintain all Confidential Information clearly marked as "confidential information" in confidence and will
21 use it solely in the discharge of its obligations under this Agreement and any applicable Statement of
22 Work. Nothing herein will be deemed to restrict a party from disclosing Confidential Information to its
employees and subcontractors in the discharge of such obligations.

23 B. Confidential Information will not include information that (i) is, or
24 becomes, generally known or available through no fault of the, recipient; (ii) is known to the recipient at
25 the time of its receipt from the disclosing party; (iii) the disclosing party provides to a third party without
26 restrictions on disclosure; (iv) is subsequently and rightfully provided to the recipient by a third party
27 without restriction on disclosure; (v) is independently developed by the recipient, without reference to the
28 disclosing party's Confidential Information; or (vi) is required to be disclosed pursuant to a governmental
agency or court subpoena, provided the recipient promptly notifies the disclosing party of such
subpoena to allow it reasonable time to seek a protective order or other appropriate relief.

1
2 C. Because of the unique nature of the Confidential Information, each party
3 agrees that the disclosing party may suffer irreparable harm in the event the recipient fails to comply
4 with its obligations under this Section 6, and that monetary damages may be inadequate to compensate
5 the disclosing party for such breach. Accordingly, the recipient agrees that the disclosing party may, in
6 addition to any other remedies available to it, be entitled to injunctive relief.

7 **7. Intellectual Property**

8 A. County and Contractor shall each retain ownership of, and all right, title and
9 interest in and to, their respective pre-existing Intellectual Property, and no license therein, whether
10 express or implied, is granted by this Agreement or as a result of the Services performed hereunder. To
11 the extent the parties wish to grant to the other rights or interests in pre-existing Intellectual Property,
12 separate license agreements on mutually acceptable terms will be executed.

13 B. The Services performed, code developed, and any Intellectual Property
14 produced by Contractor pursuant to this Agreement are not "works for hire."

15 C. As used herein, "Intellectual Property" shall mean inventions (whether or not
16 patentable), works of authorship, trade secrets, copyright, techniques, know-how, ideas, concepts,
17 algorithms, and other intellectual property incorporated into any Statement of Work or Deliverable
18 whether or not first created or developed by Contractor in providing the Services.

19 **8. Non-Solicitation**

20 During the term of this Agreement, and for one (1) year thereafter, neither party will solicit the
21 employment of, or contract for the services of, any person who is/was an employee, agent, or
22 subcontractor of the other party during the term of this Agreement. Nothing in this section shall prohibit
23 either party from placing a bona fide public advertisement for employment which is not specifically
24 targeted at a Party's employees, and neither Party shall be restricted from hiring any such person who
25 responds to any such general solicitation or public advertisement, so long as no solicitation of such
26 person has occurred.

27 **9. Taxes**

28 A. In no event whatsoever shall Contractor be liable for sales, use, business,
gross receipts or any other tax that may be levied by any State or Federal Government entity other than
taxes upon income earned by Contractor for the goods and/or services provided pursuant this
Agreement. This exclusion of tax liability is also applicable to any goods and/or services that may be
provided by Contractor under any later Statement of Work, Change Order or other amendment hereto
regardless of changes in legislation or policy.

B. In the event a taxing authority conducts an audit of this Agreement and
determines that an additional tax should have been imposed on the Services or Deliverables provided
by Contractor to County (other than those taxes levied on Contractor income), County shall reimburse

Contractor for any such additional tax, including interest and penalties thereon. Similarly, if a taxing authority determines that a refund of tax is due as it relates to the Services or Deliverables provided by Contractor to County (except those taxes relating to Contractor income), Contractor shall reimburse County such refund, including any interest paid thereon by the taxing authority.

10. **Termination for Default**

Either party may terminate this Agreement or any Statement of Work if (i) the other party fails to perform a material obligation of the Agreement and such failure remains uncured for a period of thirty (30) days after receipt of notice from the non-breaching party specifying such failure; or (ii) a party ceases to conduct business, becomes or is declared insolvent or bankrupt, is the subject of any proceeding relating to its liquidation or insolvency which is not dismissed within ninety (90) days or makes an assignment for the benefit of creditors. In addition, Contractor may terminate this Agreement or any Statement of Work effective immediately upon written notice to County if County fails to make any payment in full as and when due hereunder. Termination of a Statement of Work shall not terminate this Agreement.

Upon termination for whatever reason and regardless of the nature of the default (if any), County agrees to pay Contractor the full value for all goods and/or services provided to County up to and including the date of termination.

11. **Termination for Convenience**

Notwithstanding any other provision in this Agreement, either party may terminate this Agreement or a Statement of Work by providing ninety (90) days' notice of intent to terminate. Termination of a Statement of Work shall not affect any other Statement of Work. Termination of this Agreement shall terminate all active Statements of Work. Termination by County shall not relieve County of the obligation to pay for any Services provided up to and including the date of termination.

12. **Non-Allocation of Funds**

The terms of this Agreement, and the services to be provided hereunder, 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 without penalty by giving the Contractor thirty (30) days advance written notice of non-allocation of funds.

13. **Effect of Termination**

The Terms of this Agreement shall survive for any Statement of Work which is still pending at the time of termination until the conclusion of the Statement of Work.

14. **Limited Warranty**

A. Contractor warrants that the Services provided under this Agreement shall be performed with that degree of skill and judgment normally exercised by recognized professional firms performing the

1 same or substantially similar services. In the event of any breach of the foregoing warranty, provided
2 County has delivered to Contractor timely notice of such breach as hereinafter required, Contractor
3 shall, at its own expense, in its discretion either (1) re-perform the non-conforming Services and correct
4 the non-conforming Deliverables to conform to this standard; or (2) refund to County that portion of the
5 Price received by Contractor attributable to the non-conforming Services and/or Deliverables. No
6 warranty claim shall be effective unless County has delivered to Contractor written notice specifying in
7 detail the non-conformities within 90 days after performance of the non-conforming Services or tender of
8 the non-conforming Deliverables. The remedy set forth in this section 14(a) is the sole and exclusive
9 remedy for breach of the foregoing warranty.

10 **B. CONTRACTOR SPECIFICALLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED**
11 **WARRANTIES, STANDARDS, OR GUARANTEES, INCLUDING, WITHOUT LIMITATION ANY**
12 **WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-**
13 **INFRINGEMENT, AND ANY WARRANTIES THAT MAY BE ALLEGED TO ARISE AS A RESULT OF**
14 **CUSTOM OR USAGE, ANY WARRANTY OF ERROR-FREE PERFORMANCE, OR ANY WARRANTY**
15 **OF THIRD PARTY PRODUCTS, OR FUNCTIONALITY OF THE COUNTY'S HARDWARE,**
16 **SOFTWARE, FIRMWARE, OR COMPUTER SYSTEMS.**

17 **C.** County represents and warrants to Contractor that, to the best of County's knowledge, County
18 has the right to use and furnish to Contractor for Contractor use in connection with this Agreement any
19 information, specifications, data or Intellectual Property that County has provided or will provide to
20 Contractor in order for Contractor to perform the Services identified in any Order Form or Statement of
21 Work.

22 **15. Non-Waiver of Rights**

23 The failure of either party to insist upon performance of any provision of this Agreement, or to exercise
24 any right, remedy or option provided herein, shall not be construed as a waiver of the right to assert any
25 of the same at any time thereafter.

26 **16. Rights and Remedies Not Exclusive**

27 Unless otherwise expressly provided herein, no right or remedy of a party expressed herein shall be
28 deemed exclusive, but shall be cumulative with, and not in substitution for, any other right or remedy of
that party.

17. Severability

If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void or
unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired
or invalidated in any manner.

18. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations (except for
payment obligations) under this Agreement to the extent such failure or delay is due to acts of God, acts

1 of a public enemy, fires, floods, power outages, wars, civil disturbances, epidemics, pandemics,
2 sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes
3 (whether or not the employees' demands are reasonable and/or within the party's power to satisfy),
4 failure of common carriers, Internet Service Providers, or other communication devices, acts of cyber
5 criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or
6 domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or
7 must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials,
8 power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively
9 referred to herein as "Force Majeure Occurrences"). Any such delays shall not be a breach of or failure
10 to perform this Agreement or any part thereof and the date on which the obligations hereunder are due
11 to be fulfilled shall be extended for a period equal to the time lost as a result of such delays. Neither
12 party shall be liable to the other for any liability claims, damages or other loss caused by or resulting
13 from a Force Majeure Occurrence.

14 19. **Third Party Beneficiaries**

15 This Agreement does not create, and shall not be construed as creating, any rights or interests
16 enforceable by any person not a party to this Agreement.
17
18
19
20
21
22
23
24
25
26
27
28