

AGREEMENT

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 Vesta Solutions, Inc., a California corporation, whose address is P.O. Box 9007, Temecula, CA 92590, ("CONTRACTOR").

RECITALS

WHEREAS, COUNTY previously purchased from CONTRACTOR a Communicator NXT, GeoCAST, HC Mass Call, HC Mass DataSync system, ("VESTA COMMUNICATOR/ALERT"), which allows staff to alert and notify multiple individuals and/or agencies for various events, including map-based notification affected populations, and multi-modal notification of specific individuals, groups, and teams during an emergency event; and

WHEREAS, CONTRACTOR desires to, and is able to, provide Hosted Services for the VESTA COMMUNICATOR/ALERT; and

WHEREAS, COUNTY and CONTRACTOR desire to execute this Agreement for Hosted Services provided for VESTA COMMUNICATOR/ALERT, currently used by the Fresno County Public Health Department.

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

WITNESSETH

I. DEFINITIONS:

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

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 Content:

2 Means the audio and visual information, Documentation, Software, products and
3 services contained or made available to COUNTY in the course of using the
4 Service.

5 COUNTY Data:

6 Any data, information or material that COUNTY submits to the Service in the
7 course of using the Service.

8 First Production Use:

9 Date of first use of the System in a production environment, or otherwise known
10 as the date this Agreement is effective.

11 Hosted Project Plan:

12 The Hosted Project Plan, attached hereto and incorporated herein as Exhibit C,
13 describes the schedule to transition COUNTY from an on-premise VESTA
14 COMMUNICATOR/ALERT system to the hosted Service.

15 License:

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

20 Proposal:

21 The Proposal, attached hereto and incorporated herein as Exhibit B, describes
22 the Service that CONTRACTOR will provide to COUNTY under this Agreement.

23 Service:

24 The emergency notification system accessible via the Internet, and all associated
25 applications and modules identified in the Proposal and purchased by COUNTY,
26 and all ancillary online or offline products and services provided to COUNTY by
27 Vesta Solutions hereafter.

1 Supplier:

2 The terms "Supplier", "Vendor", and "Vesta Solutions" all refer to
3 CONTRACTOR, and are considered to be equivalent throughout this Agreement.

4 System:

5 The System Software and System Documentation collectively. Reference to the
6 "System" shall include any component thereof. All modifications and
7 enhancements to the System shall be deemed to be part of the System as
8 defined herein, and shall be subject to all terms and conditions set forth herein.
9 The System consists of VESTA COMMUNICATOR/ALERT, which supports the
10 Fresno County Public Health Department, all interfaces, and third-party software
11 required for the System to function.

12 System Documentation:

13 The online documentation relating to the System Software, and all manuals,
14 reports, brochures, sample runs, specifications and other materials comprising
15 such documentation provided by CONTRACTOR or its authorized reseller in
16 connection with the System Software to assist COUNTY in the use of the Service
17 pursuant to this Agreement.

18 System Software:

19 That certain application software programs and any updates, modifications and
20 corrections thereto described in this Agreement, to which CONTRACTOR has
21 granted access to COUNTY as part of the Service hereunder, and all interfaces,
22 coding, tapes, disks, modules and similar materials comprising such software or
23 on which it is stored. System Software shall not include operating system
24 software, or any other third-party Software.

25 User:

26 The terms "User", "Customer" and "Licensee" all refer to COUNTY, and its
27 employees, representatives, consultants, contractors, or agents who are
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1 authorized to use the Service and have been supplied with the identifications and
2 passwords by the COUNTY.

3 Vesta Solutions Technology:

4 The Vesta Solutions-provided technology (including but not limited to
5 Documentation, Software, hardware, equipment, products, processes,
6 algorithms, user interfaces, know-how, techniques, designs, and other tangible or
7 intangible technical material or information), made available to COUNTY by
8 Vesta Solutions in providing the Service.

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10 **II. OBLIGATIONS AND RIGHTS OF THE CONTRACTOR**

11 **A. SOFTWARE LICENSE**

12 **1. CUSTOMER PURCHASE**

13 In consideration of the fees described herein, CONTRACTOR or its authorized
14 reseller shall provide COUNTY with access to the Service as described herein, and
15 as governed by the terms and conditions of this Agreement, Vesta Solutions'
16 Technical Service Center Support Plan Technical Service Support Plan, accepted
17 Proposal, and the Hosted Project Plan.

18 **2. GRANT OF LICENSE**

19 CONTRACTOR grants to COUNTY, and COUNTY accepts, a non-exclusive,
20 non-transferable, annual grant of license to use the Service that is subject to the
21 terms and conditions set forth in this Agreement.

22 **3. SCOPE OF LICENSE**

23 The license granted herein shall consist solely of the non-exclusive, non-
24 transferable right of COUNTY to operate the System Software in support of
25 COUNTY's Department of Public Health. All rights not expressly granted to
26 COUNTY are reserved by CONTRACTOR and its licensors.

1 4. OWNERSHIP

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

21 CONTRACTOR retains ownership of the System Software and Service, any
22 portions or copies thereof, and all rights therein. CONTRACTOR reserves all rights
23 not expressly granted to COUNTY. This Agreement does not grant COUNTY any
24 rights in connection with any trademarks or service marks of Vesta Solutions, its
25 suppliers or licensors. All right, title, interest and copyrights in and to the System
26 Software, Service and System Documentation and any copies thereof are owned by
27 CONTRACTOR, its suppliers or licensors. All title and intellectual property rights in
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1 and to the Content which may be accessed through use of the Service is the
2 property of the respective Content owner and may be protected by applicable
3 copyright or other intellectual property laws and treaties. This Agreement grants
4 COUNTY no rights to use such Content.

5 5. POSSESSION, USE AND UPDATE OF SOFTWARE

6 COUNTY agrees that only COUNTY will use the System Software for its own
7 internal purposes. CONTRACTOR may, at reasonable times, inspect COUNTY's
8 premises and equipment to verify that all of the terms and conditions of this license
9 are being observed. CONTRACTOR may create, from time to time, updated
10 versions of the System Software and System Documentation and CONTRACTOR
11 shall make such System Updates available to COUNTY. All System Updates shall
12 be licensed under the terms of this Agreement. COUNTY agrees to follow the
13 prescribed instructions for updating System Software and System Documentation
14 provided to COUNTY by CONTRACTOR. COUNTY must authorize all System
15 Updates in writing.

16 6. TRANSFER OF SOFTWARE

17 COUNTY shall not rent, lease, license, sublicense, distribute, sell, resell, transfer,
18 or assign this license, the System Software, or the System Documentation, or the
19 Content, or any of the information contained therein other than COUNTY data, to
20 any other person or entity, whether on a permanent or temporary basis, and any
21 attempt to do so will constitute a breach of this Agreement. No right or license is
22 granted under this Agreement for the use or other utilization of the licensed
23 programs, directly or indirectly, for the benefit of any other person or entity, except
24 as provided in this Agreement.

25 7. POSSESSION AND USE OF SOURCE CODE

26 Source code and other material that results from custom programming by
27 CONTRACTOR released to COUNTY under this license shall be deemed
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1 CONTRACTOR software, subject to all of the terms and conditions of the software
2 license set forth in this Agreement. The scope of COUNTY's permitted use of the
3 custom source code under this license shall be limited to maintenance and support
4 of the System Software. For purposes of this Section, the term "maintenance and
5 support" means correction of System Software errors and preparation of System
6 Software modifications and enhancements.

7 8. RESTRICTIONS ON USE:

8 COUNTY shall not (i) license, sublicense, sell, resell, transfer, assign, distribute
9 or otherwise commercially exploit or make available to any third party the Service,
10 System Software, the System Documentation, or the Content in any way; (ii) modify
11 or make derivative works based upon the System Software or the System
12 Documentation; (iii) create Internet "links" to the System Software or "frame" or
13 "mirror" any System Documentation on any other server or wireless or Internet-
14 based device; (iv) send spam or otherwise duplicative or unsolicited messages in
15 violation of applicable law; (v) send or store infringing, obscene, threatening,
16 libelous, or otherwise unlawful or tortious material, including material harmful to
17 children or violative of third party privacy rights; (iv) send or store material containing
18 software viruses, worms, Trojan horses or other harmful computer code, files,
19 scripts, agents or programs; (vii) interfere with or disrupt the integrity or performance
20 of the System Software or the data contained therein, including but not limited to
21 COUNTY Data; (viii) attempt to gain unauthorized access to the Service, System
22 Software or its related systems or networks; (ix) reverse engineer or access the
23 System Software in order to (a) build a competitive product or service, (b) build a
24 product using similar ideas, features, functions or graphics of the System Software,
25 or (c) copy any ideas, features, functions or graphics of the System Software.

1 9. INTELLECTUAL PROPERTY, TRADEMARK AND COPYRIGHT

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

13 B. SERVICES TO BE PROVIDED BY CONTRACTOR TO COUNTY

14 CONTRACTOR shall provide to COUNTY VESTA COMMUNICATOR/ALERT
15 System Documentation, which shall consist of electronic media files. Additional
16 documentation may be provided. The electronic media files must be printable using PC
17 software normally available at COUNTY. CONTRACTOR shall provide new System
18 Documentation corresponding to all new Software Upgrades. COUNTY may print
19 additional copies of all documentation. All System Documentation shall be used by
20 COUNTY only for the purposes identified within this Agreement.

21 1. SYSTEM ACCESS

22 CONTRACTOR shall provide COUNTY access to the Service in accordance with
23 this Agreement. Such access shall include hardware/network review and
24 recommendations, consultation, software installation and remote technical support to
25 the extent applicable and agreed to.

1 2. TRAINING

2 Training, if purchased by COUNTY, will be reflected on the corresponding
3 invoice. Subject to the terms and conditions of this Agreement, and provided that
4 COUNTY pays all applicable fees related to the Service, CONTRACTOR shall
5 provide COUNTY with support described in this Agreement, and as more particularly
6 described in Vesta Solutions' Technical Service Center Support Plan ("Support
7 Plan"), a copy of which is attached hereto as Exhibit A and incorporated herein by
8 reference. CONTRACTOR reserves the right to modify the terms and conditions of
9 the Technical Service Center Support Plan at any time, effective upon posting of an
10 updated version. COUNTY is responsible for regularly reviewing the TSC Support
11 Plan. Continued use of the Service after any such changes shall constitute
12 COUNTY's consent to such changes.

13 3. DOCUMENTATION

14 CONTRACTOR shall provide to COUNTY product System Documentation, which
15 shall consist of electronic media files. The electronic media files must be printable
16 using PC software normally available at COUNTY. CONTRACTOR shall provide
17 new System Documentation corresponding to all new Software Upgrades. COUNTY
18 may print additional copies of all documentation. All System Documentation shall be
19 used by COUNTY only for the purposes identified within this Agreement.

20 C. SYSTEM MAINTENANCE AND SUPPORT BY CONTRACTOR

21 System maintenance and support includes System Updates as they are released by
22 CONTRACTOR, including Updates as required as a result of regulatory changes.
23 CONTRACTOR will support day-to-day operation of the System including the following
24 services:

25 1. SUPPORT HOURS/SCOPE:

26 Provide unlimited technical assistance by phone during normal coverage hours
27 (8:00 a.m. to 5:00 p.m. Pacific Standard Time (PST), Monday through Friday, except
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CONTRACTOR and COUNTY holidays), toll-free telephone assistance to keep the System in, or restored to, normal operating condition. The object of this support will be to answer specific questions related to the System Software and the application thereof. Support provided under this Agreement does not include training of new personnel (after initial staff is trained), operation of hardware, or solving other hardware/software problems unrelated to the System Software.

2. SUPPORT RESPONSE:

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

If analysis by CONTRACTOR indicates a reported problem is caused by a reproducible error or malfunction in the then-current release of the System Software as supplied and maintained by CONTRACTOR that significantly impacts effective use of the System by COUNTY, CONTRACTOR will, if the System is inoperable, as reported by COUNTY, provide continuous effort to correct the error or to resolve the problem by providing a circumvention.

In such cases, CONTRACTOR will provide COUNTY with corrective information, such as corrective documentation and/or program code. CONTRACTOR will endeavor to respond to COUNTY's service request no later than four (4) hours from the time a call has been received by CONTRACTOR. In the event a person with the necessary expertise is not available when the call is received, CONTRACTOR will endeavor to respond to the service request no later than within one (1) business day.

1 3. REMOTE VIRTUAL PRIVATE NETWORK (VPN) DIAGNOSTICS

2 If applicable, remote VPN Diagnostics Support includes:

- 3 a) Diagnostic or corrective actions necessary to restore proper VESTA
4 COMMUNICATOR/ALERT operation.
5 b) Diagnostic actions which attempt to identify the cause of system problems.
6 c) Correction of data file problems.
7 d) VESTA COMMUNICATOR/ALERT modifications.

8 CONTRACTOR product specialists will provide diagnostics via VPN on VESTA
9 COMMUNICATOR/ALERT. COUNTY will provide any required hardware and
10 equipment necessary at COUNTY for CONTRACTOR VPN support.

11 4. ERROR CORRECTION PROCESS

12 If, during the term of this Agreement, COUNTY determines that software error(s)
13 exist, COUNTY will first follow the error procedures specified in the System
14 Documentation. If following the error procedures does not correct the software error,
15 COUNTY shall immediately notify CONTRACTOR, setting forth the defects noted
16 with specificity. Upon notification of a reported software error, CONTRACTOR shall
17 have five (5) days to determine if any actual software error exist and, if so, endeavor
18 to correct such software errors. At CONTRACTOR's request, additional time to solve
19 difficult problems will not be unreasonably withheld. Within fifteen (15) days of
20 correction, COUNTY shall retest the System Software and report any other software
21 errors.

22 5. TECHNICAL INFORMATION

23 CONTRACTOR will provide technical information to COUNTY from time to time.
24 Such information may cover areas such as Product usage, third party software, and
25 other matters considered relevant to COUNTY by CONTRACTOR. Technical
26 information will be provided at the discretion of CONTRACTOR, but will not be
27 unreasonably withheld.
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1. ADDITIONAL TRAINING

2. DATA AND SYSTEM CORRECTIONS

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1 3. CUSTOMER SITE VISITS

2 Site visits to COUNTY sites, as may be requested in writing by COUNTY and
3 that are within the scope of the project services, are available for reasons such as,
4 but not limited to, (a) additional System training on hardware or software usage; (b)
5 resolution of System difficulties not resulting from actions by, or otherwise the
6 responsibility of CONTRACTOR (as determined by mutual agreement between
7 CONTRACTOR and COUNTY); (c) installation of Software Releases; and (d)
8 assistance in equipment maintenance, movement or diagnosis. Site visits outside of
9 the scope of project services will be reviewed by CONTRACTOR, and must be
10 requested in writing in advance by the COUNTY Contract Administrator. Charges
11 will be at rates identified in this Agreement.

12 4. CUSTOM PROGRAMMING

13 Requests for supplemental programming or customization of system features not
14 covered under this Agreement are available to COUNTY for the most current and
15 future versions of VESTA COMMUNICATOR/ALERT. Such requests will be
16 reviewed by CONTRACTOR and must be requested in writing in advance by the
17 COUNTY Contract Administrator. Charges will be at rates identified in this
18 Agreement.

19 E. CONTRACTOR PROJECT COORDINATOR

20 Upon execution of this Agreement, CONTRACTOR shall appoint a Project
21 Coordinator, who will act as the primary contact person to interface with COUNTY for
22 implementation, maintenance and support of VESTA COMMUNICATOR/ALERT.

23 F. SYSTEM UPDATES AND NEW PRODUCTS

24 1. SYSTEM UPDATES

25 From time to time, CONTRACTOR will develop and provide System Updates to
26 COUNTY for the COUNTY'S licensed CONTRACTOR software. System Updates
27 shall be subject to the terms and conditions of this Agreement and shall be deemed
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1 licensed System Software hereunder and will be made available to COUNTY at no
2 additional charge to COUNTY. System Updates will be made available to COUNTY
3 at the discretion of CONTRACTOR, but will not be unreasonably withheld.

4 2. NEW PRODUCTS

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

10 G. OPERATING SYSTEM UPDATES

11 The application must run on an operating system (O/S) that is consistently and
12 currently supported by the operating system vendor. Applications hosted by
13 CONTRACTOR require updates within one (1) year of current for the O/S, including
14 security patches (including but not limited to Java, Chrome, etc.).

15 H. ANTI-VIRUS MANAGEMENT

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

19 I. ADHERE TO CHANGE CONTROL PROCESS

20 The COUNTY acknowledges that the CONTRACTOR shall be providing the hosted
21 environment and processes for the System application. When applicable, the
22 CONTRACTOR must adhere to the COUNTY's change control process ("Change
23 Control Process"), which shall be provided to the CONTRACTOR in writing, and which,
24 for purposes of clarity, may include email notification. COUNTY employs a procedure to
25 implement updates, upgrades, and version releases to a system that is in production
26 use. This forum allows COUNTY's ITSD to inform staff (Help Desk, Network, Server,
27 Database, Security, and Analysts) of upcoming changes to a production system.

1 CONTRACTOR must inform COUNTY with a minimum of (1) calendar week notice of
2 any planned, non-emergency changes so that the Change Control process may be
3 followed. Notwithstanding the forgoing, scheduled weekly System maintenance shall not
4 be subject to the COUNTY's Change Control Process.

5 J. OTHER

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

9 None of the provisions of this Agreement is intended by the parties, nor shall they be
10 deemed, to confer any benefit on any person not a Party to this Agreement.

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

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16 **III. OBLIGATIONS AND RIGHTS OF THE COUNTY**

17 A. COUNTY CONTRACT ADMINISTRATOR

18 COUNTY appoints the Chief Information Officer (CIO) or his designee as COUNTY's
19 Contract Administrator, with full authority to deal with CONTRACTOR in all matters
20 concerning this Agreement.

21 B. ACCESS

22 COUNTY and Vesta Solutions shall agree upon, prior to COUNTY's use of the
23 Service, the offices and Users authorized to access the Service, and such Users shall
24 be identified in writing in advance by COUNTY. COUNTY may modify the Users of the
25 Service by providing advance written notice to Vesta Solutions. COUNTY may
26 authorize access for the number of simultaneous, concurrent Users of the Service at
27 any given time. Passwords provided for Service access may be used only by
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1 authorized personnel. Neither COUNTY nor its authorized personnel shall divulge,
2 sublicense, assign, or transfer to any third-party passwords established for access to
3 the Service. COUNTY shall be responsible for the confidentiality and security of its User
4 identifications and passwords.

5 C. COUNTY DATA

6 Vesta Solutions does not own any data, information, or material that COUNTY
7 submits to the Service in the course of using the Service ("COUNTY Data"). COUNTY
8 shall have sole responsibility for the accuracy, quality, integrity, legality, reliability,
9 appropriateness and intellectual property ownership or right to use of all COUNTY Data.
10 Vesta Solutions shall not be responsible or liable for the deletion, correction,
11 destruction, damage loss or failure to store any COUNTY Data. COUNTY shall
12 maintain a copy of all COUNTY Data. COUNTY is solely responsible for adherence to
13 any privacy act or regulation regarding such COUNTY Data, and Vesta Solutions will
14 have no responsibility with respect to the same. In regards to any self-registration portal
15 tool purchased or licensed by COUNTY through or with Vesta Solutions, COUNTY shall
16 assume all duties, obligations and compliance with any applicable law regarding its use,
17 including but not limited to the gathering, storage and dissemination of such COUNTY
18 Data. COUNTY shall also be solely responsible for communicating any applicable
19 notices or terms of use to its registrants. These duties and obligations are non-
20 delegable by COUNTY to Vesta Solutions.

21 D. FEES OF SERVICE

22 For the term of this Agreement, COUNTY will pay Vesta Solutions or its authorized
23 reseller the amount set forth in the Proposal, and as described in Section VIII, herein.
24 Payment shall be made within forty-five (45) days from the date of the invoice. License
25 rights granted hereunder, and Services shall renew as described in Section V, unless
26 terminated by COUNTY's written notice to CONTRACTOR not less than ninety (90)
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1 days prior to the expiration of the then-in-effect term. Payment on the renewal invoice
2 shall be due on or before the expiration of the current term.

3 E. TAXES

4 COUNTY will pay all taxes based on this Agreement or any product or services
5 related thereto, excluding taxes based on Vesta Solutions' income, but including
6 personal property taxes, if any. All shipping and insurance charges for products shipped
7 between Vesta Solutions and COUNTY will be paid by COUNTY.

8 F. LATE CHARGE

9 In addition to any other remedy available to CONTRACTOR, COUNTY shall pay a
10 charge of 1.5% per month for any late payments by COUNTY, or the maximum
11 percentage permitted by applicable law, whichever is less, on any amount not paid
12 when due.

13 G. SAFEGUARDING SYSTEM SOFTWARE

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

18 COUNTY is responsible for all activity occurring in its User accounts, and shall abide
19 by all applicable local, state, national and foreign law, treaties and regulations in
20 connection with COUNTY's use of the Service, including but not limited to data privacy,
21 security, international communications and the transmission of technical or personal
22 data. COUNTY shall: (i) Prevent unauthorized access to the Service and notify Vesta
23 Solutions immediately of any unauthorized use of any password or account or any other
24 known or suspected breach of security; (ii) report to Vesta Solutions immediately, and
25 use reasonable efforts to stop immediately, any copying or distribution of Content that is
26 known or suspected by COUNTY; and (iii) ensure that use of the Service by all of
27 COUNTY's Users is in compliance with this Agreement.

1 1. Privacy and Security; Disclosure

2 Vesta Solutions' Data Security and Encryption Policy and Hosting Center
3 Policy are available upon COUNTY request. Vesta Solutions reserves the right
4 to modify these policies in its reasonable discretion from time to time. Because
5 the Service is a hosted, online application, Vesta Solutions may need to notify all
6 Users of the Service of important announcements regarding the operation of the
7 Service, and will use COUNTY information for that purpose.

8 H. BACKUP AND RECOVERY MANAGEMENT

- 9 1. CONTRACTOR shall utilize a backup and recovery system comparable to
10 COUNTY Internal Services Department – Information Technology (ISD-IT)
11 standards.
12 2. Upon request, CONTRACTOR will provide a descriptive overview of the backup
13 and recovery system to assure database integrity.
14 3. CONTRACTOR, at all times, during and after the performance of the installation
15 of the System Software, is responsible for maintaining adequate data backups to
16 protect against loss of data.

17 I. ACCEPTANCE TESTING

18 COUNTY shall approve Final System Acceptance when all VESTA
19 COMMUNICATOR/ALERT features and functions have been delivered to, and
20 successfully tested by, the COUNTY, in accordance with a mutually agreed-upon
21 hosted project plan executed by both parties.

22 J. ACCEPTANCE TESTING PROCESS

23 Following delivery and installation, CONTRACTOR shall test VESTA
24 COMMUNICATOR/ALERT along with COUNTY personnel.

25 K. FACILITIES AND PREPARATION

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

4 L. SYSTEM HARDWARE AND SYSTEM SOFTWARE

5 COUNTY will, at its own expense, provide and properly maintain and update on an
6 on-going basis all necessary COUNTY System Software and COUNTY System
7 Hardware required to operate VESTA COMMUNICATOR/ALERT. Said COUNTY
8 System Software and COUNTY System Hardware shall meet or exceed
9 CONTRACTOR's recommendations.

10 As part of COUNTY's responsibility for computer infrastructure, COUNTY is
11 responsible for ensuring that data is secure and protected at all times. CONTRACTOR
12 is not responsible for, and cannot be held liable for, inadvertent data disclosure or theft
13 from COUNTY facilities.

14 M. COUNTY PROJECT MANAGER

15 Upon execution of this Agreement, COUNTY's Contract Administrator shall
16 designate one individual from ISD-IT who will function as Project Manager with
17 responsibility for day-to-day management of the project for implementation of VESTA
18 COMMUNICATOR/ALERT. The Project Manager and COUNTY personnel shall have
19 the necessary and appropriate training and experience to implement the terms of this
20 Agreement. COUNTY acknowledges CONTRACTOR'S reliance on same.

21 N. OTHER COUNTY OBLIGATIONS

- 22 1. Technical assistance from COUNTY's Information Technology staff will be
23 provided during the performance of the installation of the System Software. In
24 particular, COUNTY will provide:
- 25 a) Network connectivity and troubleshooting assistance.
 - 26 b) Ability to monitor network traffic and isolate bottlenecks.
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- 1 c) Technical assistance concerning the integration with existing COUNTY
2 systems (if applicable).
3 d) Expertise to handle issues with PCs, printers, and cabling before, during, and
4 after rollout.
- 5 2. Unless otherwise specified, for third-party software, CONTRACTOR shall provide
6 standard documentation in electronic form (via the Internet or File Transfer
7 Protocol (FTP)).
- 8 3. The System being provided runs in a Local Area Network and Web environment.
9 As such, the performance of the System is directly related to, among other
10 things: available network bandwidth, and the performance of other applications.
11 For this reason, CONTRACTOR makes no guarantees as to System response
12 time.

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14 **IV. WARRANTY**

- 15 A. Each Party represents and warrants that it has the legal power and authority to enter
16 into this Agreement. CONTRACTOR represents and warrants that it will provide the
17 System in a manner consistent with general industry standards reasonably
18 applicable to the provision thereof, and that the System will perform substantially in
19 accordance with the online Contractor Documentation under normal use and
20 circumstances. The COUNTY represents and warrants that it has not falsely
21 identified itself, or provided any false information to gain access to the Service.
- 22 1. During the term, Vesta Solutions will provide such assistance as is reasonably
23 necessary to cause the Vesta Solutions Service to perform materially in
24 accordance with the then current System Documentation, provided that
25 COUNTY's use is in accordance with this Agreement and the System
26 Documentation.

1 2. COUNTY'S REMEDY: COUNTY'S EXCLUSIVE REMEDY, AND VESTA
2 SOLUTIONS' ENTIRE LIABILITY IN CONTRACT, TORT OR OTHERWISE FOR
3 BREACH OF ANY OF THE ABOVE WARRANTIES WILL BE TO USE ITS
4 COMMERCIALY REASONABLE EFFORTS TO PROVIDE A CORRECTION
5 OR WORK AROUND FOR ANY MATERIAL NONCONFORMITY WHICH IS (I)
6 REPORTED TO VESTA SOLUTIONS BY COUNTY WHILE VESTA
7 SOLUTIONS IS OBLIGATED TO PERFORM SUPPORT SERVICES AND (II)
8 REPRODUCIBLE BY VESTA SOLUTIONS IN THE EXECUTION
9 ENVIRONMENT.

10 B. Disclaimer of Warranties. THE EXPRESS WARRANTIES CONTAINED IN THIS
11 AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER
12 REPRESENTATIONS AND WARRANTIES. VESTA SOLUTIONS DISCLAIMS ALL
13 OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING
14 WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR
15 A PARTICULAR PURPOSE OR NONINFRINGEMENT. VESTA SOLUTIONS DOES
16 NOT WARRANT THAT THE SOFTWARE OR SERVICE IS ERROR-FREE OR
17 WILL OPERATE WITHOUT INTERRUPTION.

18 C. IF THE VESTA SOLUTIONS SERVICE IS USED IN EMERGENCY SITUATIONS,
19 THEN THE SERVICE IS INTENDED TO ONLY INCREASE THE NOTICE WHICH
20 WILL BE GIVEN. THERE IS NOT AND CAN NOT BE ANY GUARANTEE THAT
21 ALL PERSONS INTENDED TO BE CONTACTED WILL BE CONTACTED. VESTA
22 SOLUTIONS ACCEPTS NO RESPONSIBILITY FOR ANY FAILURE OF THE
23 VESTA SOLUTIONS SERVICE TO CONTACT ANY PERSON OR PERSONS AND
24 IS NOT RESPONSIBLE FOR ANY DAMAGE OR INJURY WHICH RESULTS FROM
25 ANY FAILURE TO CONTACT ANYONE. The warranties in this Section IV will not
26 apply to any defects or problems caused in whole or part by (i) defects in any
27 equipment, (ii) failure of any portion of equipment to function in accordance with
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1 manufacturer's specifications, (iii) modifications or enhancements made to the
2 Service by anyone other than Vesta Solutions, (iv) any software, hardware,
3 firmware, peripheral or communication devices used with the Service not provided
4 by or approved of in writing by Vesta Solutions, (v) failure of COUNTY or any third
5 party to follow Vesta Solutions' most current instructions for proper use of the
6 Service, (vi) negligence of COUNTY or any third party, or (vii) failure to install and
7 use the updates, modifications and corrections provided by Vesta Solutions. If
8 COUNTY falls within any of the foregoing exceptions, and requests Vesta Solutions
9 to provide support services for such defect or problem, COUNTY will pay Vesta
10 Solutions for such services at Vesta Solutions' then current hourly rate.

11 12 **V. TERM**

13 The term of this Agreement shall be for a period of three (3) years, commencing on
14 December 16, 2019, through and including December 15, 2022. This Agreement will
15 renew for two (2) additional consecutive twelve (12) month periods, unless terminated
16 by the COUNTY upon giving thirty (30) days prior written notice to CONTRACTOR. The
17 Director of Internal Services/Chief Information Officer (CIO) or his or her designee is
18 authorized to execute such written approval on behalf of COUNTY based on
19 CONTRACTOR'S satisfactory performance.

20 21 **VI. TERMINATION**

22 **A. NON-ALLOCATION OF FUNDS**

23 The terms of this Agreement, and the services to be provided thereunder, are
24 contingent on the approval of funds by the appropriating government agency. Should
25 sufficient funds not be allocated, the services provided may be modified, or this
26 Agreement terminated, at any time without penalty by giving the CONTRACTOR ninety
27 (90) days advance written notice.

1 B. BREACH OF CONTRACT

2 The CONTRACTOR may terminate this Agreement without further obligation or
3 liability to COUNTY if:

- 4 1. COUNTY fails to timely pay any amounts due under this Agreement and fails to
5 make such payments within ten (10) days of written notice from Vesta Solutions;
6 2. COUNTY commits any material breach of this Agreement and fails to remedy
7 such breach within thirty (30) days of written notice from Vesta Solutions; or
8 3. COUNTY becomes the subject of a petition in bankruptcy; is or becomes
9 insolvent; or admits a general inability to pay its debts as they become due.

10
11 The COUNTY may immediately suspend or terminate this Agreement in whole or in
12 part, where in the determination of the COUNTY there is:

- 13 1. If any material breach of this Agreement occurs, and CONTRACTOR fails to
14 remedy such breach within thirty (30) days of written notice from COUNTY.
15 2. An illegal or improper use of funds;

16
17 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY
18 of any breach of this Agreement or any default which may then exist on the part of the
19 CONTRACTOR. Neither shall such payment impair or prejudice any remedy available
20 to the COUNTY with respect to the breach or default. The COUNTY shall have the right
21 to demand of the CONTRACTOR the repayment to the COUNTY of any funds
22 disbursed to the CONTRACTOR under this Agreement, which were not expended in
23 accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund
24 any such funds upon demand. CONTRACTOR may, upon thirty (30) days prior written
25 notice to COUNTY, terminate this Agreement if COUNTY fails to comply with any
26 material term or condition of this Agreement, unless COUNTY cures such failure within
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1 such thirty (30) day period, or other such timeframe as may be mutually agreed upon in
2 writing by the parties.

3 **C. EFFECT OF TERMINATION**

4 Upon termination of this Agreement, all amounts owed to CONTRACTOR through
5 the date of termination will be immediately due and payable, and CONTRACTOR will
6 cease performance of all obligations herein without liability to COUNTY. Sections of this
7 Agreement that, by their nature, are reasonably intended to survive termination shall so
8 automatically survive.

9 Upon termination or expiration of this Agreement, COUNTY shall be prohibited from
10 further use of the Service, and shall promptly return copies of any System
11 Documentation in its possession, if any, to Vesta Solutions. All amounts owed to Vesta
12 Solutions, including but not limited to amounts due for setup services provided by Vesta
13 Solutions, shall be immediately due and payable, and Vesta Solutions will cease
14 performance of all obligations hereunder without liability to COUNTY. Sections VI-C,
15 VI-D, VI-E, IX, XII-A, XII-B, XII-C, and XVI will survive termination or expiration. Upon
16 termination, COUNTY shall have sixty (60) days to notify Vesta Solutions if it opts to
17 have COUNTY Data returned by Vesta Solutions at the expense of COUNTY. In the
18 event termination is due to COUNTY's failure to pay all fees due hereunder, Vesta
19 Solutions reserves the right to withhold return of COUNTY Data until paid in full. If
20 COUNTY does not contact Vesta Solutions during such 60-day timeframe, and/or all
21 fees are not paid current during that timeframe, Vesta Solutions may restrict all access
22 to COUNTY Data until required payments, including fees, incurred are paid in full.
23 Vesta Solutions has no obligation to provide transition services in connection with
24 COUNTY's election to utilize an alternative vendor.

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E. PARTIAL INVALIDITY

F. WAIVER

G. FORCE MAJEURE

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1 **VII. COUNTERPARTS**

2 This Agreement may be executed in one or more counterparts, all of which taken
3 together shall constitute one instrument. Once fully executed, it will become effective as
4 of the Effective Date stated above. Delivery of an executed signature page of this
5 Agreement by facsimile transmission or electronic photocopy (i.e., "pdf") shall be equally
6 effective as manual delivery of an original signed counterpart hereof.
7

8 **VIII. COMPENSATION/INVOICING**

9 COUNTY agrees to pay CONTRACTOR, and CONTRACTOR agrees to receive
10 compensation as follows for each individual year of the Agreement:

11 A. ANNUAL MAINTENANCE AND SUPPORT FEES, WITH FULL HOSTING
12 SERVICES, INCLUDING:

- 13 • List and Map-Based Calling
 - 14 • 20,000 Universal Calling/SMS Units included annually
 - 15 ○ Optional Bundled Packages Available for purchase
 - 16 • Hosted Backup Service
 - 17 • Data Migration to hosted solution
 - 18 • Efax Service
 - 19 • 24/7/365 Technical Support, including access to Support Portal
 - 20 • Unlimited Administrators and Scenarios
 - 21 • Annually - Training for 1 participant at NSS University in Franklin, TN or
22 WebEx training with an instructor (up to 10 participants)
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| | | |
|--|--|----------|
| Year 1: 12/16/2019 – 12/15/2020 | | |
| • Annual Service Support | | \$26,802 |
| • One-time setup fee | | \$500.00 |
| Year 2: 12/16/2020 – 12/15/2021 | | |
| • Annual Service Support | | \$26,802 |
| Year 3: 12/16/2021 – 12/15/2022 | | |
| • Annual Service Support | | \$26,802 |
| Year 4: 12/16/2022 – 12/15/2023 | | |
| • Annual Service Support | | \$26,802 |
| Year 5: 12/16/2023 – 12/15/2024 | | |
| • Annual Service Support | | \$26,802 |

B. ADDITIONAL LICENSE/SERVICES FEES:

| | | |
|---|--|------------|
| 1. On-site System training/day | | \$1,800.00 |
| 2. Hourly Rate for Additional Services | | |
| a. Regular Hours (M-F, 8am-5pm CST, excluding holidays) | | \$225/hour |
| b. Outside of Regular Hours \$450/hour | | \$450/hour |
| 3. Universal Calling/SMS Messaging | | \$17,000 |
| | | Annually |

Additional License/Services Fees shall only be paid to CONTRACTOR if any such services set forth hereinabove are performed by CONTRACTOR upon COUNTY's written request. In no event shall Additional License/Services Fees exceed \$20,000, per year, for the overall term of this Agreement.

1 C. TOTAL CONTRACT AMOUNT

2 In no event shall services performed under this Agreement be in excess of
3 \$234,510.00 during the entire potential five (5) year term of this Agreement. It is
4 understood that all expenses incidental to CONTRACTOR'S performance of services
5 under this Agreement shall be borne by CONTRACTOR.

6 D. INVOICING

7 CONTRACTOR shall submit invoices, either electronically or via mail, to the County
8 of Fresno ISD-IT, Accounts Payable, 2048 N. Fine Avenue, Fresno, CA 93727 or
9 Accounts Payable (isdbusinessoffice@fresnocountyca.gov). COUNTY will pay
10 CONTRACTOR within forty-five (45) days from the date of invoice, by mail addressed to
11 CONTRACTOR's remittance address at P.O. Box 9007, Temecula, CA 92590.

12
13 **IX. INDEPENDENT CONTRACTOR**

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

26 Because of its status as an independent contractor, CONTRACTOR shall have
27 absolutely no right to employment rights and benefits available to COUNTY employees.

1 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its
2 employees all legally-required employee benefits. In addition, CONTRACTOR shall be
3 solely responsible and save COUNTY harmless from all matters relating to payment of
4 CONTRACTOR'S employees, including compliance with Social Security withholding and all
5 other regulations governing such matters. It is acknowledged that during the term of this
6 Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY
7 or to this Agreement.

8

9 **X. CONFIDENTIALITY**

10 A Party receiving Information (defined below) of the other will not disclose such
11 Information other than to persons in its organization who have a need to know and who will
12 be required to comply with this Section. All such confidential information must be clearly
13 marked "Confidential." The Party receiving Information will not use such Information for a
14 purpose inconsistent with the terms of this Agreement. "Information" means the System
15 Software, System Documentation and all information and intellectual property related
16 thereto (including, but not limited to all databases provided to COUNTY by CONTRACTOR
17 whether created by CONTRACTOR or its third-party licensors such as, without limitation,
18 the mapping product databases). Information will not include: (i) information publicly known
19 prior to disclosure; (ii) information coming into the lawful possession of the recipient without
20 any confidentiality obligation; and (iii) information required to be disclosed pursuant to
21 regulatory action, state law, or court order, provided prior written notice of any request to
22 disclose is given to the Party whose information is to be disclosed. The terms of this
23 Agreement are not confidential information, pursuant to this Section X. Each Party will
24 exercise at least the same degree of care to safeguard the confidentiality of the other's
25 Information as it does to safeguard its own proprietary confidential information, but not less
26 than a reasonable degree of care.

1 **XI. MODIFICATION**

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

4
5 **XII. NON-ASSIGNMENT**

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

8 Both parties' rights and remedies under this Agreement will be cumulative and in
9 addition to all other rights and remedies available to each party in law and in equity.

10
11 **XIII. HOLD HARMLESS**

12 A. INFRINGEMENT INDEMNITY

13 With the exception of any third-party software, hardware or equipment that may be
14 provided under this Agreement, CONTRACTOR agrees to hold COUNTY harmless
15 from liability to third parties resulting from infringement of any United States patent or
16 copyright by the CONTRACTOR software purchased hereunder, and CONTRACTOR
17 further agrees to pay all damages and costs, including reasonable legal fees, which
18 may be assessed against COUNTY under any such claim or action. CONTRACTOR
19 shall be released from the foregoing obligation if COUNTY fails to reasonably cooperate
20 with CONTRACTOR in defending or settling any such claim or action, or fails to provide
21 CONTRACTOR with (i) prompt written notice once COUNTY first becomes aware of
22 such a claim or action, or possibility thereof; (ii) control and authority over the defense
23 or settlement thereof; and (iii) cooperation to settle and/or defend any such claim or
24 action. Without limiting the foregoing, if a final injunction is, or CONTRACTOR believes,
25 in its sole discretion, is likely to be, entered prohibiting the use of the software by
26 COUNTY as contemplated herein, CONTRACTOR will, at its sole option and expense,
27 either (a) procure for COUNTY the right to use the infringing software as provided
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1 herein or (b) replace the infringing software with non-infringing, functionally equivalent
2 products, or (c) suitably modify the infringing software so that it is not infringing; or (d) in
3 the event (a), (b) and (c) are not commercially reasonable, terminate the license, accept
4 return of the infringing software, and refund to COUNTY the prorated portion of the
5 license fee for the unused term of this Agreement, paid therefore. Except as specified
6 above, CONTRACTOR will not be liable for any infringement claim-related costs or
7 expenses incurred without its prior written authorization. Notwithstanding the foregoing,
8 CONTRACTOR assumes no liability for infringement claims with respect to software (i)
9 not supplied by CONTRACTOR, (ii) made in whole or in part in accordance to
10 COUNTY's specifications, (iii) that is modified after delivery by CONTRACTOR, (iv)
11 combined with other products, processes or materials where the alleged infringement
12 relates to such combination, (v) where COUNTY continues allegedly infringing activity
13 after being notified thereof or after being informed of modifications that would have
14 avoided the alleged infringement, or (vi) where COUNTY's use of the software is not
15 strictly in accordance with this Agreement.

16 IN NO EVENT WILL VESTA SOLUTIONS BE LIABLE TO COUNTY FOR ANY
17 INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES,
18 INCLUDING WITHOUT LIMITATION, LOSS OF DATA, LOSS OF PROFITS, LOSS OF
19 BUSINESS INFORMATION, BUSINESS INTERRUPTION OR ANY OTHER
20 PECUNIARY LOSS ARISING OUT OF THE USE OF OR INABILITY TO USE THE
21 SERVICE OR SOFTWARE OR THE PROVISION OF OR FAILURE TO PROVIDE
22 SUPPORT SERVICES, ARISING OUT OF OR RELATED TO THIS AGREEMENT,
23 EVEN IF VESTA SOLUTIONS HAS BEEN ADVISED OF, KNEW OF, OR SHOULD
24 HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. VESTA SOLUTIONS'
25 TOTAL LIABILITY TO CUSTOMER HEREUNDER, IF ANY, WILL IN NO EVENT
26 EXCEED THE TOTAL AMOUNT PAID TO VESTA SOLUTIONS HEREUNDER IN THE
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1 TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO
2 THE CLAIM.

3 THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE
4 LIABILITY AND OBLIGATIONS OF CONTRACTOR AND THE EXCLUSIVE REMEDY
5 OF COUNTY WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF
6 ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER
7 INTELLECTUAL PROPERTY RIGHT BY THE SOFTWARE.

8 B. INJUNCTIVE RELIEF

9 Each Party acknowledges that a violation or threatened violation by it of Section IX
10 hereof would result in damage that is largely intangible but nonetheless real and that is
11 incapable of complete remedy by award of damages. Thus, such violation or
12 threatened violation will give the injured Party the right to a court-ordered injunction to
13 specifically enforce such covenant or obligation.

14 C. GENERAL INDEMNITY

15 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY'S
16 request, defend the COUNTY, its officers, agents, and employees from any and all
17 costs and expenses, damages, liabilities, claims, and losses occurring or resulting to
18 COUNTY in connection with any bodily injuries or damages incurred as a result of
19 CONTRACTOR's negligence while traveling to or from COUNTY's premises or while
20 performing services on COUNTY's premises.

21 COUNTY shall indemnify, defend and hold Vesta Solutions, its licensors and each
22 such Party's parent organizations, subsidiaries, affiliates, officers, directors, employees,
23 attorneys and agents harmless from and against any and all claims, costs, damages,
24 losses, liabilities, and expenses (including attorneys' fees and costs) arising out of or in
25 connection with: (i) A claim alleging that use of the COUNTY Data infringes the rights of,
26 or has caused harm to a third party; (ii) a claim which if true, would constitute a violation
27 by COUNTY of its representations and warranties contained herein; (iii) a claim arising
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1 from the breach by COUNTY of this Agreement, provided in any such case that Vesta
2 Solutions (a) gives COUNTY timely written notice of the claim; and (b) provides
3 COUNTY all available information and assistance. COUNTY shall not settle or
4 compromise any such claim without Vesta Solutions' prior written consent. If Vesta
5 Solutions fails to respond to COUNTY'S request to settle any such claim within thirty
6 (30) days of the written notice from the COUNTY, then Vesta Solutions will be deemed
7 to have consented.

8 9 **XIV. INSURANCE**

10 Without limiting the COUNTY's right to obtain indemnification from CONTRACTOR or
11 any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect,
12 the following insurance policies or a program of self-insurance, including but not limited to,
13 an insurance pooling arrangement or Joint Powers Agreement (JPA) throughout the term of
14 the Agreement:

15 **A. COMMERCIAL GENERAL LIABILITY**

16 Commercial General Liability Insurance with limits of not less than Two Million
17 Dollars (\$2,000,000.00) per occurrence and an annual aggregate of Four Million Dollars
18 (\$4,000,000.00). This policy shall be issued on a per occurrence basis on standard ISO
19 form CG 00 01 04 13. COUNTY may require specific coverages with written agreement
20 including completed operations, products liability, contractual liability, Explosion-
21 Collapse-Underground, fire legal liability or any other liability insurance deemed
22 necessary because of the nature of this contract.

23 **B. AUTOMOBILE LIABILITY**

24 Comprehensive Automobile Liability Insurance with limits for bodily injury of not less
25 than One Million Dollars (\$1,000,000.00) per accident for bodily injury and for property
26 damages. Coverage should include auto used in connection with this Agreement.

1 C. TECHNOLOGY PROFESSIONAL LIABILITY INCLUDING CYBER LIABILITY
2 (ERRORS AND OMISSIONS)

3 Technology Professional Liability (Errors and Omissions) Insurance appropriate to
4 CONTRACTOR's profession, with limits not less than Two Million Dollars (\$2,000,000)
5 per occurrence or claim, Two Million Dollars (\$2,000,000) aggregate. Coverage shall be
6 sufficiently broad to respond to the duties and obligations as is undertaken by
7 CONTRACTOR in this Agreement and may include, but not be limited to infringement of
8 copyright, trademark, trade dress (but excluding patents and trade secrets), invasion of
9 privacy violations, information theft, damage to or destruction of electronic information,
10 release of private information, alteration of electronic information, extortion and network
11 security. The policy may provide coverage for breach response costs as well as
12 regulatory fines and penalties as well as credit monitoring expenses with limits sufficient
13 to respond to these obligations.

14 For purposes of the technology professional liability insurance and the cyber liability
15 insurance required under this Agreement, Cyber Risks include (i) security breaches,
16 which include disclosure of, whether intentional or unintentional, information provided by
17 COUNTY, information provided by or obtained from any inmate, or personal-identifying
18 information relating to any inmate, to an unauthorized third party; (ii) breach of any of
19 CONTRACTOR's obligations under this Agreement relating to data security, protection,
20 preservation, usage, storage, transmission, and the like; (iii) infringement of intellectual
21 property including, but not limited to, infringement of copyright, trademark, and trade
22 dress (but excluding patents and trade secrets); (iv) invasion of privacy, including any
23 release of private information; (v) information theft by any person or entity, whatsoever;
24 (vi) damage to or destruction or alteration of electronic information; (vii) extortion related
25 to CONTRACTOR's obligations under this Agreement regarding electronic information,
26 including information provided by COUNTY, information provided by or obtained from
27 any inmate, or personal-identifying information relating to any inmate; (viii) network
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1 security; (ix) data breach response costs, including security breach response costs; (x)
2 regulatory fines and penalties related to CONTRACTOR's obligations under this
3 Agreement regarding electronic information, including information provided by
4 COUNTY, information provided by or obtained from an inmate, or personal-identifying
5 information relating to any inmate; and (xi) credit monitoring expenses.

6 **D. WORKER'S COMPENSATION**

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

9 **E. ADDITIONAL REQUIREMENTS RELATING TO INSURANCE**

10 CONTRACTOR hereby waives its right to recover from COUNTY, its officers,
11 agents, and employees any amounts paid by the policy of worker's compensation
12 insurance required by this Agreement. CONTRACTOR is solely responsible to obtain
13 any endorsement to such policy that may be necessary to accomplish such waiver of
14 subrogation, but CONTRACTOR's waiver of subrogation under this paragraph is
15 effective whether or not CONTRACTOR obtains such an endorsement.

16 CONTRACTOR shall obtain endorsements to the Commercial General Liability
17 insurance including the County of Fresno, its officers, applicable agents, and
18 employees, individually and collectively, as additional insured, but only insofar as the
19 operations under this Agreement are concerned. Such coverage for additional insured
20 shall apply as primary insurance. This insurance shall not be cancelled or changed
21 without a thirty (30) days advance written notice given to COUNTY.

22 Within Thirty (30) days from the date CONTRACTOR executes this Agreement,
23 CONTRACTOR shall provide certificates of insurance and endorsement as stated
24 above for all of the foregoing policies, as required herein, to the County of Fresno, Chief
25 Information Officer, 333 W Pontiac Way, Clovis, CA, 93612-5613, stating that such
26 insurance coverages have been obtained and are in full force. County of Fresno, its
27 officers, applicable agents and employees will not be responsible for any premiums on
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1 the policies and that for such worker's compensation insurance the CONTRACTOR has
2 waived its right to recover from the COUNTY, its officers, agents, and employees any
3 amounts paid under the insurance policy and that waiver does not invalidate the
4 insurance policy. Certificate of insurance shall state that Commercial General Liability
5 insurance shall include the County of Fresno, its officers, applicable agents and
6 employees, individually and collectively, as additional insured, but only insofar as the
7 operations under this Agreement are concerned; that such coverage for additional
8 insured shall apply as primary insurance.

9 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as
10 herein provided, the COUNTY may suspend or terminate this Agreement upon the
11 occurrence of such event.

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

15 16 **XV. AUDITS AND INSPECTIONS**

17 CONTRACTOR shall at any time during CONTRACTOR'S normal business hours, and
18 upon reasonable prior written notice, not more often than once a year, make available to
19 the COUNTY for examination all of its records and data specifically related to the matters
20 covered by this Agreement. CONTRACTOR shall, upon request by the COUNTY, permit
21 the COUNTY to audit and inspect all of such records and data necessary to ensure
22 CONTRACTOR'S compliance with the terms of this Agreement. Any such examinations or
23 audits shall be at the COUNTY'S expense.

24 CONTRACTOR shall be subject to the examination and audit of the California State
25 Auditor for a period of three (3) years after final payment under contract (Government Code
26 Section 8546.7).

1 Notwithstanding the forgoing, in no circumstances will CONTRACTOR be required to
2 create or maintain documents not kept in the ordinary course of CONTRACTOR'S business
3 operations, nor will CONTRACTOR be required to disclose any information, including but
4 not limited to cost data, which is considers confidential or proprietary to CONTRACTOR,
5 except as required by law.

6
7 **XVI. NOTICES**

8 A. AUTHORITY TO GIVE AND RECEIVE NOTICES

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

| | | |
|----|---------------------------|---------------------------|
| 11 | | |
| 12 | COUNTY OF FRESNO | CONTRACTOR |
| 13 | Chief Information Officer | Chris Leonard |
| 14 | 333 W Pontiac Way | Account Executive |
| 15 | Clovis, CA 93612-5613 | 117 Seaboard Ln, Ste D100 |
| 16 | | Franklin, TN 37067-2871 |
| 17 | | |
| 18 | | P.O. Box 9007 |
| 19 | | Temecula, CA 92590 |
| 20 | | |

21 All notices between the COUNTY and the CONTRACTOR provided for or permitted under
22 this Agreement must be in writing and delivered either by personal service, by first-class
23 United States mail, by an overnight commercial courier service, or by telephonic facsimile
24 transmission. A notice delivered by personal service is effective upon service to the
25 recipient. A notice delivered by first-class United States mail is effective three COUNTY
26 business days after deposit in the United States mail, postage prepaid, addressed to the
27 recipient. A notice delivered by an overnight commercial courier service is effective one
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COUNTY business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery instructions given for next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile is effective when transmission to the recipient is completed (but, if such transmission is completed outside of COUNTY business hours, then such delivery shall be deemed to be effective at the next beginning of a COUNTY business day), provided that the sender maintains a machine record of the completed transmission. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

1 **B. PRIMARY ESCALATION CONTACT INFORMATION**

2 The persons and their contact information that the COUNTY or CONTRACTOR can
3 use to escalate problems or situations are as follows:

4
5 COUNTY OF FRESNO

CONTRACTOR

6
7 Contact #1

Contact #1

8 Application Information

Chris Leonard

9 Technology Manager

Account Executive

10 Office Phone: (559) 600-5800

(615) 550-0270

11 helpdesk@fresnocountyca.gov

chris.leonard@motorolasolutions.com

12 333 W Pontiac Way

105 West Park Drive, Suite 200

13 Clovis, CA 93612-5613

Brentwood, TN 37027

14
15 Contact #2

Contact #2

16 Sheri Walden

Michael Anderson

17 Information technology Division

Sales Director

18 Manager

(435)-830-2547

19 swalden@fresnocountyca.gov

michael.anderson@motorolasolutions.com

20
21 **XVII. GOVERNING LAW**

22 Venue for any action arising out of or related to this Agreement shall only be in Fresno
23 County, California.

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

26 All parties agree that venue regarding any action arising hereunder will be exclusively in
27 Fresno County, California.

1 **XVIII. DISCLOSURE OF SELF-DEALING TRANSACTIONS**

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

5 Members of the CONTRACTOR's Board of Directors shall disclose any self-dealing
6 transactions that they are a party to while CONTRACTOR is providing goods or performing
7 services under this agreement. A self-dealing transaction shall mean a transaction to which
8 the CONTRACTOR is a party and in which one or more of its directors has a material
9 financial interest. Members of the Board of Directors shall disclose any self-dealing
10 transactions that they are a party to by completing and signing a Self-Dealing Transaction
11 Disclosure Form (Exhibit 1) and submitting it to the COUNTY prior to commencing with the
12 self-dealing transaction or immediately thereafter.

13
14 **XIX. ENTIRE AGREEMENT**

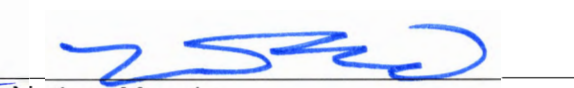
15 This Agreement constitutes the entire agreement between the CONTRACTOR and
16 COUNTY with respect to the subject matter hereof, and supersedes all previous Agreement
17 negotiations, proposals, commitments, writings, advertisements, publications, and
18 understandings of any nature whatsoever, unless expressly included in this Agreement.
19 The terms of any COUNTY-provided invoice concerning any product or service provided
20 hereunder will not serve to replace, modify or supersede the terms of this Agreement. The
21 terms of this Agreement shall prevail for any and all purposes.

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

3 **CONTRACTOR**

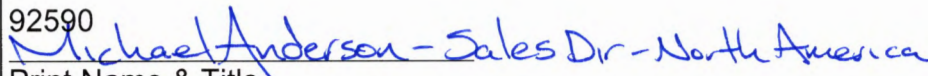
COUNTY OF FRESNO

4 
5 (Authorized Signature)

6 
Nathan Mageig,

7 Michael Anderson
8 Vesta Solutions, Inc.
9 P.O. Box 9007, Temecula, CA

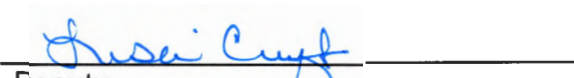
Chairman of the Board of Supervisors of
the County of Fresno

10 92590
11 
12 Print Name & Title

13 **ATTEST:**

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

17
18
19 By:

20 
21 Deputy

22 **FOR ACCOUNTING USE ONLY:**

23 Org. No.: 56204605
24 Account No./Fund: 7295/0001/10000
25
26
27
28

Technical Services Center Support Plan

Vesta Solutions, Inc. offers Software support to purchasers ("Licensee" or "Customer") of its application Software, in accordance with the terms and conditions of this Technical Services Center Support Plan ("Support Plan"), which is made a part of and is incorporated by reference into the License and Support Agreement entered into by Customer and Vesta Solutions, Inc.. Defined terms as set forth in the License and Support Agreement shall have the same meaning in this Support Plan. This Support Plan does not apply to system software or any other third party software.

Conditions of the Support Plan

In order to keep the Support Plan active, the Customer is required to:

1. Pay all applicable Hosting Fees; and
2. Comply with all terms and conditions of this Support Plan and the License and Support Agreement.

Definitions

TSC Technical Services Center

TSS Technical Services Specialist

TSA Technical Services Analyst

Response Time is the period of time that it takes the TSC to call the Customer back when a voice mail has been left or to provide an update on the call ticket. Response times are only implemented when the call is not resolved on the first call. Response Time does not mean Resolution Time.

Resolution Time is the period of time it takes to solve a problem. The resolution time is different for each situation and cannot be determined until the appropriate TSC personnel have evaluated the problem and are able to determine an approximate resolution time.

Support Services Provided

Supported Products

The TSC will only support Software approved and installed by Vesta Solutions, Inc.. The TSC will not resolve requests associated with software other than that provided by Vesta Solutions, Inc.; the requests will, however, be logged into the database. Pursuant to this Support Plan, Vesta Solutions, Inc., as coordinated by its Technical

Service Center, will provide issue resolution and updates to supported Software as further described below.

Hours of Operation

Normal Business Hours (NBH): Monday through Friday, excluding holidays, from 8:00AM to 5:00PM, Central Time.
After hours Emergency support only - see Call Levels

Issue Resolution

The TSC works with Customers to resolve issues related to supported Software that does not perform materially in accordance with the then current Documentation for such Software. This service is designed to support the Customer's technician who is adequately trained in the product about which they are calling and listed as an approved Customer Contact with NSS TSC. To be adequately trained the Customer's technician must have received training directly through an Vesta Solutions, Inc. training program or have been trained by a Customer Technician that has received training directly through Vesta Solutions, Inc.. A trained Customer's technician is responsible for attempting to troubleshoot issues prior to calling TSC. If the Customer's technician is not adequately trained, based on the description above, in the product about which he or she is calling, and thus not listed as an approved Customer Contact, NSS TSC personnel will attempt to contact an approved Customer contact for problem resolution.

For security purposes, only Customer contacts that are listed with TSC will receive support unless a listed contact provides approval to do so. In the event of an emergency TSC may make a special allowance if TSC personnel are unable to reach one of the listed contacts for verification.

To better facilitate high first call resolution for on premise solutions, the TSC will utilize remote control software. This will allow the TSC to connect to the Customer's system via a dial-up or network connection and "take control" of the system to perform troubleshooting and/or resolution services. The TSS/TSA will at all times advise the Customer of their intention to access the system, and upon completion will advise the Customer that they have left the system, relaying to them what steps were taken to resolve an issue. The TSC will maintain a database of all calls received from the Customer, the steps taken to resolve and the resolution. The database will show dates when a call was received and dates of all contacts related to call.

TSC will work with the Customer to identify errors or defects in the Software, and if the TSC is unable to confirm that such error or defect exists through independent testing, it will then escalate the issue to the NSS R&D Department. The TSC will remain as the Customer contact and will work with the R&D Department to provide updated information to the Customer through resolution of the issue.

Contacting the NSS Technical Services Center

During Normal Business Hours (NBH): Customers may call a dedicated ACD at 888.322.4200 or 615.794.2307. If all TSC personnel are busy assisting other customers, the call will go to voice mail. If the caller is experiencing an emergency (see Call Levels below) they may press 0 for the operator and a TSC manager will be paged to assist. If the call is not an emergency (as defined below), the caller should leave a message with their name, company name and ID, telephone number and a brief description of the reason for the call. Messages are checked frequently and calls are returned in the order in which they are received, but always within four (4) hours.

After Hours Emergency: If the Customer is experiencing an emergency (as defined below) they should call the TSC at 888.322.4200 or 615.794.2307. The call will be routed to an answering service where the Customer should leave a clear message with their name, company name and ID, telephone number and a brief description of the reason for the call. The on-call TSS will be paged and will return the call within 15 minutes of receipt of the page.

E-mail Requests: The TSC will respond to e-mail requests within eight (8) business hours.

Note: Emergency or very important requests should always be phoned into the TSC. E-mail can sometimes be unreliable and the TSC has no control over the timely delivery of requests. E-mail service level commitments are based on the time the requests actually reach the TSC.

Call Levels Applied to This Support Plan

Emergency Call - Immediate Response during NBH; within 15 minutes of page outside NBH

- Server Applications will not start.
- Site is experiencing an actual emergency and the system will not send out notifications to one or more device types.
- Site initiates activation, attempts to stop it, and experiences difficulty doing so.

Routine Call - 4 hour Response Time

- Reports are not functioning properly.
- Testing system and needs help making adjustments.
- Assistance with modifying roster members or groups.
- Assistance with speech recording done by Site.
- Assistance creating template scenarios.

Services that require advanced scheduling

- Installation of software or hardware updates or additional configurations.
- Modifications to the system to accommodate telephony changes.
- Vesta Solutions provided speech recording.
- GIS Updates.

Call Procedures & Escalation

The Technical Service Center will maintain call ownership throughout the entire request process. The TSC will address incoming calls as follows.

1. *Capture the Request* - The TSS/TSA will capture all requests by phone, e-mail, or voice mail and verify the right to service based on the Customer's name, support contract status and the approved software support list. If the request relates to unsupported software, the Customer will be notified. Otherwise, the analyst will continue with Step 2.
2. *Log Request into the Database* - The TSS/TSA will open a ticket in the call management system. Information included on the ticket will include the Customer's name, location, description of problem, severity of problem, and time of request and person reporting the issue.
3. *Troubleshoot the Request* - The TSS/TSA responsible for resolving the call will acknowledge the open ticket and work with the Customer to resolve the issue.
4. *Escalate to Second Level* - The TSS will escalate the request to second level support when the first contact is unable to make progress in the resolution of the issue in a timely manner.
5. *Log Resolution into the Database* - The TSS/TSA will log the resolutions to requests in the call management database.
6. *Verify Customer Satisfaction* - The TSS/TSA will follow up and verify that the Customer is satisfied with the resolution.
7. *Close the Request or Ticket* - All tickets will be closed after Customer satisfaction has been verified.

Customer Responsibilities

- The Customer shall maintain the current version of the Vesta Solutions, Inc. application software, or one version back from the most current version.
- The Customer Site should have at least one system administrator that has attended Vesta Solutions, Inc. training, either at the Customer Site or at the Vesta Solutions, Inc. Training Center. The Customer shall provide the administrator's contact information to Vesta Solutions, Inc..
- Customer will schedule install of all updates in a timely manner.
- Customer will work with TSC staff to maintain an accurate database of contact names.
- Customer will respond to requests for information in a timely manner.

Support Limitations

Vesta Solutions's support obligations hereunder will not apply to any Vesta Solutions, Inc. supported application Software if correction of an error, adjustment, repair, or parts replacement is required because of:

- Damage or destruction caused by natural or man-made acts or disasters.
- The operation of the software in a manner other than that currently specified by Vesta Solutions, Inc..
- The failure of the Customer to provide suitable qualified and adequately trained operating and maintenance staff.

- Incompatible or faulty Customer equipment.
- Modifications made without Vesta Solutions, Inc.'s written approval to the OS, network, hardware or software environment or software applications.

Further, support described herein does not include cosmetic repairs, refurbishment, furnishing consumables, supplies or accessories, making accessory changes or adding additional devices or software applications.

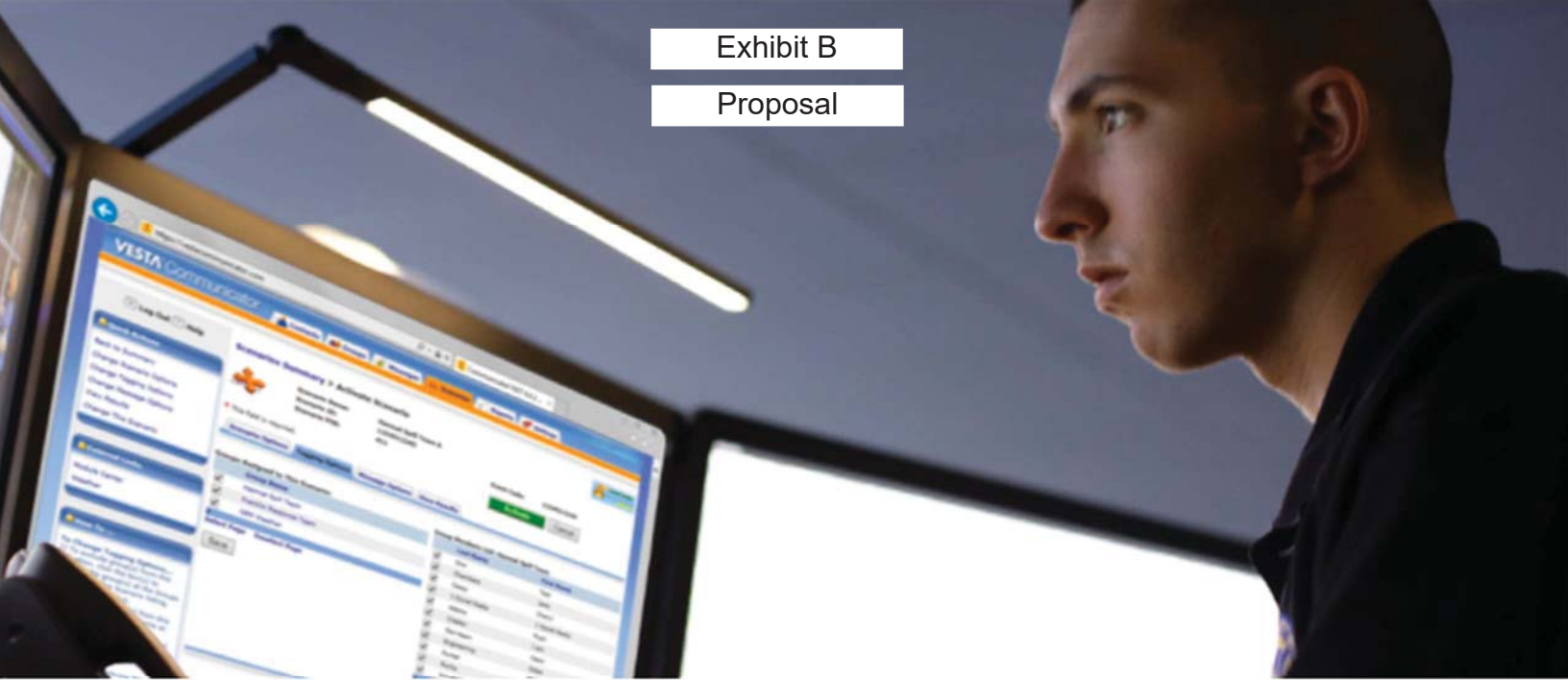
Telephone support and/or field engineering necessary to rectify such unsupported failures as described above may be obtained from Vesta Solutions, Inc. on a time & materials basis as set forth in the applicable price list. The labor rate charged will be the then current Vesta Solutions, Inc. labor rate (plus expenses) at the time service is requested.

Software Updates

Vesta Solutions, Inc. will provide application Software updates. Application Software updates are defined as minor enhancements to the already purchased product feature / functionality set. A program update is classified as minor, in the discretion of Vesta Solutions, Inc., based upon the impact of the change to the core functionality of the product. Notice of all Software updates available during the term of the Support Plan will be posted under the "latest Updates and Patches" section for each product on the Vesta Solutions, Inc. Support Website located at <http://support.vestapublicsafety.com> (<http://support.vestapublicsafety.com>) (login required). Application Software program updates will roll into the existing Support Plan, thereby not extending the term of the Support Plan. Any change in the two numbers following the decimal point within the product version number constitutes an application software program update (for example a change from product version 1.10 to 1.20, or 2.11 to 2.12, or 3.20 to 3.30, etc. will represent an application software program update).

Other Services

Other services not specifically identified as being included in this Support Plan, including but not limited to training, implementation services, and custom development, are not included.



VESTA[®] Alert

VESTA[®] Communicator

PROPOSAL FOR
**FRESNO COUNTY
HEALTH SERVICES
AGENCY**

10/24/19





October 24th, 2019

Jack Curtis

Ref: Proposal #75213

Dear Jack,

Motorola Solutions is committed to helping people be their best in the moments that matter. We appreciate the opportunity to propose our industry renowned Notification Solutions and Services (NSS).

To meet the communications needs of the Fresno County Health Services Agency, we are providing this proposal for the continuation of services provided by the company's web-based solutions, the VESTA® Communicator and VESTA® Alert solutions, in the hosted environment. Through the technology's use, your organization gains unprecedented calling capacity for reaching recipients, while eliminating costs and maintenance associated with on-site hardware and phone lines.

This offer shall remain valid for 120 days from the date of this Proposal.

We thank you for the opportunity to furnish Fresno County Health Services Agency with critical emergency notification technology. Our goal is to provide you with the best solutions and services available in the industry. If you have any questions regarding this proposal, please do not hesitate to contact me.

Best regards,

Chris Leonard

Regional Account Manager

Chris.Leonard@MotorolaSolutions.com

m: 615.947.8390

Motorola Solutions, Inc.

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| 4. | Installation, Support and Training ----- | 8 |
| 5. | Pricing----- | 9 |

1. OVERVIEW

Vesta Solutions, Inc., a wholly owned subsidiary of Motorola Solutions, is committed to helping people be their best in the moments that matter. We appreciate the opportunity to propose our industry renowned Notification Solutions and Services (NSS).

Throughout our history, we have engineered premise-based and hosted platforms to consistently perform in situations impacting operational resiliency and personal safety. Our solutions are scalable in design, supporting simple to highly complex communications and budgets of every size. As a result, thousands of public and private sector clients worldwide look to us for the experience, choice and performance essential to executing their rapid notification strategies.

Experience. With almost 30 years in the industry, our growing list of clients speaks volumes toward the integrity and commitment of Vesta Solutions, and demonstrates our continued investment in people, business processes, applications and global presence. Other key points include:

- Highly diverse customer community spanning multiple industries, including defense, security, finance, healthcare, utility, retail, oil and chemical, as well as public safety and government
- Detailed knowledge and integration with commonly used incident management tools, databases and technologies
- Thorough understanding of emerging communications standards, alerting protocols and emergency notification pitfalls

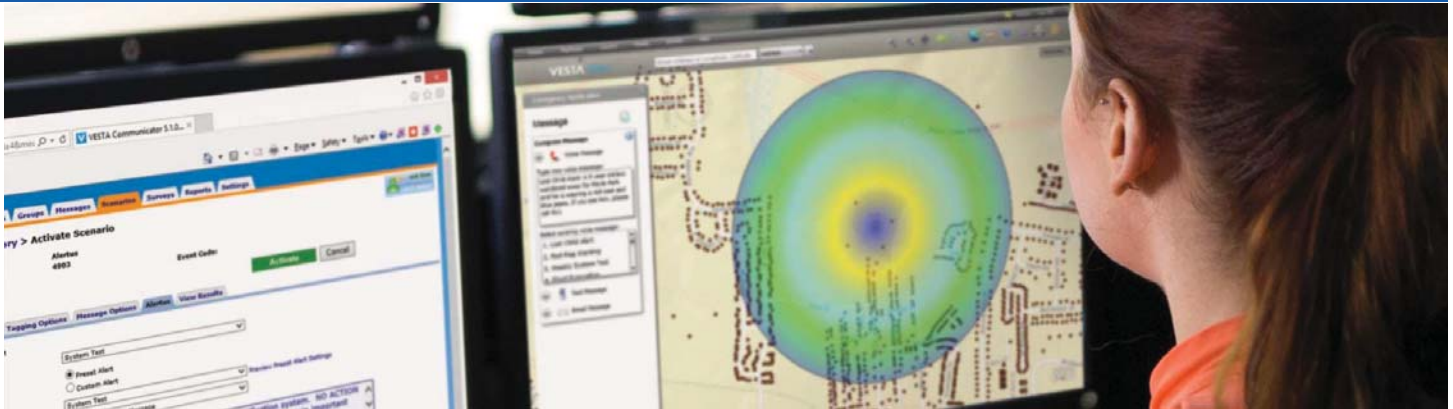
Choice. Only Vesta Solutions offers discrete deployment options adaptable to any environment or operational need, yet fully engineered to support the unique communications needs of our clients. Our broad range of offerings, coupled with invaluable customer input, allows us to be active consultants in the design, deployment and support of our notification solutions and services.

- Premise-based, hosted (SaaS model) and hybrid platforms
- List- and map-based applications
- API integration with various applications, databases and/or technologies
- Complete scalability across jurisdictions or through public-private partnerships

Performance. Vesta Solutions' Notification Solutions and Services have proven secure and reliable in the most extreme situations. Our people, systems and business processes help organizations to reduce risk, shorten recovery time, maintain public confidence and enhance regulatory compliance. Their success drives our ongoing development efforts and customer service initiatives, allowing us to continually raise the bar in the notification industry.

- Security-hardened offerings; passing of rigorous vulnerability assessments
- Multiple Tier III, geographically dispersed and SSAE 16 (formerly SAS 70) certified data centers
- ISO 9001:2015 certified organization

2. VESTA ALERT



VESTA® Alert is a highly intuitive map-based solution that quickly and accurately identifies an area at risk to rapidly deliver critical information to the impacted population. The intuitive, easy-to-use interface can reduce costly training time for public safety organizations.

Citizens must be able to rely on Public Safety officials to notify them of dangerous and in some instances life-threatening events. Public Safety officials must be able to rely on a sophisticated yet easily managed solution to notify the community at a moment's notice.

The VESTA Alert solution from Vesta Solutions does just that. Map-based and optimized for population warning and mass notification, this state-of-the-art solution delivers citizens and public safety officials a system they can rely on with the quality and reliability that Public Safety has come to expect from the VESTA® portfolio.

EASY TO USE AND MANAGE

One of the most attractive features of the VESTA Alert solution is the fact that it is extremely intuitive and easy to use. Users can quickly and accurately identify the area at risk and issue an alert.

The intuitive user interface reduces costly training time. Once you open your web browser and sign-in to the secure web-portal, you are connected to the robust map-based application displaying your local geographical area. You can immediately begin the tasks you need to get done - whether that includes planning or initiating a notification, drawing notification zones for future use or checking on a status of existing notification.

EFFECTIVE, RESPONSIVE AND DETAILED

The VESTA Alert solution is highly responsive and offers a rich mapping experience. Users can quickly navigate using detailed street level maps and overlay high-quality aerial imagery and easily pan, zoom, search and navigate the map using a variety of mapping tools. The solution delivers the software through secure web browser-based access, which eliminates the need to install software locally or download a large GIS data set to each user's computer.

MASSCALL® CAPABILITY

The VESTA Alert solution includes our MassCall® service, a state-of-the-art telecommunications network that provides the capability to generate hundreds of thousands of calls per hour. This service can also automatically detect and deliver messages to telecommunications devices (TTY/TDD). Moreover, MassCall can customize a Caller ID for your organization, making calls appear to come directly from you and increasing the likelihood recipients will answer.

INTEGRATION WITH EXISTING VESTA NOTIFICATION PRODUCTS

The VESTA Alert solution integrates seamlessly with other Vesta Solutions products including the VESTA Communicator solution, to send and receive messages to phone, email and text devices and our Self-Registration Portal (SRP), where citizens can self-subscribe to alerts ensuring they receive notifications.

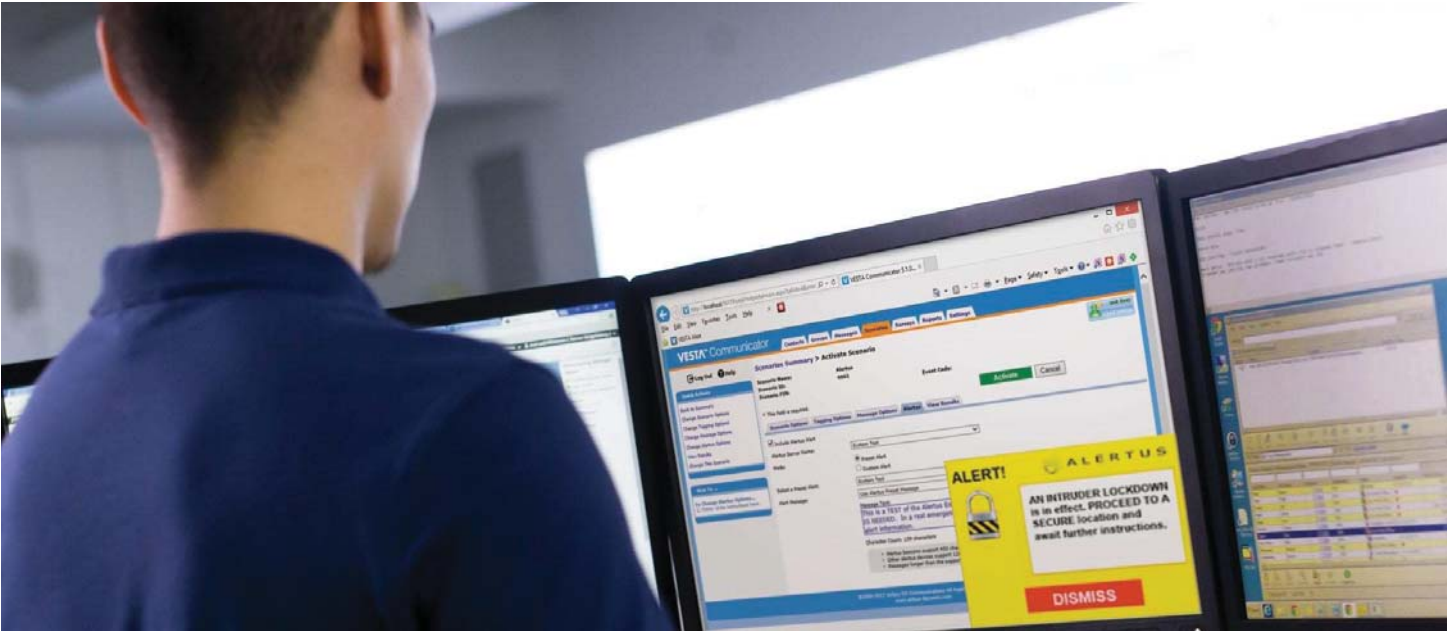
VESTA ALERT CAN BE DEPLOYED IN ONE OF THREE OPTIONS.

1. As on premise, with VESTA Communicator, where all server hardware is installed at your location. If you choose this option, Vesta Solutions can provide a local or hosted back-up service.
2. As software-as-a-service (SaaS), where all hardware is located in the Vesta Solutions' secure data centers.
3. As a fully dedicated SaaS solution, where all server hardware is dedicated to your account and hosted in the Vesta Solutions' secure data centers.

KEY BENEFITS

- Fast, accurate notifications
- IPAWS capability including sending messages to Wireless Emergency Alerts (WEA), Emergency Alert System (EAS), Non-Weather Emergency Message (NWEM), COG-to-COG
- IPAWS Alert areas for VESTA Alert notifications
- Weather Alerts displayed on the map; can be used as the basis for a Notification
- Hazmat ERG - Notification areas can be defined using a Hazmat ERG tool based on the latest Emergency Response Guide
- Self-Registration Portal (SRP) integration - Registrants from the SRP are automatically updated within the VESTA Alert application
- MassCall service that provides the capability to generate hundreds of thousands of calls per hour
- ArcGIS Server 10.2 – VESTA Alert solution is based on ArcGIS Server and can consume customer-provided ArcGIS Server map services

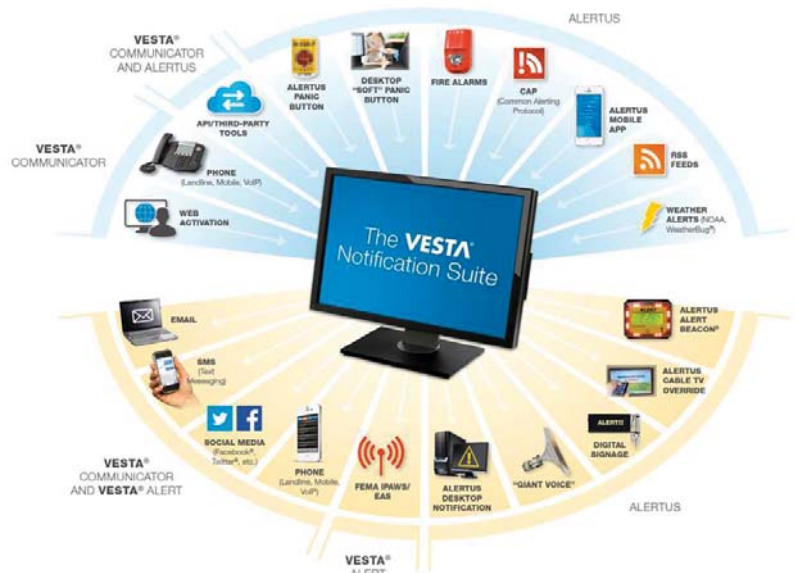
3. VESTA COMMUNICATOR



The VESTA® Communicator is an industry-renowned critical communications software solution from Vesta Solutions. Available on-premise, hosted or hybrid (combination), it is a web-based application that enables easy and quick delivery of messages to virtually any communications device. The software, accessible using a web browser (via the Internet, LAN or WAN), provides rules-based staff and group notifications.

Only the VESTA Communicator solution possesses the speed and intelligence required to mobilize groups of any size or type. The application easily fills positions based on specified criteria such as skill, certification and availability. It also integrates with third-party tools and databases through a simple yet robust Application Programming Interface (API).

With the VESTA Communicator solution, notifications can be activated directly from the desktop or remotely by phone. Users can modify contacts, prepare messages and assess results, easily managing communications from start to finish.



4. INSTALLATION, SUPPORT AND TRAINING

Vesta Solutions provides a variety of resources to assist you in the successful use of your emergency notification solution, to include:

INSTALLATION

- Assignment of project manager to successfully lead installation and coordination of your solution deployment
- Guidance and project coordination/planning to ensure the solution is configured to function correctly within your infrastructure
- Premise-based configurations include on-site installation and readiness testing by technicians
- Assistance with importing of data and creation of initial notification scenarios

SUPPORT

- Multi-tier Technical Services Help Desk made up of a team of full-time professionals, dedicated to providing the highest level of technical support
- 24/7 telephone support (including Business Hours and After Hours on-call for emergencies) plus Business Hours Email and select Chat Support
- Includes software upgrades/updates as released by Vesta Solutions' Quality Assurance team (dependent on deployment option)
- Newsletters and information on Vesta Solutions products and services
- Technical website available at Support.VESTAPublicSafety.com providing access to manuals, best practices, tips and tricks and more

TRAINING

Vesta Solutions offers a variety of training options, covering all topics necessary for optimum system performance and meeting any scheduling need.

- In-house: In this two-and-a-half-day course held at Vesta Solutions' Brentwood TN location, subject matter experts will guide users on how to can comfortably share ideas and network, exploring best practices for utilizing the technology within their operations.
- On-site: Clients can elect to have an experienced member of the training team come to your location, providing flexibility for multiple teams/shifts to take part and accommodating the most demanding of schedules.
- Web-based: This option enables you to take part in real-time, instructor-led training specific to your organization and needs.
- Computer-based: Through Vesta Solutions' online Learning Management System (LMS), you can view recorded training sessions at your convenience.

5. PRICING

Solution: Hosted – The Communicator! NXT & VESTA Alert

Includes:

- List and Map Based Calling
- 20,000 Universal Calling/SMS Units included annually
 - Optional Bundled Packages Available for purchase
- Hosted Backup Service
- Data Migration to hosted solution
- Efax Service
- 24/7/365 Technical Support, including access to Support Portal
- Unlimited Administrators and Scenarios
- Annually - Training for 1 participant at NSS University in Franklin, TN or WebEx training with an instructor (up to 10 participants)

TERM: 5 Years* - 12/16/2019 – 12/15/2024

Annually \$26,802 + 1 time \$500 setup fee

Optional Unlimited Messaging = \$17,500 Annually

Please note that on March 7, 2018 Motorola Solutions, Inc. completed its acquisition of Airbus DS Communications, Inc.'s parent company, Plant Holdings, Inc. That same day, Airbus DS Communications, Inc. changed its name to Vesta Solutions, Inc. All new contracts and purchase orders should bear the name of Vesta Solutions, Inc.

Exhibit C Hosted Project Plan

| | | | | | | | | | | | |
|--|--|---|-------------|-------------|-------------|--------------|---|---------------------|--|--|--|
| | | VESTA Communicator VESTA Alert Shared Hosting | | | | | Base Template Version: 1.0.0 Last Updated: Thu 10/24/19 | | | | |
| ID | | Task Name | Duration | Start | Finish | Predecessors | Resource Names | 0, '18 M T W | | | |
| 1 | | VESTA Communicator and VESTA Alert Shared Hosted Project Plan | 47.25 days? | Tue 1/1/19 | Thu 3/7/19 | | | | | | |
| 2 | | Project Preparation | 0.31 days | Tue 1/1/19 | Tue 1/1/19 | | | | | | |
| 3 | | Prepare Project Package | 0.06 days | Tue 1/1/19 | Tue 1/1/19 | | Project Manager | | | | |
| 4 | | Review and Analyze | 0.25 days | Tue 1/1/19 | Tue 1/1/19 | 3 | Project Manager | | | | |
| 5 | | Project Kickoff | 12 days? | Tue 1/1/19 | Wed 1/16/19 | | | | | | |
| 6 | | Contact POC to Kickoff Project and Review | 1 day? | Tue 1/1/19 | Tue 1/1/19 | | Project Manager | | | | |
| 7 | | Follow up with Email/Conference Call Correspondence | 10 days? | Wed 1/2/19 | Tue 1/15/19 | 2,6 | Project Manager | | | | |
| 8 | | Submit Work Request Documentation | 12 days? | Tue 1/1/19 | Wed 1/16/19 | | | | | | |
| 9 | | Submit System Setup Information to Hosting Infrastructure | 1 day? | Wed 1/16/19 | Wed 1/16/19 | 7 | Project Manager | | | | |
| 10 | | Collect and Submit Speech Request as needed | 1 day? | Wed 1/16/19 | Wed 1/16/19 | 7 | Project Manager | | | | |
| 11 | | Confirm Map Data (maps and telephone) Source | 10 days? | Tue 1/1/19 | Mon 1/14/19 | | Project Manager | | | | |
| 12 | | Resources & Data Preparation | 5 days? | Thu 1/17/19 | Wed 1/23/19 | | | | | | |
| 13 | | Hosting Infrastructure Request Completed | 1 day? | Thu 1/17/19 | Thu 1/17/19 | 9 | Hosting Infrastructure | | | | |
| 14 | | Schedule Data Freeze for Premise Systems | 1 day? | Mon 1/21/19 | Mon 1/21/19 | | Project Manager, Customer | | | | |
| 15 | | Schedule WebEx to pull backup copy of premise databases | 1 day? | Tue 1/22/19 | Tue 1/22/19 | 14 | Project Manager; Customer | | | | |
| 16 | | Receive GeoCoded Map Data (from InfoCode or Customer) | 1 day? | Tue 1/22/19 | Tue 1/22/19 | 14 | Project Manager | | | | |
| 17 | | Migrate customer data to Hosted Systems | 2 days? | Tue 1/22/19 | Wed 1/23/19 | 14 | | | | | |
| 18 | | Testing & Configuration | 17 days? | Tue 1/1/19 | Wed 1/23/19 | | | | | | |
| 19 | | Finalize Customer Configurations | 0.75 days? | Wed 1/23/19 | Wed 1/23/19 | 17FS-1 day | Project Manager; Customer | | | | |
| <div><div><div>© 2019 Vesta Solutions, Inc., a wholly owned subsidiary of Motorola Solutions, Inc. This document is protected by copyright law and international treaties, and is the CONFIDENTIAL AND PROPRIETARY information of Vesta Solutions, Inc.</div><div><div>Task</div><div>Split</div><div>Milestone</div><div>Summary</div><div>Project Summary</div><div>External Tasks</div></div><div><div></div><div></div><div></div><div></div><div></div><div></div></div><div><div>External Milestone</div><div>Inactive Task</div><div>Inactive Milestone</div><div>Inactive Summary</div><div>Manual Task</div><div>Duration-only</div></div><div><div></div><div></div><div></div><div></div><div></div><div></div></div><div><div>Manual Summary Rollup</div><div>Manual Summary</div><div>Start-only</div><div>Finish-only</div><div>Progress</div><div>Deadline</div></div><div><div></div><div></div><div></div><div></div><div></div><div></div></div></div></div> | | | | | | | | | | | |
| 56 | | | | | | | | | | | |

Exhibit C

Hosted Project Plan



VESTA Communicator
VESTA Alert
Shared Hosting

Base Template
Version: 1.0.0
Last Updated: Thu 10/24/19

| ID |  | Task Name | Duration | Start | Finish | Predecessors | Resource Names | 0, '18 | M | T | W |
|----|---|---|------------|-------------|-------------|--------------|----------------------------|--------|---|---|---|
| 20 | | Final Internal Testing | 0.25 days? | Wed 1/23/19 | Wed 1/23/19 | 17FS-1 day | Project Manager | | | | |
| 21 | | Final Customer Testing | 1 day? | Wed 1/23/19 | Wed 1/23/19 | 17FS-1 day | | | | | |
| 22 | | Coordinate Training Dates (optional) | 10 days? | Tue 1/1/19 | Mon 1/14/19 | | Training Manager; Customer | | | | |
| 23 | | Project Close & Transition | 31 days? | Wed 1/23/19 | Thu 3/7/19 | | | | | | |
| 24 | | Complete Project Documentation and send Customer Online Notifications | 1 day? | Wed 1/23/19 | Thu 1/24/19 | 20 | Project Manager | | | | |
| 25 | | Decommission existing Premise sysetm and premise DataSync Backup system (typically 30 days from Account Online) | 30 days? | Thu 1/24/19 | Thu 3/7/19 | 24 | Project Manager | | | | |
| 26 | | Transition account from Implemenation to Technncial Support | 1 day? | Wed 1/23/19 | Thu 1/24/19 | 20 | | | | | |

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Task



External Milestone



Manual Summary Rollup



Split



Inactive Task



Manual Summary



Milestone



Inactive Milestone



Start-only



Summary



Inactive Summary



Finish-only



Project Summary



Manual Task



Progress



External Tasks



Duration-only

Deadline



Exhibit D

SELF-DEALING TRANSACTION DISCLOSURE FORM

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

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

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

INSTRUCTIONS

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

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

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

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

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

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

(5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

Exhibit D

(1) Company Board Member Information:

| | | |
|--|-------|--|
| | Date: | |
| | | |

(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):

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(5) Authorized Signature

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|-----------|--|-------|--|
| Signature | | Date: | |
|-----------|--|-------|--|