

AMENDMENT I TO AGREEMENT

THIS AMENDMENT I TO AGREEMENT (hereinafter "Amendment") is made and entered into this 22nd day of June, 2021, by and between COUNTY OF FRESNO, a Political Subdivision of the State of California, Fresno, California (hereinafter "COUNTY"), and BITWISE INDUSTRIES, INC. dba BITWISE TECH CONSULTING (formerly SHIFT3 TECHNOLOGIES), a California Corporation, whose address is 700 Van Ness Avenue, Fresno, CA 93721 (hereinafter "CONTRACTOR").

WITNESSETH:

WHEREAS, COUNTY and CONTRACTOR entered into Agreement number A-16-692, dated December 13, 2016 (hereinafter "Agreement"), pursuant to which CONTRACTOR agreed to provide Break-Fix Support and Maintenance for the Multi-Agency Access Program (MAP) Database to COUNTY; and

WHEREAS, COUNTY and CONTRACTOR now desire to amend the Agreement regarding changes as stated below and restate the Agreement in its entirety.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, COUNTY and CONTRACTOR agree as follows:

1. That the following be added to existing COUNTY Agreement No. 16-692, Section Five (5) "Term", on page Seventeen (17), line Twenty-One (21), after the word "term":

"The term of this Agreement shall be extended for an additional twelve (12) month period beginning on July 1, 2021 and shall terminate on June 30, 2022."

2. That the following be added to existing COUNTY Agreement No. 16-692, Section Seven (7) "Compensation and Invoicing", on page Twenty (20), line Eighteen (18), after the word "Agreement":

"The maximum compensation amount under this Agreement for the additional extended period of July 1, 2021 through June 30, 2022 shall not exceed Forty-Eight Thousand and No/100 Dollars (\$48,000.00)."

3. That the existing COUNTY Agreement No. 16-692, Section Twelve (12) "Insurance", on page Twenty-Two (22), line One (1) through page Twenty-Four (24), line Two (2), is deleted in its

1 entirety and replaced with the following:

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

6 A. Commercial General Liability

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

12 B. Automobile Liability

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

16 C. Professional Liability

17 If CONTRACTOR employs licensed professional staff, (e.g., Ph.D., R.N., L.C.S.W.,
18 M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million
19 Dollars (\$1,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) annual aggregate.
20 CONTRACTOR agrees that it shall maintain, at its sole expense, in full force and effect for a period of
21 three (3) years following the termination of this Agreement, one or more policies of professional
22 liability insurance with limits of coverage as specified herein.

23 D. Worker's Compensation

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

26 E. Cyber liability

27 Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or
28 claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and

1 obligations as is undertaken by CONTRACTOR in this Agreement and shall include, but not be
2 limited to, claims involving infringement of intellectual property, including but not limited to
3 infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft,
4 damage to or destruction of electronic information, release of private information, alteration of
5 electronic information, extortion and network security. The policy shall provide coverage for breach
6 response costs as well as regulatory fines and penalties as well as credit monitoring expenses with
7 limits sufficient to respond to these obligations.

8 F. Technology Professional Liability (Errors and Omissions)

9 Technology professional liability (errors and omissions) insurance with limits of
10 not less than Two Million Dollars (\$2,000,000) per occurrence. Coverage must encompass all of the
11 Contractor's obligations under this Agreement, including but not limited to claims involving Cyber
12 Risks.

13 **Definition of Cyber Risks.** "Cyber Risks" include but are not limited to (i)
14 Security Breaches, which may include Disclosure of Personal Information to an Unauthorized Third
15 Party; (ii) breach of any of the Contractor's obligations under Section # of this Agreement; (iii)
16 infringement of intellectual property, including but not limited to infringement of copyright, trademark,
17 and trade dress; (iv) invasion of privacy, including release of private information; (v) information theft;
18 (vi) damage to or destruction or alteration of electronic information; (vii) extortion related to the
19 Contractor's obligations under this Agreement regarding electronic information, including Personal
20 Information; (viii) network security; (ix) data breach response costs, including Security Breach
21 response costs; (x) regulatory fines and penalties related to the Contractor's obligations under this
22 Agreement regarding electronic information, including Personal Information; and (xi) credit monitoring
23 expenses.

24 Additional Requirements Relating to Insurance

25 CONTRACTOR shall obtain endorsements to the Commercial General Liability
26 insurance naming the County of Fresno, its officers, agents, and employees, individually and
27 collectively, as additional insured, but only insofar as the operations under this Agreement
28 are concerned. Such coverage for additional insured shall apply as primary insurance and

1 any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and
2 employees shall be excess only and not contributing with insurance provided under
3 CONTRACTOR's policies herein. This insurance shall not be cancelled or changed without a
4 minimum of thirty (30) days advance written notice given to COUNTY.

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

11 Within Thirty (30) days from the date CONTRACTOR signs and executes this
12 Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated
13 above for all of the foregoing policies, as required herein, to the County of Fresno, Department of
14 Behavioral Health, 3133 N. Millbrook Ave, Fresno, California, 93703, Attention Contracts Division or
15 by email to dbhcontractedservicesdivision@fresnocountyca.gov stating that such insurance
16 coverage have been obtained and are in full force; that the County of Fresno, its officers, agents and
17 employees will not be responsible for any premiums on the policies; that for such worker's
18 compensation insurance the CONTRACTOR has waived its right to recover from the COUNTY, its
19 officers, agents, and employees any amounts paid under the insurance policy and that waiver does
20 not invalidate the insurance policy; that such Commercial General Liability insurance names the
21 County of Fresno, its officers, agents and employees, individually and collectively, as additional
22 insured, but only insofar as the operations under this Agreement are concerned; that such coverage
23 for additional insured shall apply as primary insurance and any other insurance, or self-insurance,
24 maintained by COUNTY, its officers, agents and employees, shall be excess only and not contributing
25 with insurance provided under CONTRACTOR's policies herein; and that this insurance shall not be
26 cancelled or changed without a minimum of thirty (30) days advance, written notice given to
27 COUNTY.

28 In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein

1 provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this
2 Agreement upon the occurrence of such event.

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

6 COUNTY and CONTRACTOR agree that this Amendment is sufficient to amend the
7 Agreement and, that upon execution of this Amendment, the Agreement and this Amendment
8 together shall be considered the Agreement.

9 The parties agree that this Amendment may be executed by electronic signature as provided in
10 this section. An “electronic signature” means any symbol or process intended by an individual signing
11 this Amendment to represent their signature, including but not limited to (1) a digital signature; (2) a
12 faxed version of an original handwritten signature; or (3) an electronically scanned and transmitted
13 (for example by PDF document) of a handwritten signature. Each electronic signature affixed or
14 attached to this Amendment (1) is deemed equivalent to a valid original handwritten signature of the
15 person signing this Amendment for all purposes, including but not limited to evidentiary proof in any
16 administrative or judicial proceeding, and (2) has the same force and effect as the valid original
17 handwritten signature of that person. The provisions of this section satisfy the requirements of Civil
18 Code section 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (Civil Code, Division
19 3, Part 2, Title 2.5, beginning with section 1633.1). Each party using a digital signature represents
20 that it has undertaken and satisfied the requirements of Government Code section 16.5, subdivision
21 (a), paragraphs (1) through (5), and agrees that each other party may rely upon that representation.
22 This Amendment is not conditioned upon the parties conducting the transactions under it by
23 electronic means and either party may sign this Amendment with an original handwritten signature.

24 The Agreement, as hereby amended, is ratified and continued. All provisions, terms,
25 covenants, conditions and promises contained in the Agreement and not amended herein shall
26 remain in full force and effect. The Amendment I shall be effective July 1, 2021.


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1 IN WITNESS WHEREOF, the parties hereto have executed this Amendment I to Agreement as of the
2 date first above set forth.

3
4 **BITWISE INDUSTRIES, INC.**

COUNTY OF FRESNO


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6 _____
7 By: Bethany E. Mily
8 Its: President

Steve Brandau
Chairman of the Board of Supervisors of
the County of Fresno

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11 **ATTEST:**
12 Bernice E. Seidel
13 Clerk of the Board of Supervisors
14 County of Fresno, State of California

15 By:  _____
16 Deputy

17 **FOR ACCOUNTING USE ONLY**

18 Fund: 0001
19 Subclass: 10000
20 ORG: 5630, 4768
21 Account: 7311
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