

SOFTWARE AND SERVICES AGREEMENT

This Software and Services Agreement (this “Agreement”), is dated the date set forth in Section 3 below, and is between the agency and the contractor identified below. The parties agree to each of the terms set forth below (the “Basic Terms”) and to each of the terms set forth in the Attachments defined in Section 6 below.

1. Parties.

(a) Agency: (*check one*)

- ☒ Contra Costa County for its Department named below
- ☐ Contra Costa County Flood Control and Water Conservation District
- ☐ Contra Costa County Fire Protection District
- ☐ Housing Authority of the County of Contra Costa

(i) Department (*if applicable*): Treasurer-Tax Collector

(ii) Authorized Representative: Belinda Zhu, Assistant County Treasurer

(ii) Agency Mailing Address: 625 Court Street, Room 100, Martinez, CA 94553

Attn: Belinda Zhu

(b) Contractor’s Name and Address: Emphasys Computer Solutions, Inc. 1200 SW 145th Ave, Suite 301, Pembroke Pines, FL 33027

Attn: Ken Reimer, General Manager

(i) Type of Business Entity: Corporation
(e.g., individual, corporation, sole proprietorship, partnership (general or limited), limited liability company)

If corporation, limited liability company, limited partnership or limited liability partnership, add State of incorporation or organization: Michigan

(ii) Federal Taxpayer I.D. or SSN: 38-2464382

(iii) Authorized Representative: Joe DeMarco, Regina Sales Manager

2. Project Name, Number, & Location: Treasury Management Services

3. Term. The effective date of this Agreement is April 20, 2021. It terminates on April 19, 2028 unless sooner terminated as provided herein.

4. Payment Limit. Payments under this Agreement may not exceed: \$500,000.00 in total.

5. Legal Authority. This Agreement is entered into under and subject to Government Code Section 31000, or:

- ☐ Health and Safety Code Section 13861 (*Fire Protection District*)
- ☐ Health and Safety Code Section 34314 (*Housing Authority*)
- ☒ Other: (*Government Code 31000*)

6. Attachments.

The following documents are attached to this Agreement (the “Attachments”) and are incorporated herein by reference and form part of this Agreement. This Agreement includes the Basic Terms, the signature pages and all of the Attachments.

- ☒ General Conditions
- ☒ Special conditions
- ☒ Appendix A: Service Plan
- ☒ Appendix B: Payment Provisions
- ☒ Appendix C: Software License
- ☒ Appendix D: Maintenance and Support
- ☐ Appendix E: Specifications
- ☐ Appendix F: Deliverables
- ☐ Appendix G: Performance and Acceptance

7. Signatures. These signatures attest the parties’ agreement hereto:

CONTRACTOR

SIGNATURE A

Contractor’s Name:
Emphasys Computer Solutions, Inc.,
a Michigan Corporation

SIGNATURE B

By: _____
(Signature of individual or officer)

By: _____
(Signature of individual or officer)

(Print name and title, if applicable)

(Print name and title, if applicable)

Note to Contractor: If Contractor is a corporation or limited liability company, two officers must sign this Agreement. The first signature (Signature A) must be that of the chairperson of the board, president or vice-president; the second signature (Signature B) must be that of the secretary, assistant secretary, chief financial officer, or assistant treasurer. (Civil Code Section 1190 and Corporations Code Sections 313 and 17703.01.) The acknowledgment below must be signed by a Notary Public.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)
County of _____)

On _____, before me, _____, Notary Public, personally appeared _____ (insert name(s) and title(s) of the officer(s) signing on behalf of the Consultant), who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS MY HAND AND OFFICIAL SEAL

Signature

(Notary's Seal)

AGENCY

(a) **If Agreement is approved by Agency governing body (required if Payment Limit exceeds \$100,000):**

AGENCY,

ATTEST: Clerk of the Board of Supervisors

By _____
Board Chair/Designee

By _____
Deputy

(b) If Agreement is approved by County Purchasing Agent:

AGENCY.

By _____
County Purchasing Agent

COUNTY APPROVALS

RECOMMENDED BY DEPARTMENT

By: _____
Designee

FORM APPROVED BY COUNTY COUNSEL

By: _____
Name: _____
Deputy County Counsel

APPROVED: COUNTY ADMINISTRATOR

By: _____
Designee

SOFTWARE AND SERVICES AGREEMENT GENERAL CONDITIONS

Section 8. Definitions. The following terms have the following definitions. The definitions of terms herein apply equally to the singular and plural forms of the terms defined.

- 8.1. “Agreement” has the meaning set forth in the first paragraph of the Basic Terms.
- 8.2. “Authorized Representative” means, for each party, the individual designated by that party as its authorized representative in Section 1 of the Basic Terms.
- 8.3. “Basic Terms” has the meaning set forth in the first paragraph of the Software and Services Agreement, dated the Effective Date, between Contractor and the County.
- 8.4. “Business Day” means Monday through Friday, excluding holidays observed by the County.
- 8.5. “Confidential Information” means any nonpublic information pertaining to County employees or County operations, and Contractor’s proprietary information and trade secrets regarding the Software and Documentation. County Confidential Information includes, but is not limited to, data, medical records, records concerning any individual relating to services provided, employment records, personnel data, payroll data, passwords to County computer systems, methods of accessing County computers and data, proprietary software, and any information or documents identified as confidential in a writing signed by County’s Authorized Representative, or designee, and delivered to Contractor. Contractor Confidential Information expressly includes, without limitation, the Software and Documentation. Confidential Information does not include information which the party receiving the information can document: (i) was in the possession of or known by it without an obligation of confidentiality prior to receipt of the information; (ii) is or becomes general public knowledge through no act or fault of the receiving party; (iii) is or becomes lawfully available to the receiving party from a third party without an obligation of confidentiality; and (iv) is independently developed by the receiving party without the use of any Confidential Information.
- 8.6. “Contractor” means the contractor identified in Section 1(b) of the Basic Terms.
- 8.7. “Contractor Project Manager” means Contractor’s representative designated in writing to County to act as County’s primary contact with Contractor for this Agreement.
- 8.8. “County” means the agency identified in Section 1(a) of the Basic Terms.

- 8.9. “County Project Manager” means County's representative designated in writing to Contractor to act as County's primary contact with Contractor for this Agreement.
- 8.10. “Documentation” means the Product documentation delivered by Contractor to County, or made available to County, that describes the use, operation, design, specifications, or requirements of the Product or a Product release. Documentation may be either in hard copy or electronic format. User manuals, administration manuals, data models, reference guides, installation manuals, system administrator manuals, technical guides, and requirements documents are some examples of Documentation. Documentation includes all documentation developed for County pursuant to this Agreement.
- 8.11. “Effective Date” means the effective date set forth in Section 3 of the Basic Terms.
- 8.12. “General Conditions” mean the General Conditions attached to the Basic Terms.
- 8.13. “Hardware” means any hardware as well as any replacement or other hardware provided by Contractor pursuant to this Agreement.
- 8.14. “Maintenance and Support Services” means the provision of technical information, assistance, error correction, repair services, and repair parts for the Product as set forth in Appendix D (Maintenance and Support).
- 8.15. “Major Change” has the meaning set forth in Section 14.3 below.
- 8.16. “Minor Change” has the meaning set forth in Section 14.2 below.
- 8.17. “Public Records Act” has the meaning set forth in Section 15.2 below.
- 8.18. “Product” means the goods, materials, supplies, parts, assemblies, equipment, Hardware, Software, and Documentation being provided by Contractor under this Agreement.
- 8.19. “Project” means all work performed by Contractor pursuant to this Agreement.
- 8.20. “Services” means all services and labor to be provided by Contractor and its subcontractors pursuant to this Agreement.
- 8.21. “Software” means the object code version of Contractor's software that is licensed to County pursuant to the Software License Appendix. Software includes the specific modules and functionality listed in Appendix F (Deliverables) of this Agreement, any fixes, updates, modifications, enhancements, customizations, and new versions (if any) as may, from time to time, be provided to County pursuant to Appendix D (Maintenance and Support) of this Agreement.

- 8.22. “Software License Appendix” means Appendix C (Software License) to this Agreement, under which Contractor licenses the Product to County.
- 8.23. “System” means the Product, Hardware, and any Documentation provided pursuant to this Agreement.
- 8.24. “Third-party Software” means software that has been developed and maintained by a party or parties other than Contractor.
- 8.25. “User” means a person who is authorized by County to use the Product in a specific manner that may include, without limitation, viewing, searching, modifying, and or deleting data, and which occupies one of the Software licenses licensed under the Software License Appendix.

Section 9. Continued Maintenance and Support Services. Contractor shall make available, for County’s purchase, Contractor’s annual Maintenance and Support Services for the System and/or Products as set forth in Appendix D (Maintenance and Support) for so long as Contractor makes Maintenance and Support Services generally available to other licensees of the Software and System. Contractor shall make its annual Maintenance and Support Services available to County at the rates set forth in Appendix B (Payment Provisions).

Section 10. Delivery Terms. If Products are to be installed by Contractor or Contractor’s subcontractor, then upon Contractor’s delivery of Products to a common carrier for shipment to County, title and risk of loss with respect to such Products will automatically pass to County, and any loss or damage thereafter will not relieve County of any obligation hereunder. Contractor shall insure all shipments to County. Unless otherwise agreed in writing by County, Contractor shall package all items in accordance with Contractor’s normal practices. If Products are to be installed by Contractor or Contractor’s subcontractor, then title and risk of loss with respect to such Products will not pass to County until County has accepted installation in accordance with the procedures specified in Section 11 (Final Acceptance) below.

Section 11. Final Acceptance. County’s acceptance of the System, Products, and Services will occur according to Appendix G (Performance and Acceptance).

Section 12. Personnel and Subcontractors.

- 12.1. Contractor Personnel. Contractor shall employ only competent personnel to work on the Project.
- 12.2. Subcontracts. Contractor may not enter into subcontracts for any work contemplated under this Agreement, nor may Contractor assign this Agreement, monies due or to become due, by operation of law or otherwise, without the prior written consent of County's Authorized Representative.
- 12.3. Subcontractor Requirements. Contractor is responsible for the performance or non-performance by its subcontractors of the tasks set forth in this Agreement.

Contractor shall contractually require all subcontractors performing work on the Project to abide by the provisions of this Agreement.

- 12.4. Contractor and Subcontractor Employee Performance. Immediately upon receipt of written notice from County's Authorized Representative that any Contractor employee, or employee of a subcontractor to Contractor, is not performing work on the Project in a satisfactory manner, Contractor shall remove such employee and, within a reasonable period of time, replace such employee with a qualified employee.
- 12.5. County and Contractor Relationship. The parties intend that Contractor, in performing the services specified herein, is acting as an independent contractor and that Contractor shall control the work and the manner in which it is performed. This Agreement is not to be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture, or association. Nothing contained in this Agreement authorizes either party to act as the agent or legal representative of the other for any purpose. No provision of this Agreement grants either party any express or implied right of authority to assume or to create any obligation or responsibility on behalf of or in the name of the other party, or to bind the other party in any manner or thing whatsoever. Contractor and its employees, subcontractors, and subcontractors' employees are not, and will not be deemed to be, employees of County. This Agreement does not give Contractor any right to participate in any pension plan, workers' compensation plan, insurance, bonus, or similar benefits County provides to its employees. If County exercises its right to terminate this Agreement, Contractor expressly agrees that it shall have no recourse or right of appeal under any rules, regulations, ordinances, or laws applicable to employees. Contractor and its subcontractors are solely responsible for the payment of their respective employees' compensation, including employee taxes, workers' compensation, and any similar taxes associated with their employment.

Section 13. Assistance from County; Rules of Access; Change Management.

- 13.1. County Assistance. The County's Authorized Representative and other assigned staff will assist Contractor with the implementation of the Product as necessary.
- 13.2. Access Rules. While on County's premises in connection with the performance of this Agreement, Contractor shall cause its personnel to comply with County's applicable rules with respect to security, conduct and other matters concerning access to County's premises. Such rules may require in some cases background checks and escorts for Contractor and subcontractor personnel. Upon receipt of notice from County's Authorized Representative, Contractor shall immediately remove any of its personnel assigned to perform work under this Agreement who do not comply with such rules.
- 13.3. Project Hours. Unless otherwise requested in writing by County's Authorized Representative, that portion of the Project work to be done on County premises

by Contractor and its subcontractors will be performed between the hours of 8:00 a.m. and 5:00 p.m. on Business Days or as requested by County.

- 13.4. Technical Change Management. In performing its duties for the Project, Contractor shall comply with County's requirements with respect to technical and operational change management. It is understood by Contractor that changing County's computers, in particular its mainframes, requires advance notice and compliance with established County procedures.

Section 14. Changes.

- 14.1. Change Management. Additions, deletions, and modifications to the Products and Services specified under this Agreement may occur only in accordance with the procedures set forth in this Section 14.
- 14.2. Minor Changes. A "Minor Change" means a change that (i) costs no more than \$5,000, and (ii) does not affect a material term of this Agreement, such as the term or payment limit of this Agreement or the nature of the scope of services to be provided. Minor Changes may be made by the mutual written agreement of the Authorized Representatives of Contractor and County without the necessity of a formal proposal and estimates so long as they do not cause the payment limit of this Agreement to be exceeded.
- 14.3. Major Changes. A "Major Change" means a change that affects a material term of this Agreement, such as the payment limit of this Agreement, Agreement term, or nature and general scope of services. A party seeking a Major Change will inform the other party in writing of the details of the proposed Major Change and any requested terms concerning the change. For a Major Change requested by Contractor that involves additional or deleted Products or Services, Contractor shall include a written proposal containing the cost of the additional or deleted Product or Service involved in the Major Change, and any impacts upon price, delivery schedule, or other terms. For a Major Change requested by County, Contractor shall respond with a written proposal containing the cost of the additional or deleted Services involved in the Major Change within ten (10) Business Days after receipt of a written request for the Major Change. All Major Changes require a written amendment to this Agreement, which may require approval by the County Administrator or by County's Board of Supervisors.
- 14.4. Change Requirements. No change, whether major or minor, is binding upon County, and Contractor may not proceed with any change, unless the change is stated in writing and properly approved by each party's Authorized Representative.

Section 15. Confidential Information.

- 15.1. Contractor Handling of Confidential Information. In the course of performing Work on the Project, Contractor and its subcontractors may be exposed to Confidential Information. Contractor may use Confidential Information only

as needed for the Project and may not disclose Confidential Information to others without the advance written consent of County's Authorized Representative. Contractor shall protect, and shall cause its subcontractors to protect, Confidential Information with the same degree of care that they regularly employ to safeguard their own confidential information of a like nature from unauthorized disclosure, but no less than a reasonable degree of care. If Contractor or its subcontractor is required by a governmental agency, court or other quasi-judicial or other regulatory body, or by State or Federal law, to disclose Confidential Information received under this Agreement, Contractor and its subcontractors will not be liable for such disclosure if, prior to such disclosure, Contractor and its subcontractors give notice as promptly as reasonably possible to County's Authorized Representative of such required disclosure so that County may contest such required disclosure. Except as provided herein, Contractor may not disclose Confidential Information.

- 15.2. County Handling of Confidential Information. County acknowledges that, during the course of the Project, it and its Authorized Representative and personnel may gain access to information that Contractor has marked "Confidential" and/or "Proprietary." Except as required by law, County and its Authorized Representative and personnel shall not disclose any of Contractor's information marked "Confidential" and/or "Proprietary" to any person without Contractor's specific written authorization, except that County may disclose such information on a need-to-know basis to Authorized Representatives of County without Contractor's specific written authorization. Notwithstanding anything contained herein to the contrary, County is a political subdivision of the State of California and is subject to the California Public Records Act (California Government Code Section 6250 et seq., the "Public Records Act"). Any of Contractor's information marked "Confidential" and/or "Proprietary" that County may be obligated to disclose under California law may be released and disclosed by County pursuant to the Public Records Act, and any such release or disclosure shall not in any way constitute a breach of this Agreement, nor will County be liable to Contractor for such release or disclosure.
- 15.3. Public Records Act. If County receives a request under the Public Records Act for disclosure of information that Contractor has specifically marked "Confidential" or "Proprietary," County will provide Contractor with written notice of such request (the "Notice of Request for Disclosure"). If Contractor has a reasonable basis for contending that the disclosure of such information is not required by the Public Records Act, Contractor shall, within eight (8) days following the date of mailing of the Notice of Request for Disclosure, notify County in writing of its objection to disclosure of the information and the basis therefor. If County determines that the information requested is not exempt from disclosure and intends to release the requested information in compliance with the Public Records Act, then it will provide written notice of such intent to Contractor ("Notice of Disclosure"), and the Contractor shall then have ten (10) days from the date of the Notice of Disclosure to seek relief from disclosure required under the Public Records Act in court. If County receives no written objection from Contractor within ten (10) days of the date of the

Notice of Disclosure, County may disclose the information referenced in the Notice of Disclosure. Contractor is responsible for any attorneys' fees or costs County incurs as a result of Contractor's objection to disclosure.

- 15.4. Confidentiality Laws. Contractor agrees to comply, and to require its officers, partners, associates, agents and employees to comply, with all applicable state and federal statutes and regulations respecting confidentiality, including but not limited to, the identity of persons served under this Agreement, their records, or services provided them, and assures that no person shall publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required in the administration of such service. Contractor agrees to inform all employees, agents and partners of the above provisions, and that any person knowingly and intentionally disclosing such information other than as authorized by law may be guilty of a misdemeanor.
- 15.5. Return of Confidential Information. Except for Confidential Information contained in Documentation prepared for County by Contractor or its subcontractors hereunder, upon request by County's Authorized Representative, Contractor and its subcontractors shall return Confidential Information to the County, along with all copies and notes made from it.
- 15.6. Survival. This Section 15 shall survive the termination of this Agreement. Nothing in this Agreement is intended to prevent the County from complying with the Public Records Act and Contractor does not have nor shall it claim any right to damages resulting from the County's production of records in response to a Public Records Act request.

Section 16. Default.

- 16.1. Default. Contractor's failure to perform any provision of this Agreement, or to render its performance under this Agreement in a timely manner, is a default.
- 16.2. Notice to Cure. If Contractor's default is curable, County may, but is not required to, deliver written notice to cure a default to Contractor ("Notice to Cure"). Within thirty (30) days following the mailing of the Notice to Cure, Contractor shall cure the default. If Contractor fails to cure such default within thirty (30) days of the date the Notice to Cure is mailed, then, in addition to any other rights available to under law or equity, County may terminate this Agreement without further notice.
- 16.3. Remedy. If a default is not curable or if County elects not to give Contractor a Notice to Cure, then, in addition to any other rights available to it under law or equity, County may immediately terminate this Agreement without notice. Upon termination by County for Contractor's default, Contractor shall provide County with a pro-rata refund of all Maintenance and Support Services fees and Software license Fees paid in advance.

Section 17. Termination.

17.1. County Termination. In addition to the termination rights granted under Section 16 (Default), County may terminate this Agreement in whole or in part, with or without cause, at any time by providing thirty (30) days advance written notice of termination to Contractor. County's notice of termination may direct Contractor to stop work immediately on some or all of the Project and may direct Contractor to continue work until the termination date on other portions of the Project.

17.2. Contractor Termination. Contractor may terminate this Agreement at any time by providing County ninety (90) days advance written notice of termination.

17.2.1. Actions After Termination. After Contractor sends County a notice of termination or receives County's notice of termination, Contractor shall: (a) comply with the instructions of County with respect to stopping or continuing work until the termination date; (b) place no further orders or subcontracts for Products or third-party services, except as otherwise directed by County; (c) terminate all orders for Products and subcontracts to the extent they relate to the performance of work terminated by the notice of termination; (d) return Products to their suppliers, if requested by County and permitted by such suppliers; (e) deliver Documentation and any custom Software to County in the form it is then in; and (f) return to County all Confidential Information, along with all copies and notes made from it and a certificate signed by Contractor's Authorized Representative evidencing compliance with this provision.

17.2.2. Refund of Fees. If this Agreement is terminated, County is entitled to a pro-rata refund of all Maintenance and Support Services fees and Software license Fees paid in advance.

Section 18. Infringement Protection.

18.1. Infringement Indemnification. If a third party claims that the Product or System infringes any United States patent, copyright, trade secret or similar intellectual property right, Contractor shall defend County against such claim at Contractor's expense and pay all damages that a court finally awards against County. If such a claim is made or appears possible, Contractor shall, within sixty (60) days of such claim, and at its option: (a) secure for County the right to continue to use the infringing portion of the Product or System; or (b) modify or replace the Product and System so that it is non-infringing but retains equivalent functionality. If neither of the foregoing options is reasonably available, Contractor shall require County to return the infringing module(s) of the Product or System, and Contractor shall refund County an amount equal to the Software license fee paid for such module(s) under this Agreement, multiplied by the quotient of (60 *minus* the number of months elapsed after the Go-Live date) *divided* by 60 months. The foregoing notwithstanding, Contractor shall have no obligation to indemnify County for

any infringement claim based on County's modification or misuse of the Product, if the claim would have been avoided had the Product not been modified or misused.

18.2. Royalty Costs. The cost of all royalties or other charges for any patent, copyright, trademark, trade secret, or other proprietary right used in the Project is included in the price for the Project.

18.3. Survival. This Section 18 shall survive termination of this Agreement.

Section 19. Indemnification.

19.1. Indemnification. Contractor shall defend, indemnify, save, and hold harmless County and its officers and employees from any and all claims, demands, losses, costs, expenses, and liabilities for any damages, fines, sickness, death, or injury to person(s) or property, including any and all administrative fines, penalties or costs imposed as a result of an administrative or quasi-judicial proceeding, arising directly or indirectly from or connected with the services provided under this Agreement that are caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors, subcontractors, or any persons under its direction or control. If requested by County, Contractor shall defend any such suits at its sole cost and expense. If County elects to provide its own defense, Contractor shall reimburse County for any expenditures, including reasonable attorney's fees and costs. Contractor's obligations under this Section 19 exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Contractor is not required to indemnify County for the proportion of liability a court determines is attributable to the sole negligence or willful misconduct of the County, its officers and employees. This provision will survive the expiration or termination of this Agreement.

19.2. County Responsibilities. County will promptly inform Contractor of any claims or suits being made or brought against County that arise under the terms of this Agreement. County will allow Contractor or its suppliers to control the defense against such claims and suits, and will cooperate, at Contractor's expense, in the defense against any such claim or suit, provided however, that in no event may Contractor make any admission of guilt or liability on behalf of County without County's prior written consent.

Section 20. Insurance.

20.1. Maintenance of Insurance. During the entire term of this Agreement and any extension or modification hereof, Contractor shall keep in effect insurance policies meeting the following insurance requirements:

20.1.1. Commercial General Liability Insurance. Contractor shall provide commercial general liability insurance, including coverage for business losses and for owned and non-owned automobiles, with a minimum

combined single limit coverage of \$1,000,000 for all damages, including consequential damages, due to bodily injury, sickness or disease, or death to any person or damage to or destruction of property, including the loss of use thereof, arising from each occurrence. Contractor shall cause such insurance to be endorsed to include County and its officers and employees as additional insureds as to all services performed by Contractor under this Agreement. Such policies must constitute primary insurance as to County and its officers, agents, and employees, so that other insurance policies held by them or their self-insurance programs will not be required to contribute to any loss covered under Contractor's insurance policy or policies. Contractor shall provide County with a copy of the endorsement making the County an additional insured on all commercial general liability policies as required herein no later than the effective date of this Agreement.

20.1.2. Workers Compensation. Contractor shall provide workers' compensation insurance for its employees with statutory limits as required by the Labor Code of the State of California.

20.1.3. Cyberinsurance. If Contractor will be hosting County data or the Software on Contractor's servers, Contractor shall provide commercial cyberinsurance, in form and substance satisfactory to County, including without limitation, coverage for loss of data, breaches of personally identifiable information, call center services, credit monitoring remedies, and identity restoration services. Contractor shall cause such insurance to be endorsed to include County and its officers and employees as additional insureds. Such policies must constitute primary insurance as to County and its officers, agents, and employees, so that other insurance policies held by them or their self-insurance programs will not be required to contribute to any loss covered under Contractor's insurance policy or policies. Contractor shall provide County with a copy of the endorsement making the County an additional insured on its commercial cyberinsurance policies as required herein no later than the effective date of this Agreement.

20.2 Documentation of Coverage. Contractor shall submit to County properly executed certificates of insurance clearly evidencing all coverages and limits required above and copies of additional insured endorsements required above prior to the Effective Date of this Agreement. Contractor agrees to maintain current certificates of insurance evidencing the above-required coverages, limits, and endorsements evidencing the above-specified requirements on file with the County for the duration of this Agreement. If Contractor renews an insurance policy or acquires either a new insurance policy or amends the coverage afforded through an endorsement to a policy at any time during the term of this Agreement, Contractor shall provide a current certificate of insurance.

20.3. Notice of Cancellation and Material Changes. No later than five days after Contractor's receipt of: (i) a notice of cancellation, a notice of an intention to cancel, or a notice of a lapse in any of Contractor's insurance coverage required by this Contract; or (ii) a notice of a material change to Contractor's insurance coverage required by this Contract, Contractor shall provide Department a copy of such notice of cancellation, notice of intention to cancel, notice of lapse of coverage, or notice of material change. Contractor's failure to provide Department the notice as required by the preceding sentence is a default under this Contract

20.4. Policy obligations. Contractor's indemnity and other obligations are not limited by the foregoing insurance requirements.

20.5. Survival. This Section 20 shall survive termination of this Agreement.

Section 21. Warranties. In addition to any other warranties made in this Agreement, Contractor makes the following representations and warranties to County:

21.1. Product Warranties.

21.1.1. Software. For a period of ninety (90) days following the date that County accepts the Product pursuant to Appendix G (Performance and Acceptance), Contractor warrants that the Product will perform in accordance with Appendix B (Deliverables), Appendix C (Service Plan), Appendix F (Performance and Acceptance Criteria), and the Documentation.

21.1.2. Hardware. For a period of one (1) year from the date of Contractor's installation of the Contractor-developed Hardware, Contractor warrants that such Hardware will be free from defects in material and workmanship.

21.2. Service Warranty. Contractor warrants to County that the Services to be performed by it and its subcontractors hereunder will be performed in a competent manner by qualified personnel in conformance with industry standards. This warranty will remain in effect during the entire term of this Agreement. To qualify for remedial action under this warranty, County must report a warranty failure to Contractor in writing. Contractor is not responsible for remedial action under this warranty to the extent the failure to meet the warranty is caused by modification to the Products by County or anyone other than Contractor or its subcontractors, unless such modification is performed under Contractor's or its subcontractor's direction, or is approved in writing by Contractor's Authorized Representative in advance of the modification. If Contractor fails to meet this warranty, Contractor shall use commercially reasonable efforts to correct the failure, provided County makes available to Contractor information concerning the failure. If Contractor is unable, by using reasonable efforts, to correct the failure within a reasonable period of time, Contractor shall refund to County that portion of the amounts paid by County

that is equivalent to the proportion of the Project affected by the failure and the severity of the failure with respect to the objectives of the Project.

- 21.3. Third-Party Warranties. The warranties, if any, issued by third-party manufacturers or suppliers of Products are included in such Products and Contractor shall cause such warranties to be transferred to County. Contractor represents and warrants that any Hardware manufactured by a third party and all Third-party Software qualifies for service under the manufacturer's or publisher's standard warranty and post-warranty maintenance. Contractor shall cause all necessary documentation to be executed to activate such warranty and post-warranty maintenance.
- 21.4. Intellectual Property Rights. Contractor represents and warrants that it has title to the Software and the authority to grant license to use the Software.
- 21.5. Title. Contractor represents and warrants to County that County will have good title to each of the Products, free and clear of all liens, encumbrances, and claims.
- 21.6. New Materials. Contractor warrants that unless otherwise agreed to in writing by County's Authorized Representative, only new materials will be used in each of the Products.
- 21.7. Destructive Programming. Contractor represents and warrants to County that at the time of installation, the Software is free of programming intentionally and specifically constructed for the purpose of destroying, interrupting, or otherwise adversely affecting the Software's code or other code or data in a computer, such as by replicating itself or another program many times without any useful purpose.
- 21.8. Organizational Authority. Contractor represents and warrants that it has the corporate power and authority and the legal right to enter into this Agreement and to grant the licenses contemplated by this Agreement and that it has not and shall not enter into agreements and shall not take or fail to take action that may cause Contractor's legal right or ability to grant such licenses to be restricted.
- 21.9. Ability to Perform. Contractor represents and warrants that it is aware of no circumstances that would impair its ability to fully perform its obligations under this Agreement.

Section 22. Endorsement. Contractor may not, in its capacity as a contractor with County: (a) publicly endorse or oppose the use of any particular brand name or commercial product without the prior approval of County's Board of Supervisors; (b) publicly attribute qualities or success, or a lack thereof, to any particular brand name or commercial product without the prior approval of County's Board of Supervisors; or (c) take any action or make any appearance that could reasonably be interpreted as the endorsement of a product by County. Notwithstanding the foregoing, Contractor may express its view on products to other contractors, the Board of Supervisors,

County officers, or others who may be authorized by the Board of Supervisors or by law to receive such views.

Section 23. Assignment and Subcontracting.

23.1. Contractor may not assign, subcontract, or delegate any of its duties or obligations under this Agreement without prior written consent of County. Any attempted assignment, subcontract, or delegation by Contractor is void and of no effect. Contractor may, upon written notice to County, assign this Agreement or any right or obligation hereunder to any person or entity acquiring all or substantially all of the assets of Contractor and continuing the business of Contractor. This Agreement binds the heirs, successors, permitted assigns and representatives of Contractor.

23.2. All software and services from third parties to be provided by Contractor hereunder will be licensed to the County pursuant to the terms and conditions of the license agreements provided by the publishers or providers of such software or services.

Section 24. Choice of Law and Personal Jurisdiction. This Agreement is made in Contra Costa County and is governed by, and will be construed in accordance with, the laws of the State of California. The parties, to the fullest extent permitted by law, knowingly, intentionally, and voluntarily, with and upon the advice of competent counsel, submit to personal jurisdiction in the State of California over any suit, action or proceeding arising from or relating to the terms of this Agreement. Any action relating to this Agreement must be instituted and prosecuted in the courts of Contra Costa County, State of California.

Section 25. Compliance with Law. Contractor is subject to and must comply with all applicable federal, state, and local laws and regulations with respect to its performance under this Agreement, including but not limited to, licensing, employment, and purchasing practices; and wages, hours, and conditions of employment, including nondiscrimination. Should federal or state regulations or laws touching upon the subject of this Agreement be adopted or revised during the term hereof, this Agreement will be deemed amended to assure conformance with such federal or state requirements. Contractor agrees that all goods and services under this Agreement will be available to all qualified persons regardless of age, gender, race, religion, color, national origin, ethnic background, disability, or sexual orientation, and that none will be used, in whole or in part, for religious worship.

Section 26. Notices. All notices to be provided under this Agreement will be in writing and may be delivered by deposit in the United States mail, postage prepaid. Notices to County must be addressed to the department head of the County department for which this Agreement is made at the address set forth in the Basic Terms. Notices to Contractor must be addressed to the Contractor's address set forth in the Basic Terms. Notices sent by United States mail are effective three (3) days after the date of deposit in the mail.

Section 27. Records. Contractor must keep and make available for inspection and copying by authorized representatives of the County, the State of California, and the United States Government, the Contractor's regular business records and such additional records pertaining to this Agreement as may be required by the County.

27.1. Retention of Records. Contractor must retain all documents pertaining to this Agreement for five years from the date of submission of Contractor's final payment demand or final cost report; for any further period that is required by law; and until all federal/state audits are complete and exceptions resolved for this Agreement's funding period. Upon request, Contractor must make these records available to authorized representatives of the County, the State of California, and the United States Government.

27.2. Access to Books and Records of Contractor, Subcontractor. Pursuant to Section 1861(v)(1) of the Social Security Act, and any regulations promulgated thereunder, Contractor must, upon written request and until the expiration of five years after the furnishing of services pursuant to this Agreement, make available to the County, the Secretary of Health and Human Services, or the Comptroller General, or any of their duly authorized representatives, this Agreement and books, documents, and records of Contractor necessary to certify the nature and extent of all costs and charges hereunder.

Further, if Contractor carries out any of the duties of this Agreement through a subcontract with a value or cost of \$10,000 or more over a twelve-month period, such subcontract must contain a clause to the effect that upon written request and until the expiration of five years after the furnishing of services pursuant to such subcontract, the subcontractor must make available to the County, the Secretary, the Comptroller General, or any of their duly authorized representatives, the subcontract and books, documents, and records of the subcontractor necessary to verify the nature and extent of all costs and charges thereunder.

This provision is in addition to any and all other terms regarding the maintenance or retention of records under this Agreement and is binding on the heirs, successors, assigns and representatives of Contractor.

Section 28. Waiver.

28.1. No Implied Waiver. The waiver by County of any breach of any term or provision of this Agreement will not be deemed to be a waiver of such term or provision or of any subsequent breach of the same or any other term or provision contained herein.

28.2. No Waiver by County. Except as expressly set forth in this Agreement, inspections, approvals, or statements by any officer, agent or employee of County indicating that Contractor's performance or any part thereof complies with the requirements of this Agreement, or acceptance of the whole or any part of such performance, or payments therefor, or any combination of these acts, do not relieve Contractor's obligation to fulfill this Agreement as prescribed; nor is the County thereby prevented from bringing any action for

damages or enforcement arising from any failure to comply with any of the terms and conditions of this Agreement.

Section 29. Reporting Requirements. Pursuant to Government Code Section 7550, Contractor must include in all documents and written reports completed and submitted to County in accordance with this Agreement, a separate section listing the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of each such document or written report. This Section 29 applies only if the payment limit of this Agreement exceeds \$5,000.

Section 30. Nonrenewal. Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Agreement will be purchased by County under a new contract following expiration or termination of this Agreement, and Contractor waives all rights or claims to notice or hearing respecting any failure to continue purchasing all or any such services from Contractor.

Section 31. No Third-Party Beneficiaries. Nothing in this Agreement may be construed to create, and the parties do not intend to create, any rights in third parties.

Section 32. Copyrights, Rights in Data, and Works Made for Hire. Contractor shall not publish or transfer any materials produced or resulting from activities supported by this Agreement without the express written consent of the County Administrator. All reports, original drawings, graphics, plans, studies and other data and documents, in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, consultants, and other agents in connection with this Agreement are "works made for hire" (as defined in the Copyright Act, 17 U.S.C. Section 101 et seq., as amended) for County, and Contractor unconditionally and irrevocably transfers and assigns to County all right, title, and interest, including all copyrights and other intellectual property rights, in or to the works made for hire. Unless required by law, Contractor shall not publish, transfer, discuss, or disclose any of the above-described works made for hire or any information gathered, discovered, or generated in any way through this Agreement, without County's prior express written consent. If any of the works made for hire is subject to copyright protection, County reserves the right to copyright such works and Contractor agrees not to copyright such works. If any works made for hire are copyrighted, County reserves a royalty-free, irrevocable license to reproduce, publish, and use the works made for hire, in whole or in part, without restriction or limitation, and to authorize others to do so.

Section 33. Conflicts of Interest. Contractor represents and warrants that it presently has no interest and covenants that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interests will be employed by Contractor. If requested to do so by County, Contractor shall complete a "Statement of Economic Interest" form and file it with County and will require any other person doing work under this Agreement to complete a "Statement of Economic Interest" form and file it with County. Contractor covenants that Contractor, its employees and officials, are not

now employed by County and have not been so employed by County within twelve months immediately preceding this Agreement; or, if so employed, did not then and do not now occupy a position that would create a conflict of interest under Government Code section 1090. In addition to any indemnity provided by Contractor in this Agreement, Contractor shall indemnify, defend, and hold the County harmless from any and all claims, investigations, liabilities, or damages resulting from or related to any and all alleged conflicts of interest. Contractor represents and warrants that it has not provided, attempted to provide, or offered to provide any money, gift, gratuity, thing of value, or compensation of any kind to obtain this Agreement.

Section 34. Required Audit.

34.1. Federal Grant Funds Audit. If Contractor is funded by \$500,000 or more in federal grant funds in any fiscal year from any source, Contractor shall provide to County, at Contractor's expense, an audit conforming to the requirements set forth in the most current version of Office of Management and Budget Circular A-133. If Contractor is funded by less than \$500,000 in federal grant funds in any fiscal year from any source, but such grant imposes specific audit requirements, Contractor must provide County with an audit conforming to those requirements.

34.2. Records Availability. If Contractor is funded by less than \$500,000 in federal grant funds in any fiscal year from any source, Contractor is exempt from federal audit requirements for that year; however, Contractor's records must be available for, and an audit may be required by, appropriate officials of the federal awarding agency, the General Accounting Office (GAO), the pass-through entity and/or the County.

34.4. Conduct of Audit; Withholding. If any audit is required, Contractor shall provide County with such audit. Contractor is solely responsible for arranging for the conduct of the audit, and for its cost. County may withhold the estimated cost of the audit or 10 percent of the amount of this Agreement, whichever is greater, or the final payment, from Contractor until County receives the audit from Contractor.

Section 35. Attorneys' Fees. In any legal action or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and costs.

Section 36. Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, and supersedes all prior and contemporaneous communications, promises, representations or agreements. This Agreement may only be modified and amended upon the express written agreement of the parties.

Section 36. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SPECIAL CONDITIONS
(Purchase of Services - Long Form)

County and Contractor agree that these Special Conditions modify the General Conditions of the Contract and are part of the Contract.

1. **Section 9 (Continued Maintenance and Support Services)**. Section 9 (Continued Maintenance and Support Services) of the General Conditions is hereby amended to add the following to the end of the Section:

“Following the Term of this Agreement, nothing within this section shall obligate the Contractor to continue providing Maintenance and Support Services to the County.^[EG1].”

2. **Section 10 (Delivery Terms)**. Section 10 (Delivery Terms) of the General Conditions is hereby deleted in its entirety.
3. **Section 12.4 (Contractor and Subcontractor Employee Performance)**. Section 12.4 (Contractor and Subcontractor Employee Performance) of the General Conditions is hereby amended by deleting “in a satisfactory manner” therefrom, and replacing it with “in a reasonably satisfactory manner”.
4. **Section 16.1 (Default)**. Section 16.1 (Default) of the General Conditions is hereby deleted in its entirety and replaced by the following:

“16.1. Default. Either party’s failure to perform any provision of this Agreement, or to render its performance under this Agreement in a timely manner, is a default.”

5. **Section 16.2 (Notice to Cure)**. Section 16.2 (Notice to Cure) of the General Conditions is hereby deleted in its entirety and replaced by the following:

“16.2 Notice to Cure. If one party believes the other party is in default, the other party shall deliver written notice to cure the default to the party (“Notice to Cure”). Within thirty (30) days following the mailing of the Notice to Cure, the party shall cure the default. If the party fails to cure such default within thirty (30) days of the date the Notice to Cure is mailed, then, in addition to any other rights available to under law or equity, the other party may terminate this Agreement without further notice.”

6. **Section 16.3 (Remedy)**. Section 16.3 (Remedy) of the General Conditions is hereby deleted in its entirety and replaced by the following:

“16.3. Remedy. If a party’s default under this Agreement is not curable, then, in addition to any other rights available to it under law or equity, the other party may immediately terminate this Agreement without notice. Upon termination by

Contractor County Dept.

County for Contractor's default, Contractor shall provide County with a pro-rata refund of all Maintenance and Support Services Fees and Software license Fees paid in advance."

7. **Section 17.1 (County Termination)**. Section 17.1 (County Termination) of the General Conditions is hereby deleted in its entirety and replaced with the following;

"17.1. County Termination. In addition to the termination rights granted under Section 16 (Default), County may terminate this Agreement in whole or in part, with or without cause, at any time by providing one hundred eighty (180) days advance written notice of termination to Contractor. County's notice of termination may direct Contract to stop work immediately on some or all of the project and may direct Contractor to continue work until the termination date on other portions of the Project."

8. **Section 17.2 (Contractor Termination)**. Section 17.2 (Contractor Termination) of the General Conditions is hereby deleted in its entirety and replaced with the following:

"17.2. Contractor Termination. In addition to the termination rights granted under Section 16 (Default), Contractor may terminate this Agreement at any time by providing County one hundred eighty (180) days advance written notice of termination."

9. **Section 17.2.1 (Actions After Termination)**. Section 17.2.1 of the General Conditions is hereby deleted in its entirety and replaced with the following:

"17.2.1. Actions After Termination. After Contractor sends County a notice of termination or receives County's notice of termination, Contractor shall: (a) comply with the instructions of County with respect to stopping or continuing work until the termination date; (b) place no further orders or subcontracts for Products or third-party services, except as otherwise directed by County; (c) terminate all orders for Products and subcontracts to the extent they relate to the performance of work terminated by the notice of termination; (d) return Products to their suppliers, if requested by County and permitted by such suppliers; and (e) return to County all Confidential Information, along with all copies and notes made from it and a certificate signed by Contractor's Authorized representative evidencing compliance with this provision."

10. **Section 17.2.2 (Refund of Fees)**. Section 17.2.2 (Refund of Fees) of the General Conditions is hereby deleted in its entirety and replaced with the following:

"17.2.2. Refund of Fees. If this Agreement is terminated by mutual written agreement, or by Contractor for convenience, or by County for Contractor's breach, County is entitled to a pro-rata refund of all Maintenance and Support Services fees and Software license Fees paid in advance."

Contractor

County Dept.

11. Section 19.1 (Indemnification). Section 19.1 (Indemnification) is hereby amended as follow:

“19.1. Indemnification. Contractor shall defend, indemnify, save, and hold harmless County and its officers and employees from any and all claims, demands, losses, costs, expenses, and liabilities for any damages, fines, sickness, death, or injury to person(s) or property, including any and all administrative fines, penalties or costs imposed as a result of an administrative or quasi-judicial proceeding, arising directly or indirectly from or connected with the services provided under this Agreement that are caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors, subcontractors, or any persons under its direction or control. If requested by County, Contractor shall defend any such suits at its sole cost and expense. If County elects to provide its own defense, Contractor shall reimburse County for any expenditures, including reasonable attorney’s fees and costs. Contractor’s obligations under this Section 19 exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Contractor is not required to indemnify County for the proportion of liability a court determines is attributable to the sole negligence or willful misconduct of the County, its officers, and employees. This provision will survive the expiration or termination of this Agreement.”

12. Section 19.1.1. (Limitation of Liability). A new Section 19.1.1. (Limitation of Liability) is hereby added as follows:

“19.1.1. Limitation of Liability. Notwithstanding any other provisions to the contrary, the Contractor shall not be liable to County for any claim or damages arising directly or indirectly from the furnishing of the services or any documentation relating to such services provided hereunder |EG2|in excess of the total fees paid to the Contractor in the twelve (12) months preceding any such claim, provided that the foregoing limitation shall not apply to acts of gross negligence, willful misconduct, or in the event of claims relating to sickness, death, or injury to person(s) or property. Except for acts of gross negligence, willful misconduct, or in the event of claims relating to sickness, death, or injury to person(s) or property, in no event shall Contractor be liable to County or any third party for indirect, incidental, special, consequential, or exemplary damages of any kind arising out of the existence, furnishing, functioning or the use of the services provided hereunder, even if Contractor has been advised of the possibility of such damages.”

13. Section 20.1.3 (Cyberinsurance). Section 20.1.3 (Cyberinsurance) of the General Conditions is hereby amended by deleting the last sentence of the section.

14. Section 20.3 (Notice of Cancellation and Material Changes). Section 20.3 (Notice of Cancellation and Material Changes) of the General Conditions is hereby amended by deleting “five” therefrom and replacing it with “thirty (30)”.

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15. Section 21.1.1 (Software). Section 21.1.1 (Software) of the General Conditions is hereby deleted and replaced by the following:

“21.1.1 Software. For a period of ninety (90) days following the date that County accepts the Product, Contractor warrants that the Product will perform in accordance with Appendix A (Software and Services Agreement Service Plan), and the Documentation.”

16. Section 21.2 (Service Warranty). Section 21.2 (Service Warranty) of the General Conditions is hereby deleted in its entirety and replaced by the following:

“21.2. Service Warranty. Contractor warrants to County that the Services to be performed by it and its subcontractors hereunder will be performed in a competent manner by qualified personnel in conformance with industry standards. This warranty will remain in effect during the entire term of this Agreement. To qualify for remedial action under this warranty, County must report a warranty failure to Contractor in writing. Contractor is not responsible for remedial action under this warranty to the extent the failure to meet the warranty is caused by modification to the Products by County or anyone other than Contractor or its subcontractor’s direction. If Contractor fails to meet this warranty, Contractor shall use commercially reasonable efforts to correct the failure, provided County makes available to Contractor information concerning the failure. If Contractor is unable, by using commercially reasonable efforts, to correct the failure within a reasonable period of time, Contractor shall refund to County that portion of the amounts paid by County that is equivalent to the proportion of the Project affected by the failure and the severity of the failure with respect to the objectives of the Project.”

17. Section 21.5 (Title). Section 21.5 (Title) of the General Conditions is hereby deleted in its entirety and replaced with the following:

“21.5 Title. The licensed Software, including source code and the means, manner and method of providing the related support services, and all documents related thereto, constitutes proprietary information and trade secrets of Contractor or the principals for whom Contractor is the authorized agent. Title and full ownership, including any modifications or revisions thereto, shall at all times remain with Contractor or its principal. All County data or derivatives of such data shall remain the exclusive property of the County.”

18. Section 21.6 (New Materials). Section 21.6 (New Materials) of the General Conditions is hereby deleted in its entirety.

19. Section 26 (Notices). The first sentence of Section 26 (Notices) of the General Conditions is hereby deleted and replaced with the following: “All notices to be provided under this Agreement will be in writing and shall be delivered by United States Postal Service certified

Contractor County Dept.

mail, postage prepaid.”

20. Section 32 (Copyrights, Rights in Data, and Works Made for Hire). Section 32 (Copyrights, Rights in Data, and Works Made for Hire) is hereby deleted in its entirety.

Appendix A

SOFTWARE AND SERVICES AGREEMENT SERVICE PLAN

A. General.

1. County, on behalf of the Contra Costa County Treasurer-Tax Collector is engaging Contractor to provide treasury management services through Contractor installing, hosting, and licensing Contractor's SymPro Treasury Management Software, a proprietary computer software developed by Contractor, pursuant to the terms of this Agreement. In consideration of Services provided by Contractor under this Agreement, County will pay Contractor as set forth in Appendix B (Payment Provisions). Contractor will provide labor to install and configure the Software in accordance with County's requirements, successfully complete the data conversions, develop and assist development and testing of interfaces, conduct testing, and perform training. Contractor will host the Software on it or its subcontractor's servers and related hardware, which together with the Software, and database housing data entered in the SymPro System by the County ("County Data") are referred to herein as the "SymPro System".
2. The implementation of the Software will be deemed complete when the County accepts completion of the following tasks in writing:
 - a. All data conversion has been added to and checked within the SymPro system.
 - b. All modules and interfaces have been installed and are fully operational.
 - c. All identified users are trained and fully functional with all elements of the Software.

B. Services.

1. Contractor will provide the following Software modules and services:
 - a. Software Installation
 - i. Fixed Income - 6 Concurrent Users
 - ii. Earnings Allocation Module
 - iii. Market Pricing – Import of Market Prices from ICE Data
 - iv. Custodial Download - (Import of transactions from 1 Custodial Bank - BNY)
 - v. General Ledger Module & Interface to Workday
 - b. Other Services
 - i. Project Management
 - ii. Total of Four (4) days of on-site or remote training & implementation (see Section D (Training) below).
 - iii. Data Conversion – 2 years of investment data from APS2 System
2. In addition to the warranties set forth in Section 21 (Warranties) of the General Conditions of this Agreement, the Software modules will provide the following functionality:
 - a. Fixed Income Module: it shall provide services including, but not limit to: prior and current valuations, portfolio composition, earnings analysis, schedules of cash flows

and maturities, buying and selling analysis positions with gain/loss calculations, sector and category analysis, performance analytics, portfolio stress test, benchmark the portfolio to any public or private index, market pricing portfolio holdings. It shall also provide reporting services include but not limit to full-disclosure financial reports, asset reporting on book, par, market values, earnings reports, change in market value, performance tracking reports with yields and total return, along with policy compliance reports and compliance reporting such as GASB/GASB.

- b. Earnings Allocation Module: it shall provide services including, but not limited to: calculation of each participant's share, apportionment of earnings based on the proportional average daily cash balance of each participant's account, including options for fee formulas, account exceptions and reports on all participants in the allocation pool portfolio.
- c. Market Pricing: it shall import market prices from ICE Data to update all positions at once with the current market prices.
- d. Custodial Download: download information from the County's custodial bank (Bank of New York Mellon) and reconciles investment positions in the SymPro portfolio with records held by County's custodial bank.
- e. General Ledger ("GL") Module and Interface to Workday: it shall provide services including, but not limited to: creating general ledger journal entries to reflect investment transaction activity within a portfolio for a specific date range. The investment transaction activity includes purchases, sales, maturities, income earned, interest/dividends received, change in value, and related journal entries to reflect investment, debt, and cash transactions. County users can view each entry before posting, view exceptions, or import the entire transaction set. Once the journal transactions are created, County users are able to view the journal entries on screen, print reports, or export the data to an external general ledger application or to a variety of ASCII and spreadsheet formats.
- f. Miscellaneous Services: include other professional services may be requested by County from time to time.

C. Hosting Services. Contractor shall host the System according to the requirements set forth in Appendix D (Software Maintenance and Support) of this Agreement.

D. Trainings. Contractor will provide the following trainings:

- 1. Trainings for the SymPro Treasury Management Software as set forth below. Each training day will be scheduled from 9:00 am to 5:00 pm. Contractor will send out agendas for each training period at least seven (7) days prior to each on-site training.
 - a. Software (excluding GL interface) Implementation/Training – Two (2) days onsite or remote
 - b. General Ledger Interface Implementation/Training – Two (2) days onsite or remote

D. Required County Resources. County will provide the following resources in connection with the implementation, migration, and training.

1. Personnel Required for Software Training
 - a. The primary SymPro user(s) responsible for portfolio set-up and reporting decisions, for the full consultation and training.
 - b. Data entry users for the transactions and reporting training.
 - c. Personnel responsible for reviewing reports or determining reporting goals, for the reports training (day 2 only).
2. Personnel Required for General Ledger Interface Implementation and Training
 - a. Primary GL Interface SymPro Users for data review.
 - b. SymPro Users responsible for providing SymPro General Ledger information to Accounting/General Ledger personnel.
 - c. Accounting personnel & primary users responsible for the Workday/SymPro General Ledger Interface, for initial planning. Personnel/users must have flexible schedule from 9 a.m. to 5 p.m. but will not be required for entire training period.
3. Other Required Resources (Technical and Information)
 - a. Training room with network connection and laptops/workstations for all training participants. Projection equipment should be provided and connected to at least one workstation. Training room will be available from 9:00 a.m. to 5:00 p.m. on all training days.
 - b. Chart of Accounts for GL Interface.

E. Implementation Timeline.

	<u>Milestone</u>	<u>Milestone Date</u>
1.	Project Kickoff	Within 7 Days after Agreement Effective Date
2.	Installation of Software at hosting site	Within 2 Weeks after Agreement Effective Date
3.	Conversion of Investment Data	Within 6 Weeks after Agreement Effective Date
4.	Software Implementation/Training	Within 2 Months after Agreement Effective Date
5.	Custodial Download Setup & Implementation	Within 3 Months after Agreement Effective Date
6.	GL Module Implementation/Training	Within [] months Agreement Effective Date

Contra Costa County
Standard Form Software and Services Agreement
Revised 2015

7.	Final Testing	Within [__] months after Agreement Effective Date
8.	Go Live	Within [__] months after Agreement Effective Date

Appendix B PAYMENT PROVISIONS

A. Payment Amounts. Subject to the Payment limit of this Agreement and subject to the following Payment Provisions, Contractor will charge County the following fee as full compensation for all services, work, expenses or costs provided or incurred by Contractor:

1. Training, Consulting, and Implementation Services.....\$23,000.00
 - a. Contractor will invoice County for these fees upon completion of the services set forth in Sections A through D of Appendix A (Service Plan).
2. Software Licenses\$63,000.00
 - a. The SymPro Treasury Management Software Licenses include Multi-User License (6 concurrent users), Fixed Income Module, Earnings Allocation Module, General Ledger Module and Interface to GL (Workday), and Custodial Download from one custodian – Bank of New York Market Pricing Module.
 - b. County understands that the Market Pricing Module interfaces to third party pricing service provided by Intercontinental Exchange, ICE Data, and that ICE Data requires an independent service agreement with related fees.
 - c. Contractor will invoice County for the Software license fees upon execution of the Agreement.
3. First Year Annual Maintenance and Support.....\$17,600.00
 - a. This is the first year payment which includes unlimited technical support, software upgrades/enhancements, and yearly regional training seminar.
 - b. Contractor will invoice County for this fee upon County's use of the System in a production environment.
4. First Year Annual Hosting\$6,000.00
 - a. Contractor will invoice County for the initial year of hosting services upon County's use of the System in a production environment.
5. Annual Maintenance and Support & Hosting. Contractor will invoice County on the anniversary of the Agreement effective date for hosting and maintenance as follows:

a. Year Two (2).....	\$24,608
b. Year Three (3).....	\$25,523
c. Year Four (4).....	\$26,289
d. Year Five (5).....	\$27,078
e. Year Six (6).....	\$27,890
f. Year Seven (7)	\$28,726

6. Upon the written approval of County, additional onsite trainings and associated travel expenses will be invoiced as services are performed.

B. Payment Terms. Contractor will submit an invoice for payment in the manner and form described by County. Contractor shall submit said demands for payment no later than 30 days from the end of the month in which the contract services upon which such demand is based were actually rendered. Upon approval of payment demands by the head of the County Department of which this Contract is made, or his designee, County will make payments as specified in Payment Amount above.

Appendix C SOFTWARE LICENSE

This Software License Appendix is part of the Agreement. Capitalized terms used in this Software License Appendix and not otherwise defined have the meanings set forth in the General Conditions of the Agreement.

- A. Software License. Subject to the terms of this Agreement, Contractor hereby grants to County, and County accepts, a limited, personal, non-transferable and non-exclusive perpetual license to use the Licensed Products solely for Licensee's own internal business purposes located at the Designated Site by the number of Authorized Users stated below or such Authorized Users added during the term of the Agreement. County is permitted to make one copy of the Software for backup and archival purposes only. Each copy must reproduce all copyright and other proprietary notices. SymPro Treasury Management Software which includes Fixed Income Module, Multi-User License (6 Concurrent Users) Earnings Allocation Module, General Ledger Module and Interface, Custodian Download (BNY).
- B. Designated Site. Microsoft Azure Hosting Site.
- C. Authorized Users. Network installation with concurrent access and support for 1-6 Authorized Users.
- D. License Restrictions.
 - 1. The Software shall only be used by the County.
 - 2. County shall not sublicense, duplicate, modify, decompile, reverse engineer, disassemble, or attempt to derive the source code of the Software.
 - 3. The license granted hereunder shall not imply ownership by County of the Software, rights of the County to sell the Software, or rights to use the Software for the benefits of others, *provided, however*, Contractor understands and agrees that the public uses the Software.
 - 4. The license granted hereunder is not transferable. Licensed Products shall not be used to process data except for County's internal purposes.
 - 5. County may not create any derivative work or product based on or derived from the Software, or modify the Software without the prior written consent of Contractor. In the event of a breach of this provision (and without limiting Contractor's remedies), any modification, derivative work or product based on the Software is hereby deemed assigned to Contractor.

- E. License Term. Upon termination or expiration of the Agreement pursuant to its terms, the Software license granted hereunder shall expire and County will immediately remove the Software from County's computers and network and destroy or erase all copies of the Software and any Confidential Information. Upon County's request, Contractor will assist in extracting the County data in a format acceptable to both the County and Contractor.

Appendix D

SOFTWARE MAINTENANCE AND SUPPORT

This Software Maintenance and Support Appendix is part of the Agreement. Capitalized terms used in this Software Maintenance and Support Appendix and not otherwise defined have the meanings set forth in the General Conditions of the Agreement.

A. Annual Software Maintenance and Support.

1. Post-Implementation Maintenance and Support. Contractor's Support and Maintenance Plan is available on an annual basis for the installed modules purchased. Application support includes 1) Priority service from technical support representatives; 2) Access to all SymPro upgrades released within the year; 3) Electronic access to software and documentation upgrades; and 4) SymPro users web trainings.

Contractor will provide technical support for the Licensed Software via technical support staff that are available from 6:30 a.m. to 5:00 p.m. Pacific time, Monday through Friday ("Regular Support Hours") for questions dealing with the operations of the licensed Software on designated equipment. Support issues may be reported via voicemail 510-655-0900 Selection 2, fax 510-655-4064 and email support@sympro.com 24 hours a day. Answers to "Frequently Asked Questions" are available at www.sympro.com, 24 hours a day. The resolution of some issues may require that County provide Contractor with a copy of County's data. County agrees to provide Contractor with a copy of their data for the purpose of resolving County's issue and Contractor agrees to maintain full confidentiality of any required data and will use it only for the resolution of County's issue. Consulting on issues concerning investment accounting matters, specific financial or investment matters, research on investments not supported within the licensed Software, or data entry for investments not supported in the licensed Software system are not included.

2. Areas of Support. Areas of unlimited telephone technical support including but not limited to: 1) Loading and configuring of SymPro Software. 2) Operational questions, including standard SymPro reports. 3) Data entry support for investment types supported within SymPro, including: Certificates of Deposits, Negotiable Certificates of Deposits, Checking Accounts, Commercial Paper, Commercial Paper Discount, United States Treasury Issues, Coupon & Discount, Federal Agency Issues, Coupon & Discount, Rolling Repurchase Agreements, GNMA/Pass Through, Bankers Acceptances, Corporate Bonds, Medium Term Notes.
3. Error Correction. Critical Software errors ("bugs") are treated with the highest priority with Contractor's developers. Patches for critical Software errors are sent to the users currently using the affected version. New releases go through an alpha, beta test, then a limited release before they are made available to the entire user base. Contractor will use its best effort to correct verifiable and reproducible Software errors when reported to Contractor via e-mail, website, and/or phone. Contractor will use its best effort to correct the reported error by modifying the Software and including such modification in a subsequent Software release. Contractor will provide County with emergency Software releases, if needed, to remedy a Product functionality issue.

4. Response Times. Contractor will provide resolutions to County's requests for technical support calls/inquires within one business day. Issues cannot be resolved within one business day, Contractor will respond to County within one business with a proposed timeline of resolutions. Software errors are logged into a tracking system and categorized by critical level.

The tracking system is used to by Contractor to log support calls. Calls are listed at (1) general information inquiries, (2) Issues that do not affect general operations, (3) Issues that are affecting general operations, (4) Issues that have halted general operations. Issues are given priority depending on their severity but County usually can get a response the same day.

Severity Level	Description	Response Time	Duration
Critical	Issues that have halted general operations, client is down.	Time to respond is 1 – 2 business hours	1 Business Day >90%
High	Issues that affect general operations and there is not an acceptable workaround. Client is operational.	Time to respond is 1-2 business days	2-3 Business Days >90%
Low	Issues that do not affect general operations and there may be an acceptable workaround.	Time to respond is 1 – 3 business days	1-2 Weeks >80%

5. Amendment to Software Maintenance and Support. Contractor may amend Software Maintenance and Support with a 60-day prior written notice to County and with a prior consent from County. All changes to Software Maintenance and Support will be posted at Contractor's website www.sympro.com and will become effective as of the next renewal term.

B. Software Updates and Enhancements.

1. Software Updates. In addition to any County-specific Product Releases, Contractor will provide County with current version releases of the Software as they are made available to Contractor's other licensees of the Software at no additional cost. Upgrades and enhancements are not required to be installed. Older versions are supported for a minimum of two years. Future releases and upgrades will be distributed via secure FTP site. Upgrades can typically be implemented within minutes and can be handled in-house. Standard upgrades are included as part of the current year's maintenance package.
2. Software Modifications. County may, from time to time, request that Contractor incorporate certain features, enhancements or modifications into the Software. Upon County's request for an enhancement or modification to the Software, Contractor will prepare a statement of work

Contra Costa County
Contractor:

Project Name:
Project No.:

(“Statement of Work”) for the specific project that defines in detail the services to be performed and the proposed cost to County for the Statement of Work.

3. Acceptance. County will review the proposed Statement of Work and proposed cost and either accept it in writing or request revisions to the Statement of Work. County understands that all Software modifications set forth in a Statement of Work will be performed on a “time-and-materials” basis unless otherwise stated in the Statement of Work. Within twenty (20) business days of Contractor’s completion of the milestones specified in the Statement of Work and delivery of the applicable enhancement/modification to County, County will provide Contractor with written notice of its acceptance or rejection of the enhancement/modification, based on the acceptance criteria set forth in the Statement of Work.
4. Title to Modifications. All modifications or enhancements to the Software are the sole property of the Contractor.

C. Hosting Services.

County hereby consents to Contractor using Microsoft as its subcontractor to provide a server hosting platform. Notwithstanding the use of a subcontractor, Contractor remains responsible for its obligations under this Agreement.

- a. Virtual Machines availability. Contractor shall make the System available to County at least 99.9% (excluding scheduled maintenance[EG1]).
- b. Disaster Recovery Guarantee. If the primary System suffers a physical disruption, Contractor shall cause the System return to operations within 72 hours of the declaration of the disaster.
- c. Security and Computer Controls Guarantee. Contractor shall cause its server host subcontractor to maintain administrative, physical, and technical safeguards designed to protect the security, confidentiality and integrity of the County Data from unauthorized access. Contractor shall cause its System to be audited at least annually against SOC 1/SSAE18 and SOC 2/AT Section 101 and ISAE 3402 standards. The audits shall be conducted by independent third-party auditors, and cover controls for data security, availability, processing integrity, and confidentiality as applicable to in-scope trust principles for each service