



15-154

RESOLUTION No. _____

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

**RESOLUTION AUTHORIZING A SOFTWARE PURCHASE
AND MAINTENANCE AGREEMENT WITH ACCELA, INC.
FOR THE ACCELA AUTOMATION SOLUTION**

WHEREAS, the Nevada County Community Development Agency has conducted a Request for Proposals process for a new land use permitting software solution; and

WHEREAS, the Nevada County Community Development Agency has selected Accela Automation as its new land use permitting software solution; and

WHEREAS, the Community Development Agency must purchase software licenses and modules to implement the new land use management system; and

WHEREAS, the purchase of the Accela Automation solution requires ongoing software maintenance and support; and

WHEREAS, the total contract amount shall not exceed \$300,220; and

WHEREAS, funding for this software purchase and maintenance agreement is available in Budget 1123-20707-321-1000/540425, 521475.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Nevada County Board of Supervisors approves the agreement with Accela, Inc. for the software purchase and maintenance agreement and authorizes the Chair of the Board to execute the Agreement.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 14th day of April, 2015, by the following vote of said Board:

Ayes: Supervisors Nathan H. Beason, Edward Scofield, Dan Miller,
Hank Weston and Richard Anderson.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Interim Clerk of the Board of Supervisors

By: _____

Julie Patterson Hunter

Edward C. Scofield
Edward C. Scofield, Chair

4/15/2015 cc: CDA*
Accela Automation
AC*

RECEIVED

MAR 20 2015

Nevada County
Community Development Agency

AGREEMENT FOR LICENSED SOFTWARE, SERVICES, AND MAINTENANCE


County of Nevada, California

This AGREEMENT is made by and between the **County of Nevada**, a political subdivision of the State of California (herein "County"), and **Accela, Inc.** (herein "Contractor"), wherein Contractor agrees to provide the software commonly known as **Accela Automation**, and related maintenance and support services.

This AGREEMENT, including the following Schedules, constitutes the entire understanding and agreement between the Parties. This AGREEMENT may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

- Schedule A: **General Terms and Conditions**
- Schedule B: **Software License Agreement**
Appendix B-1: Software Product List
- Schedule C: **Software Maintenance Agreement**
Appendix C-1: Incident Handling Procedures
- Schedule D: **Scope of Professional Services**
- Schedule E: **Schedule of Charges and Payments**

CONTRACTOR:


Name: COLIN SAMUELS
Title: ASST. CORP. SECRETARY

Dated: 17 MARCH 2015

COUNTY OF NEVADA:


Honorable Edward C. Scofield
Chair, Board of Supervisors

Dated: 4/15/2015

Attest: 
Julie Patterson-Hunter
Interim Clerk of the Board

SCHEDULE A: GENERAL TERMS AND CONDITIONS

1.0 Definitions

- 1.1 *Agreement* – This Agreement, all schedules and exhibits thereto, and any and all subsequent duly executed amendments thereto.
- 1.2 *Authorized Representative*: The person or persons authorized by County to work with Contractor to implement changes to the Software, submit Software issues to Contractor to resolve, and authorize the Contractor to make changes to the list of Users who can use the Software.
- 1.3 *Compliance Update*: A change made to the Software to reflect a mandated change in the applicable law.
- 1.4 *Computer System*: The computer processor(s), random access memory, disk subsystem, network software, Database Software, operating system software, and other hardware or software components or programs that are used in conjunction with the Licensed Software.
- 1.5 *Confidential Information* – Copyrights, Trade Secrets, Technical Information, Technology, and any and all other confidential and/or proprietary information provided by one Person (“Discloser”) to another Person (“Recipient”) pursuant to this Agreement or otherwise, relating to, among other items, the research, development, products, processes, business plans, customers, finances, suppliers, and personnel data of or related to the business of Discloser, including, without limitation, the Software and all Documentation. Confidential Information shall also include all “non-public personal information” as defined in Title V of the Gramm-Leach-Bliley Act (15 U.S. C. Section 6801, et seq.) and the implementing regulations thereunder (collectively, the “GLB Act”), as the same may be amended from time to time. Confidential Information does not include any information: (1) Recipient knew before Discloser provided it; (2) which has become publicly known through no wrongful act of Recipient; (3) which Recipient developed independently, as evidenced by appropriate documentation; or, (4) of which Recipient becomes aware from any third Person not bound by non-disclosure obligations to Discloser and with the lawful right to disclose such information to Recipient. Notwithstanding the foregoing, specific information will not be deemed to be within the foregoing exceptions merely because it is contained within more general information otherwise subject to such exceptions.
- 1.6 *Copyrights* – copyrighted and copyrightable materials, whether or not registered, published, or containing a copyright notice, in any and all media, and further including, without limitation, any and all moral rights and corresponding rights under international agreements and conventions, all Derivatives thereof, and any and all applications for registrations, registrations, and/or renewals of any of the foregoing.
- 1.7 *Data*: All data entered or used by County in order to use the Software, including but not limited to user account data and the data for which the Software is designed to store, manipulate, analyze and report in performing its functional requirements.
- 1.8 *Database Software*: Relational database management systems (RDMS), such as Microsoft SQL Server, Oracle, or similar Third-Party Software that is utilized by the Software to store County data on a disk sub-system as part of the operation of the Software.
- 1.9 *Derivatives* – any and all adaptations, enhancements, improvements, modifications, revisions, or translations, whether to Intellectual Property or otherwise.
- 1.10 *Documentation*: Standard technical publications relating to use of the Licensed Software or Programs, such as reference, installation, administrative, maintenance, and programmer manuals, provided by Contractor to County, all of which are made available to County by Contractor by either hard copy or electronic delivery.

- 1.11 *End User*: Any employee(s), affiliate(s), agent(s), or representative(s) of the County, or any other person under the direction or control of the County that uses the Software to perform certain functions or tasks as required by the County.
- 1.12 *Enhancement*: A change or additions, other than maintenance modifications, to Software and related Documentation, including, without limitation, all new releases, that improve functions, add new functions, or significantly improve performance by changes in system design or coding; *provided, however*, that Enhancements do not include any New Product.
- 1.13 *Error*: Either (a) any error or defect resulting from an incorrect functioning of Software caused by the Software's failure to meet Specifications therefor; or, (b) any error or defect resulting from an incorrect or incomplete statement in Documentation caused by the failure of the Software and/or the Documentation to meet the Specifications therefor.
- 1.14 *Error Correction (may also be referred to as "Patch")*: Either (a) a temporary repair or replacement or other modification or addition that, when made or added to the Software, corrects an Error. or (b) a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect of an Error on the County. Temporary repair may be made permanent and released in Subsequent Releases of the Software.
- 1.15 *Explanatory Documentation*: Documents that describe the escrow contents and explain how to compile and load the software program in the event that the escrow materials are released to the County.
- 1.16 *Hardware*: The Computer System components and equipment, other than the Licensed Software and Third-Party Software.
- 1.17 *Local Hardware*: The computer processing device(s) on which the Software is installed, each device of which is auditable by and reported to Contractor. Local Hardware may include physical and/or virtual servers.
- 1.18 *Installation*: Means all preparation, processing, and other tasks necessary to install the Database Software, Software, or Third-Party Software on the Local Hardware to make it operational.
- 1.19 *Intellectual Property*: Trade Secrets, Copyrights, Derivatives, Documentation, Patents, Software, Technical Information, Technology, and any and all proprietary rights relating to any of the foregoing.
- 1.20 *Licensed Software*: The proprietary computer software program(s) identified in the Software License and all related materials, Documentation, all corrections, patches or updates thereto, and other written information received by County from Contractor, whether in machine-readable or printed form.
- 1.21 *Maintenance Release*: A Subsequent Release of the Licensed Software that includes Error Corrections and/or Updates.
- 1.22 *New Product* – any change or addition to Software and/or related Documentation that: (1) has a value or utility separate from the use of the Software and Documentation; (2) as a practical matter, may be priced and offered separately from the Software and Documentation; and, (3) is not made available to Contractor's licensees generally without separate charge.
- 1.23 *Notice of Completion*: A written notice from Contractor stating that delivery, installation and implementation of all Licensed Software, and/or Third-Party Software at County's site has been completed and that the Software is available for acceptance testing.
- 1.24 *Object Code*: Machine readable compiled form of Licensed Software provided by Contractor.
- 1.25 *Party*: Either Contractor or County, and "Parties" means both of the same.

- 1.26 *Patents:* All patentable materials, letters patent, and utility models, including, without limitation, all reissues, continuations, continuations-in-part, renewals, Derivatives, and extensions of any of the foregoing and all applications therefor (and patents which may issue on all such applications).
- 1.27 *Professional Services:* Any Installation, Customization, Training, Consulting, Support Service(s), and other similar service(s) performed by Contractor under the terms of this Agreement.
- 1.28 *Project Management:* The process of planning, scheduling, and controlling certain activities in order to meet project objectives.
- 1.29 *Project Management Plan:* A comprehensive plan for execution of the Project to implement the Software, which includes subsidiary plans that include the Project Schedule, List of Deliverables, Data Conversion Plan, Issue Management Plan, Interface Specifications, Training Plan, Risk Management Plan, Resource Plan, Communication Plan, Change Control Plan, Document Control Plan, Acceptance Plan, and Quality Management Plan.
- 1.30 *Proposal:* That proposal submitted by Truepoint Solutions, LLC on August 14, 2014 on behalf of TruePoint Solutions and Accela Automation. For purposes of this Agreement, representations made in said proposal about the features and functionality of the software products licensed, supported, and maintained under the terms of this Agreement are considered representations of Accela Automation, Inc.
- 1.31 *Release:* Means a version of the Software denoted by the number to the left of the decimal point (as compared to a change in the number to the right of the decimal point). For example, 4.x and 4.1 are the same Release; 4.x and 5.x are two different Releases. Releases include major Enhancements and the incorporation of any Version developed after the Release immediately preceding the most current Release.
- 1.32 *Seat:* A unique physical device, such as a terminal, microcomputer, or similar computing device that is part of the Computer System at which an End User has access to some or all of the Software or Third-Party Software.
- 1.33 *Site:* A single physical location and single database for which the Software is licensed. The number of Sites for which County is licensed to use the Software shall be specified in the applicable Schedule.
- 1.34 *Software:* The software program(s) identified on Schedule E, including Error Corrections, Compliance Updates, and new Versions and Releases of such program(s) that may be provided under this Agreement. The term "Software" excludes any Third-Party Software.
- 1.35 *Software Acceptance Date:* The date the Software is delivered or made available to County for electronic download from Contractor's File Transfer Protocol ("FTP") site.
- 1.36 *Specifications:* The functional, operational, and performance characteristics of the Licensed Software as described in Contractor's current published product descriptions and technical manuals.
- 1.37 *Subsequent Release:* A release of the Licensed Software for use in a particular operating environment which supersedes the Licensed Software. A Subsequent Release is offered and expressly designated by Contractor as a replacement to a specified Licensed Software product. A Subsequent Release will be supported by Contractor in accordance with the terms of this Agreement. Multiple Subsequent Releases may be supported by Contractor at any given time.
- 1.38 *Support Services:* Those services provided by Contractor as described in Schedule C: Software Maintenance Agreement.
- 1.39 *Third Party Software:* Software utilized in tandem with the Licensed Software, and necessary to enable the Licensed Software to perform the Specifications, supplied by

Contractor with the Licensed Software or acquired directly by County as advised and directed in writing by Contractor.

- 1.40 *Trademarks* – trademarks, service marks, logos, trade names, and/or domain names including, without limitation, any and all common law and/or statutory rights therein and any and all applications to register and/or registrations therefor, anywhere within or outside of the Territory.
- 1.41 *Update*: A revision of the Software released by Contractor to its end user customers receiving maintenance and support services from Contractor. "Update" does not include the release of a new product or added features for which Contractor generally imposes a separate charge.
- 1.42 *Upgrade*: Either an enhancement to the Licensed Software code to add new features or functions to the Licensed Software or software programming revisions containing corrections to Errors, Defects and Malfunctions that have been reported by users or discovered by the Contractor. Upgrades include revisions that are made to the Software to conform to a newer version of the operating system software.
- 1.43 *Users*: People who, in accordance with the terms of this Agreement, are authorized by County's Authorized Representatives to access the Software for purposes of performing data entry, analysis, or reporting, or for providing technical support.
- 1.44 *Version*: A new version of the Software that includes minor Enhancements, Error Corrections, and/or Compliance Updates, which is indicated by a different number to the right of the decimal point (e.g., "4.1" and "4.2" represent different Versions of Release "4").
- 1.45 *Warranty Period*: The twelve (12) month period commencing on the Software Acceptance Date during which reported Errors, Defects and Malfunctions for Licensed Software are corrected by the Contractor without charge to the County.

2.0 Notices

This Agreement shall be managed and administered on behalf of the respective parties by the individuals identified below. All invoices shall be submitted to and approved by the County's representative so identified. In addition to personal service, all notices may be given to County and to Contractor by first class mail addressed to said party and shall be deemed received the fifth (5th) day following the date of mailing or the earlier date of personal service, as the case may be.

Contractor:
Accela, Inc,
2633 Camino Ramon, Suite 500
San Ramon, CA 94583

County of Nevada:
950 Maidu Avenue
Nevada City, California 95959

Contact Person:
Colin Samuels
General Counsel

Contact Person:
Daniel Chatigny
Chief Fiscal & Administrative Officer
Community Development Agency

925-659-3200

530-470-2799

csamuels@accela.com

daniel.chatigny@co.nevada.ca.us

3.0 Standard of Performance

Contractor represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, Contractor shall perform all such services in the manner and according to the standards observed by a competent practitioner of

the same profession in which Contractor is engaged. All products of whatsoever nature which Contractor delivers to County pursuant to this Agreement shall be prepared in a competent and workmanlike manner and shall conform to the applicable specifications and the standards of quality normally observed by a person practicing in Contractor's profession. Permits and/or licenses shall be obtained and maintained by Contractor without additional compensation. Contractor's personnel, when on the County's premises, shall comply with the County's regulations regarding security, safety and professional conduct, including but not limited to Nevada County Security Policy (NCSP) 102 regarding data security.

4.0 Contractor as Independent

In providing services hereunder, Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as agents or employees of County.

5.0 Indemnification

5.1 General

Contractor shall defend, indemnify and save harmless the County, its officers, officials, employees, agents and volunteers from any and all liabilities, claims, demands, judgments damages, losses or expenses (including, without limitation, defense costs and attorney fees of litigation) arising out of this Agreement or occasioned by its performance or attempted performance of the provisions hereof, including, but not limited to, any act or omission to act on the part of the Contractor or his agents or employees or other independent contractors directly responsible to him; except those liabilities, claims, demands, judgments damages, losses or expenses to the extent resulting from the negligence or willful misconduct of the County. With respect to any and all liabilities, claims, demands, judgments damages, losses or expenses arising from the joint or concurrent negligence of Contractor and the County, each party shall assume responsibility in proportion to the degree of its respective fault as determined by a court of competent jurisdiction. Contractor's obligation to indemnify County is contingent upon the County giving prompt notice to Contractor of any claims, permitting Contractor to defend, compromise, or settle any claim, and cooperate with the defense of any such claim. Contractor shall notify the County immediately in the event of any accident or injury arising out of or in connection with this Agreement.

5.2 Intellectual Property

- a. Notwithstanding any language contained herein to the contrary, Contractor warrants that the Software does not infringe upon or violate any patent, copyright, trade secret, contract right, or any other proprietary right of any third party within the United States. Except as otherwise provided, Contractor, at its own expense, will defend, indemnify and hold County harmless from any claim made or threatened or any suit or proceeding brought against County insofar as it is based on an allegation that the Software furnished by Contractor under this Agreement infringes any copyright or patent in existence on the date the Software was initially provided to County, but only if County does all of the following:
 - i. notifies Contractor of that action in writing within a reasonable period of time (such that Contractor suffers no prejudice to its rights);
 - ii. gives Contractor the right to control and direct the defense and settlement of that action;
 - iii. makes no compromise, settlement, or admission of liability; and
 - iv. provides reasonable assistance and cooperates in the defense of that action at Contractor's reasonable expense.
- b. Subject to the limitations set forth in this Agreement, Contractor shall pay any resulting damages, costs and expenses finally awarded to a third party, including, but

not limited to, reasonable legal fees, incurred as a result of the Software's infringement of a copyright or patent right. Contractor will have no responsibility for the settlement of any claim, suit, or proceeding made by County without Contractor's prior written approval.

- c. If the Software is held to infringe, and the use of the Software is enjoined, Contractor, at its expense, will do one of the following:
 - i. procure for County the right to continue using the infringing or potentially infringing Software;
 - ii. replace the infringing or potentially infringing Software with non-infringing software; or
 - iii. modify the infringing or potentially infringing Software so that it becomes non-infringing.
 - iv. If none of the foregoing remedies are commercially feasible, Contractor will pay to County an amount equal to the initial license fee actually paid by County to Contractor under this agreement, and upon such a return, any licenses granted to County for the Software shall terminate immediately.
 - v. Contractor has no obligation for any claim based upon a modified version of the Software or the combination or operation of the Software with any product, data, or apparatus not authorized by Contractor. Contractor provides no warranty whatsoever for any third-party hardware or software products, but agrees to pass through to County any warranties applicable to third party products.

6.0 Insurance

During the performance of this Agreement, Contractor shall maintain in full force and effect the following insurance coverages:

- 6.1 Commercial General Liability Insurance: (County Resolution No. 90674) Contractor shall promptly provide proof of such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following:
 - a. Broad form coverage for liability for death or bodily injury to a person or persons, and for property damage, combined single limit coverage, in the minimum amount of \$1,000,000.
 - b. An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from Seller's product(s) and/or the services provided under this contract;
 - c. A provision that said insurance shall be primary and other insurance maintained by the County shall be excess only and not contributing with Contractor's insurance; and
 - d. Contractor agrees to provide thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium). Upon receipt of such notice, County will provide Contractor in writing a notice that Contractor has until the effective date of termination, change in coverage protection, or reduction in coverage limits to secure new insurance coverage as required herein, and that Contractor's failure to do so will constitute default under the terms of this Agreement.
- 6.2 Data Processing Errors and Omissions Insurance: Contractor shall maintain either a professional liability or errors & omissions policy in an amount of no less than \$1,000,000, and shall promptly provide proof of such insurance evidenced by a certificate of insurance, or other documentation acceptable to County.
- 6.3 Automobile Liability Insurance: (County Resolution No. 90676) For each vehicle used including non-owned and hired automobiles, Contractor shall promptly provide proof of

such insurance evidenced by a certificate of insurance with properly executed endorsements attached, which insurance shall include the following provisions:

- a. Liability protection for death or bodily injury to a person or persons, property damage, and uninsured and underinsured coverage, combined single limit coverage, in the minimum amount of \$1,000,000.
- b. An endorsement naming County as an additional insured under said policy, with respect to claims or suits arising from the Services provided under this Agreement;
- c. A provision that said insurance shall be primary and other insurance maintained by the Buyer shall be excess only and not contributing with Seller's insurance; and,
- d. Contractor agrees to provide thirty (30) days written notice to County of any termination or change in coverage protection, or reduction in coverage limits (except ten (10) days notice for non-payment of premium). Upon receipt of such notice, County will provide Contractor in writing a notice that Contractor has until the effective date of termination, change in coverage protection, or reduction in coverage limits to secure new insurance coverage as required herein, and that Contractor's failure to do so will constitute default under the terms of this Agreement.

6.4 Worker's Compensation: (County Resolution No. 90674) Before commencing to utilize employees in providing Services under this Agreement, Contractor warrants that it will comply with the provisions of the California Labor Code, requiring Contractor to be insured for worker's compensation liability or to undertake a program of self-insurance therefor. Contractor shall maintain said policy or self insurance as required by law, and shall promptly provide proof of such insurance evidenced by a certificate of insurance, or other documentation acceptable to the County.

6.5 Miscellaneous Insurance Provisions: (County Resolution No. 90675) All policies of insurance required by this Agreement shall remain in full force and effect throughout the life of this Agreement and shall be payable on a "per occurrence" basis unless the County specifically consents to "claims made" coverage. If the County does consent to "claims made" coverage and if Contractor changes insurance carriers during the term of this Agreement or any extensions hereof, then Contractor shall carry prior acts coverage.

At all times, Contractor shall keep and maintain in full force and effect throughout the duration of this Contract, policies of insurance required by this Contract which policies shall be issued by companies with a Best's Rating of B+ or higher (B+, B++, A-, A, A+ or A++), or a Best's Financial Performance Rating (FPR) of 6 or higher (6, 7, 8 or 9) according to the current Best's Key Rating Guide, or shall be issued by companies approved by the County. In the event the Best's Rating or Best's FPR shall fall below the rating required by this paragraph, Contractor shall be required to forthwith secure alternate policies which comply with the rating required by this paragraph, or be in material breach of this Agreement. Failure to provide and maintain the insurance policies (including Best's ratings), endorsements, or certificates of insurance required by this Agreement shall constitute a material breach of this agreement (herein "Material Breach"); and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which County may elect to suspend payments hereunder, or terminate this Agreement, or both.

7.0 Ownership of Data

County is and shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, and any material necessary for the practical use of the data and/or documents from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion, except for computer software which shall be owned or licensed as provided in this Agreement. Contractor shall not release any materials under this section without prior written approval of County.

No materials produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country except as provided in this Agreement or except as determined at the sole discretion of the County. County shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or part, any reports, data, documents or other materials prepared under this Agreement, except for computer software, which shall be subject to the restrictions set forth in this Agreement.

8.0 Assignment and Subcontracting

Except as specifically provided herein, the rights, responsibilities, duties and Services to be performed under this Agreement are personal to the County and Contractor. They may not be transferred, subcontracted, or assigned without the prior written consent of both parties. Notwithstanding, Contractor may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets.

Contractor shall cause and require each transferee, subcontractor and assignee to comply with the insurance provisions set forth herein at to the extent such insurance provisions are required of Contractor under this Contract. Failure of Contractor to so cause and require such compliance by each transferee, subcontractor and assignee shall constitute a Material Breach of this Agreement, and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which COUNTY may elect to suspend payments hereunder, or terminate this Agreement, or both.

9.0 Confidentiality

The parties hereto acknowledge that information obtained about the other party pursuant to this Agreement may include confidential and proprietary information (hereinafter the "Confidential Information"). Each party agrees not to use Confidential information except in accordance with the terms of this Agreement or any other agreements between the parties, and not to disclose Confidential Information to any third parties without the prior written consent of the other party, except as required by law. The parties agree that the Confidential Information does not include any information which, at the time of disclosure, is generally known by the public. County shall make no attempt to reverse compile, disassemble, or otherwise reverse engineer the Software or any portion thereof. These obligations of confidentiality shall survive termination of the License and this Agreement.

10.0 Warranty

Contractor warrants the Software to operate in all material respects as specified in the Contractor-provided documentation. If Contractor makes or has made representations in its written Proposal/Response regarding specifications listed in a County solicitation, then the Contractor warrants the Software to operate in all material respects as claimed in its Proposal in response to the solicitation. Contractor warrants that the Software does not contain any disabling devices that would allow Contractor to terminate operation of the Software. Contractor further warrants that, to the best of its knowledge, the Software does not contain any viruses. Contractor warrants as follows for all software configurations made by Contractor for the County: (1) All software configurations will continue to be supported by Contractor under its maintenance agreement as defined in Schedule C; (2) All software configurations will be preserved and will remain functional in any future software versions, revisions, or updates provided by Contractor; (3) All future software versions, revision, or updates provided by Contractor will not cause the County to incur any additional cost as a result of the software configurations. Contractor has no obligation for any claim based upon a modified version of the Software or the combination or operation of the Software with any product, data, or apparatus not authorized by Contractor. Contractor provides no warranty whatsoever for any third-party hardware or software products, but agrees to pass through to County any warranties applicable to third party products. These provisions shall apply for as long as the County is covered by the Contractor's maintenance agreement

THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OF

CONDITIONS, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM THE COURSE OF DEALING OR USAGE OF TRADE. CONTRACTOR DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE WILL OPERATE ERROR-FREE OR UNINTERRUPTED AND THAT ALL PROGRAM ERRORS IN THE SOFTWARE CAN BE FOUND IN ORDER TO BE CORRECTED. NOR DOES CONTRACTOR MAKE ANY WARRANTIES REGARDING THE ACCURACY, RELIABILITY OR CURRENCY OF ANY INFORMATION CONTENT.

CONTRACTOR'S LIABILITY AND RESPONSIBILITY FOR ANY AND ALL CLAIMS, DAMAGES OR LOSSES ARISING FROM USE OF THE SOFTWARE BY COUNTY SHALL BE ABSOLUTELY LIMITED TO THE INSURANCE OCCURRENCE LIMIT OF \$1 MILLION. THIS LIMITATION OF CONTRACTOR'S LIABILITY SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE. THE STATED EXPRESS WARRANTIES ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITIES ON THE PART OF CONTRACTOR ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, AND/OR PERFORMANCE OF THE SOFTWARE.

Unless otherwise stated in the applicable Schedule, Contractor shall not be liable for, and County hereby assumes the risk of and shall indemnify and hold harmless Contractor against, any claim, injury, loss, damage, or expense (including attorneys' fees), either direct or indirect, incurred, made, or suffered by County in connection with or in any way arising out of the furnishing, performance, or use of services provided by any third party contracted by County to perform services in connection with the Software.

With respect to software maintenance services provided under the terms of Schedule C of this Agreement, Contractor will commence and complete the maintenance obligations described in a good and workmanlike manner, consistent with the practices and standards of care generally accepted within and expected of Contractor's industry, to ensure that the operation of the maintained software products does not materially differ from documented specifications. Contractor may make repeated efforts within a reasonable time period to resolve maintenance requests. When a maintenance request cannot be resolved, County's exclusive remedy will be damages in an amount equal to the total of two times the maintenance fees paid to Contractor for the defective or non-conforming software products for the twelve (12) calendar months immediately preceding County's maintenance request. The remedy described in this paragraph does not preclude a cause of action for failure of the Software to perform to its specifications.

11.0 Nondiscrimination and Compliance with Laws

In providing Services hereunder, Contractor agrees to comply with all applicable laws and regulations, including but not limited to those relating to nondiscrimination and civil rights. Contractor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. Contractor shall have and keep current at all times during the term of this contract all licenses and permits required by law.

12.0 Prior Nevada County Employment (County Resolution No. 03-353)

Effective July 22, 2003, it is the policy of the County of Nevada that former members of the Board of Supervisors, a former CEO, or a former Purchasing Agent, for a period of twelve (12) months following the last day of employment, shall not enter into any relationship wherein that former employee or former Board member receives direct remuneration from a legal entity that, during the last twelve (12) months of said employment or Board member's service, entered into a contract with, or received a grant from the County of Nevada. Provided however, that this prohibition shall not apply to any employee that did not personally approve a contract with or grant to said legal entity during the last twelve (12) months of said employment, and shall not

apply when the Board of Supervisors did not approve a contact with or grant to said legal entity during the last twelve (12) months of said Board member's service.

A violation of this policy shall subject Contractor to all of the remedies enumerated in said resolution and as otherwise provided in law, which remedies shall include but not be limited to injunctive relief, cancellation and voiding of this contract by COUNTY, a return of grant money, a cause of action for breach of contract, and entitlement to costs and reasonable attorney fees in any action based upon a breach of contract under this provision.

13.0 Intellectual Property

County acknowledges that Contractor owns all right, title and interest in and to the Software, the Documentation, including System Administration and End User Manuals, and other information relating thereto (including all customizations and modifications developed for County), including all patents, trademarks, copyrights, trade secrets and other intellectual property rights. No rights, other than those granted pursuant to the License, are transferred to County.

14.0 Conflict of Interest

Contractor covenants that Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Contractor. This covenant shall not prohibit Contractor from offering the same or similar Software and Services to other entities.

15.0 Responsibilities of County

County shall provide all information reasonably necessary to Contractor in performing the Services provided herein. Contractor shall not be responsible for any delays caused by County's failure to provide information or failure to perform obligations.

16.0 Technology Life Expectancy

County understands, acknowledges, and agrees that the technology upon which the Hardware, Software, and Third-Party Software is based changes rapidly. County further acknowledges that Contractor will continue to improve the functionality and features of the Software to improve legal compliance, accuracy, functionality, and usability. In relation to future versions of planned system enhancements or future product direction, the information contained in this section is not a commitment or legal obligation to deliver any of the features or functionality described herein. As a result, Contractor does not represent or warrant that the Hardware, Software, and/or Third-Party Software provided to County under this Agreement or that the Computer System recommended by Contractor will function for an indefinite period of time. Rather, Contractor and County may, from time to time, analyze the functionality of the Hardware, Software, Third-Party Software, and Computer System in response to changes to determine whether upgrades are advised. Contractor shall, for the duration of the maintenance period covered by this Agreement, and at no additional cost to County, maintain the Software to be compatible with Microsoft-supported operating systems and databases. County upgrades may include, without limitation, the installation of a new Release, additional disk storage and memory, and workstation and/or server upgrades. County upgrades may also include the installation and/or removal of Third-Party Software. County is solely responsible for all costs associated with such future resources and upgrades,

17.0 Term and Termination

17.1 The Term of this Agreement shall commence upon execution by both parties, and shall continue until all Tasks and Deliverables have been completed unless terminated earlier in accordance with this section. The Terms of the Software Maintenance Agreement and Software Escrow shall be as described in the respective Schedules C and F, as applicable.

17.2 Termination by County

- a. County may, by written notice to Contractor, terminate this Agreement in whole or in part at any time, with thirty (30) days' notice, whether for County's convenience or because of the failure of Contractor to fulfill the obligations hereunder. Upon receipt of notice, Contractor shall immediately discontinue all services affected (unless the notice directs otherwise), and deliver to County all data, estimates, summaries, reports, and all other records, documents or papers as may have been accumulated or produced by Contractor in performing services under this Agreement, whether completed or in process.
- b. For Convenience: County may terminate this Agreement upon thirty (30) days written notice without cause. Upon receipt of such notice, Contractor shall promptly cease work and notify County as to the status of its performance. Notwithstanding any other payment provision of this Agreement, County shall pay Contractor for services performed to the date of termination, to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Contractor be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Contractor shall furnish to County such information as is necessary to determine the mutually agreeable reasonable value of the services rendered by Contractor. The foregoing is cumulative and shall not affect any right or remedy which County may have in law or equity.
- c. For Cause: Should Contractor default in the performance of this Agreement or materially breach any of its provisions, the County may elect to immediately suspend payments or may provide written notice to Contractor of an opportunity to cure within thirty (30) days, after which time County may terminate the contract if Contractor fails to cure the default.

17.3 Termination by Contractor

- a. For Nonpayment: Should County fail to pay Contractor all or any part of the payment set forth in Schedule E, Contractor may, at Contractor's option, terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment.
- b. For Cause: Should County default in the performance of this Agreement or materially breach any of its provisions, Contractor, at Contractor's sole option, may terminate this Agreement upon thirty (30) days written notice.

17.4 Disentanglement

If directed by County, Contractor shall cooperate with County and County's other vendors and contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall cooperate with County to accomplish a complete transition of the services being terminated to County or to any replacement provider designated by County, without any interruption or adverse impact on those services or any other services provided by third parties. Contractor shall reasonably cooperate with County and any new service provider and otherwise promptly take all commercially reasonable steps, including but not limited to providing to County or any new service provider all requested information or documentation required to assist County in effecting a complete transition to the new service provider, provided however, the Contractor shall not be obligated to disclose its Intellectual Property to any third party. Contractor shall provide all information or documentation regarding the services to be transitioned, including but not limited to data conversion tables, client files, and interface specifications. Contractor shall provide for the prompt and orderly conclusion of all work required under the Agreement, as County may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to County or the County's

designee. All Contractor work done as part of the Disentanglement shall be performed by Contractor or its subcontractor or designee approved by County, and will be reimbursed by the County on a time and materials basis at the Contractor's then current hourly rate for technical services applicable to this Contract and shall include reimbursement for actual expenses, as applicable. Contractor's obligation to provide the Services shall not cease until the earlier of the following: a) the Disentanglement is completed to the County's reasonable satisfaction, or b) twelve (12) months after the expiration of the then-current Term of the Agreement.

17.5 Return, Transfer and Removal of Data and other Assets

- a. Upon termination of this Agreement, Contractor shall return to County all County-furnished assets in Contractor's possession.
- b. Upon termination of this Agreement, Contractor shall ensure that any and all of County's data maintained by Contractor is extracted in a commercially recognized format acceptable to County prior to the termination date or the completion of the Disentanglement period, whichever is later, and that said data is securely transmitted to County or County's designee.

17.6 Fiscal Insolvency/Source Code Escrow: Contractor provides software escrow through an existing Software Escrow agreement with NCC Group. County may execute a beneficiary registration at its option and its cost.

17.7 Renegotiation Option: In view of the fact that it is unknown how long the products and services will be employed by County and that County will require ongoing maintenance and support of the products, as offered by Contractor at any given time, for as long as the system is operational, therefore after completion of the initial term of the contract including any extensions and renewals, County and Contractor may renegotiate the contract upon mutual agreement of the parties.

17.8 Effect of Termination: Contractor shall cooperate with County to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall cooperate with County to ensure that any and all of County's data maintained in the software licensed to the County by Contractor is extracted in a commercially recognized format acceptable to County prior to the termination date, and that said data is securely transmitted to County. The termination of this Agreement shall not affect the County's rights to the Software pursuant to Schedule B (License Agreement) provided that County has paid all Software license fees set forth in the Schedule E and County is not in breach of any provision of this Agreement or the Schedules. If County terminates this Agreement prior to the payment of all Software license fees, or if County is in breach of this Agreement, County shall immediately cease using the Software and shall either destroy or return the original and all copies, in whole or in part, in any form, of the Software and related materials. County shall certify such action in writing to County within one (1) month after the termination date. Obligations and rights in connection with this Agreement which by their nature would continue beyond the termination of this Agreement, including without limitation, Section 11 of this Schedule A, shall survive termination of this Agreement.

18.0 Informal Dispute Resolution

If a dispute, controversy, or claim arises between the parties relating to this Agreement, the parties shall promptly notify one another of the dispute in writing. Each party shall promptly designate a representative to resolve the dispute. The representatives shall meet within ten (10) days following the first receipt by a party of such written notice and shall attempt to resolve the dispute within fifteen (15) days.

19.0 Compliance with Public Records Law

All information County receives from Contractor, whether received in connection with Contractor's

proposal or in connection with any services performed by Contractor, will be disclosed upon receipt of a request for disclosure pursuant to the California Public Records Act; provided, however, that if any information is set apart and clearly marked "Confidential Information" pursuant to Section 9, above, when it is provided to County, County shall give notice of Contractor of any request for disclosure of such information. Contractor shall then have five (5) days from the date it receives such notice to enter into an agreement with the County, satisfactory to the County Counsel, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by County in any legal action to compel the disclosure of such information under the California Public Records Act. Contractor shall have sole responsibility for defense of the actual "Confidential" designation of such information.

Contractor and County understand and agree that any failure by Contractor to respond to the notice provided by County and/or to enter into an agreement with County, in accordance with the provisions above, shall constitute a complete waiver by Contractor of any rights regarding the information designated "Confidential" by Contractor, and County shall disclose such information pursuant to applicable procedures required by the Public Records Act.

20.0 Books of Record and Audit Provision

Contractor shall maintain complete records relating to this Agreement for a period of five (5) years from the completion of Services hereunder. Said records shall be maintained in sufficient detail to establish the accuracy of charges for services provided and corresponding calculations of any sales tax payable.

Contractor shall permit County to audit said records as well as such related records of any business entity controlled by Contractor. Said audit may be conducted on Contractor's premises or at a location designated by County, upon fifteen (15) days notice. Contractor shall promptly refund any moneys erroneously charged and shall be liable for the costs of audit if the audit establishes an over-charge of five percent (5%) or more of the total Contract amount.

21.0 Taxes

With the exception of sales or use taxes which may be levied by the State of California for software or related materials, County shall not be responsible for paying any taxes on Contractor's behalf, and should County be required to do so by state, federal, or local taxing agencies, Contractor agrees to promptly reimburse County for the full value of such paid taxes plus interest and penalty, if any. Similarly, Contractor shall not be responsible for paying any taxes on County's behalf, and should Contractor be required to do so by state, federal, or local taxing agencies, County agrees to promptly reimburse Contractor for the full value of such paid taxes plus interest and penalty, if any (The fees set forth in Schedule E do not include any amounts for sales taxes, as it is anticipated that all software and related materials will be provided by Contractor by electronic delivery.)

22.0 Jurisdiction and Venue

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Nevada County, California.

23.0 Compliance with Applicable Laws

The Contractor shall comply with any and all federal, state and local laws, codes, ordinances, rules and regulations which relate to, concern or affect the Services to be provided by this Contract.

24.0 Authority

All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or

federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

25.0 Expert Witness

If requested by County, Contractor agrees to serve as an expert witness for County in any third party action or proceeding arising out of this Agreement.

26.0 Section Headings

The headings of the several sections of this Schedule A and other Sections which comprise this Agreement, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

27.0 Severability

If any one or more of the provisions of this Agreement shall for any reason be held to be invalid or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

28.0 Amendment and Waivers

Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the Party to be bound thereby. The waiver by a Party of any breach hereof or default hereunder shall not be deemed to constitute a waiver of any other breach or default. The failure of any Party to enforce any provision hereof shall not be construed as or constitute a waiver of the right of such Party thereafter to enforce such provision.

29.0 Force Majeure

Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile action, or catastrophic natural event. Should there be such an occurrence that impacts the ability of either party to perform their responsibilities under this Agreement, the nonperforming party shall give immediate written notice to the other party to explain the cause and probable duration of any such nonperformance.

30.0 Publicity

County authorizes Contractor to use County's name in its list of customers. The parties agree that either party or both may issue a mutually acceptable news release regarding County's use of the applicable Software and Support Services. Each party's approval of such news release will not be unreasonably withheld or delayed. Once a press release has been issued, Contractor may publicly refer to County (by name only) as being a customer of Contractor, and only in relation to this Agreement except as otherwise authorized by County.

SCHEDULE B—SOFTWARE LICENSE AGREEMENT

1.0 Agreement to License

This Agreement provides for the license of Software by Contractor as Licensor to County as Licensee, in accordance with the terms and conditions of this Agreement. Contractor shall license to County and County shall license from Contractor, the Software as described in Schedule E: Schedule of Charges and Payments.

2.0 Grant of License

- 2.1 Unless this Agreement is terminated in accordance with the provisions of Schedule A: General Terms and Conditions, Contractor grants to County a perpetual, nontransferable (except as otherwise provided in Section 8 of Schedule A, "Assignment and Subcontracting"), revocable and nonexclusive license for use of the Software (machine readable version) and Documentation therefor in accordance with the terms and conditions of this Agreement. Such use shall be limited to County only. Title to the Software remains in Contractor, which shall be the sole and exclusive owner of all rights to Patents, Copyrights, Trademarks, Trade Secrets, and all other Intellectual Property rights in the Software and in all Maintenance Modifications, Derivatives and Enhancements thereto. Any data supplied by the County shall remain the property of the County. The Software is provided for use only by County employees, and by County's contractors, agents and officials when and to extent utilized for the direct benefit of County. The Software may be installed on one or more computers but may not be used by more than the number of users for which the County has named user licenses. The Software is deemed to be in use when it is loaded into memory in a computer, regardless of whether a user is actively working with the Software.
- 2.2 County may use the Software only to process transactions relating to properties within both its own geographical and political boundaries and may not sell, rent, assign, sublicense, lend, or share any of its rights unless expressly provided herein.
- 2.3 County is liable to Contractor for any losses incurred as the result of unauthorized reproduction or distribution of the Software which occur while the Software is in County's possession or control.
- 2.4 Proprietary Rights The remedial methods, software updates, and product information provided to County are protected under the laws of the United States and the individual states and by international treaty provisions. Contractor retains full ownership in such items and grants to County a limited, nonexclusive, nontransferable license to use the items, subject to the terms and conditions of this Agreement and other agreements between Contractor and County.
- 2.5 All rights not expressly granted to County are retained by Contractor.

3.0 Right to New Versions

If Contractor creates a new Version of the Software, or acquires through acquisition a successor version of the Software, Contractor will provide that new Version to County at no additional charge through the Maintenance and Support agreement provisions, so long as County is current on payment of Maintenance and Support fees. This right will not extend to new modules or functionality that are in addition to the Software purchased by County if not otherwise provided to Contractor's customers through Maintenance and Support.

4.0 Third Party Software

County shall execute all documents reasonably requested by Contractor and will abide by all reasonable requirements with respect to Third Party Software licensed or sublicensed by Contractor to County hereunder, or necessary to the performance of the Software hereunder in

accordance with the Specifications, and County agrees to maintain in effect all required licenses and approvals of all applicable third persons.

5.0 Local Hardware

- 5.1 In order to be executed and to perform in a satisfactory manner, the Software must be installed on Local Hardware that provides sufficient network, communications, and computer resources to support the anticipated number of End Users. The Local Hardware must be properly configured, installed, managed, and maintained. County is solely responsible for ensuring that the Local Hardware meets these standards and for ensuring that its Local hardware is installed according to the schedule mutually agreed by both Parties.
- 5.2 The Local Hardware and third party technologies required to properly execute the Software may change over time. Additional network, communications or computer resources may be required to enable Customer to install and use enhancements, promotions or new Versions of the Software. Contractor will make best efforts to give the County a minimum of 180 days notice of additional third party software products that may be required, and provide information to allow County to evaluate the impact of the enhancement, promotion or new Version on network performance and to plan for network upgrades.

6.0 Rights of County as Licensee

- 6.1 County may install the Software on the Local Hardware and may, upon prior written notice to Contractor, move the Software to different Local Hardware, or, in the event of a disaster, run the Software on back-up Local Hardware. Local Hardware shall include both a test server and a production server.
- 6.2 If the Software is licensed on a Seat basis, County may use and execute the Software only on the licensed number of Seats designated on Schedule E: Schedule of Charges and Payments. Unless otherwise provided on Schedule E, County must purchase a license for each Seat that has access to the Software.
- 6.3 If the Software is licensed on a Site basis, County may use and execute the Software only in connection with the operations of the Site(s). Unless otherwise provided in Schedule E, County must purchase a license for each site for which the Software is used.
- 6.4 County may make copies of the Software for backup and archival purposes only, provided that (a) no more than two (2) copies of the Software are in existence at any one time, and (b) Contractor's copyright and other proprietary legends are reproduced on each copy. County shall keep appropriate records of the number and location of all copies and make such records available to Contractor upon request. All copies that are made by County shall be the property of Contractor.
- 6.5 County may make copies of the Documentation for County's internal use only, provided that Contractor's copyright and other proprietary legends are reproduced on each copy.
- 6.6 County may permit access to the Software to third parties for the purpose of loading data and/or generating reports, subject to execution by said parties of a non-disclosure agreement to be provided by Contractor.

7.0 Restrictions

In addition to other restrictions set forth in this Agreement, County may not:

- 7.1 Use, copy, modify or distribute the Software (electronically or otherwise) or any copy, adaptation, transcription, or merged portion thereof except as expressly authorized under this Agreement;
- 7.2 Use the Software for any purpose for the benefit of any third party (including any body of government other than the entity that executes this Agreement) in a commercial, retail, service bureau, or similar enterprise;

- 7.3 Translate, reverse engineer, decompile, recompile, update, enhance, or create derivations of all or any part of the Software, or merge any Software with any other software or program, including, without limitation, the structure and sequence of any database and/or database files, including those created by County under this Agreement;
- 7.4 Without prior written approval of Contractor, modify or manipulate the data maintained in the standard database structure schema that is documented as part of the Software, except by those provided in the Software;
- 7.5 Without prior written approval of Contractor, modify, extend, or add tables, including, without limitation, the structure and sequence of any database or database files that are used by the Software, including those created by or for County under this Agreement; or
- 7.6 Remove the labels or any proprietary legends from the Software or its Documentation.

8.0 Tools and Customizations

County shall not have any right to independently make changes to the underlying code of the Software. County may independently develop, and shall retain ownership of, hooks, interfaces, or similar tools for use with the Software, provided that the hook, interface or tool does not use any part of the Software or require any modification or alteration of the underlying code of the Software. Contractor shall own all right, title, and interest (including all associated intellectual property rights) in and to any Customizations to the Software.

9.0 Documentation

Contractor will provide documentation of the process and procedures for use of the Software, including all screens. Documentation will be embedded in the Software and accessible to End Users through a "Help" icon or menu.

10.0 Right to Audit

Contractor shall have the right, up to two (2) times per calendar year and within ten (10) days of Contractor's written request, during normal business hours and at times mutually agreed upon by the parties, to audit County's use of the Software to monitor compliance with this Agreement. If an audit reveals that County has exceeded the restrictions on use, County shall be responsible for the prompt payment to Contractor of any underpayment of license fees.

Appendix B-1 Software Product List

Accela Citizen Access: Provides 24-hours a day public access for land development applications, permits, licenses, inspection scheduling, and service requests.

Accela Land Management: Modules for automating workflows for Building, Planning, Code Compliance, Environmental Health, and Public Works.

Accela Mobile Office (including Inspector and Code Officer applications): Enables utilization of the Accela Land Management modules on specified mobile devices.

Accela GIS: Delivers spatial data and map services for user interaction.

Accela Electronic Document Review (requires County-provided Adobe Acrobat XI Pro licenses)

SCHEDULE C—SOFTWARE MAINTENANCE AGREEMENT

1.0 Scope of Agreement

- 1.1 This Schedule C covers the maintenance of Software licensed or delivered by Contractor for the benefit of the County pursuant to that certain concurrently effective Software License Agreement (Schedule B) between the parties, as listed on Schedule E: Schedule of Charges and Payments. This Agreement provides maintenance services only with respect to Software, including third party software, supplied by Contractor to County pursuant to the terms of the Software License Agreement. This Agreement does not provide for maintenance services for any third party software not provided by Contractor to County or for any hardware.
- 1.2 Contractor will provide maintenance support for the current release of each of its maintained software applications and for the release immediately preceding such current release. All other releases are deemed to be "Legacy Releases". Contractor will respond to maintenance requests concerning Legacy Releases only using currently-available information. Services requiring additional research, engineering-level support, or coding or programming by Contractor will not be provided pursuant to this Software Maintenance Agreement, but may be separately available at rates and on terms which may vary from those described herein.

2.0 Term of Agreement

- 2.1 The initial term ("Initial Term") of this Software Maintenance Agreement shall commence on the date of its execution by both parties and shall continue for a period of five (5) years.
- 2.2 No later than ninety (90) days prior to expiration of the Initial Term, the parties will negotiate in good faith to establish the cost to renew this Maintenance Agreement for up to five (5) additional years. Should Customer fail to renew its maintenance coverage or pay the applicable fees, Contractor reserves the right to withhold all support. The Initial Term, First Renewal Term and the Subsequent Terms are herein collectively referred to as "Term."

3.0 Maintenance Fees

Maintenance fees shall be as detailed in Schedule E, Schedule of Charges and Payments.

4.0 Covered Maintenance

Contractor will provide to County: (a) all services required to ensure that the Software operates in material conformity with all Specifications; and (b) all Enhancements developed by Contractor for the Software and related Documentation during the Term of this Agreement. Covered Maintenance Services do not include the costs of accessories and expendable supplies necessary to operate the Software, such as magnetic tape cards, optical disks, disk packs, paper, and similar items, and such items are not provided free of charge by Contractor hereunder.

5.0 County Obligations

- 5.1 County may designate up to five (5) persons by whom requests by Customer for Support Services may be made ("Support Team"). Contractor shall not be required to accept calls or requests from anyone other than a designated contact person. County may change its designated contact person, or request that additional people be made contact persons, at any time upon notice to Contractor.
- 5.2 County shall implement and follow the reasonable written instructions of Contractor regarding operation of the Software.
- 5.3 County shall maintain a Computer System that complies with the Hardware Specifications described in Appendix D-1. The Computer System shall be housed with site conditions that conform to common industry standards for all computer systems and/or media devices. County shall, at its own expense, install and periodically update a

computer virus program to protect its Computer System and database from computer viruses that may, from time to time, be transmitted or downloaded. Contractor expressly disclaims any liability for loss or damage caused by any computer virus on County's computer platform or database, except those which may prove to be attributed to Contractor's software or activities.

- 5.4 County will provide Contractor with access to County's network over a secure internet connection and appropriate access to County's facilities, data systems, and other resources. If security restrictions impair such access, County acknowledges that some maintenance services hereunder may not be provided to County.
- 5.5 County shall create and maintain timely, accurate, and readable electronic back-ups of all data and program and system files. It is County's sole responsibility to maintain current backup copies of its data and of its implementation of Contractor's software products. If County's failure to create proper backups substantially increases the difficulties of any remedial actions by Contractor hereunder, Contractor reserves the right to charge County for any extra work reasonably-attributable to such increased difficulty, as calculated at Contractor's then-current time-and-materials rates.

6.0 Compliance Updates

Contractor shall exercise due diligence in accordance with applicable professional standards and provide County, in a timely manner, with Compliance Updates as those Updates are made to the Software and made generally available to Contractor's customers in accordance with Contractor's standard update process. Contractor agrees to monitor changes in the applicable California laws and regulations to help the County maintain the system compliance. The County agrees to promptly notify Contractor when it becomes aware of any applicable change in the laws or regulations which the Software is designed to support.

7.0 Service Level Agreement

- 7.1 Contractor will maintain a website accessible by County, which contains information concerning the Software and Support Services.
- 7.2 Contractor will respond to County requests for software support services regarding the licensed software in accordance with the procedures described in Appendix C-1, Incident Handling Procedures. In each case, County may describe and submit notice of the support need by telephone, facsimile or electronic mail.
- 7.3 All Contractor staff assigned to provide services to County will be appropriately qualified by education, training and experience to deliver those services, and will be familiar with the functional capabilities of the Software.
- 7.4 Telephone Support includes: (i) remote diagnostics; (ii) service desk and dispatch; (iii) question and answer consulting; and, (iv) non-chargeable user error remedies. Contractor shall provide a toll-free maintenance telephone number. Remote diagnostics equipment is required at County's location for remote support, which equipment is to be obtained by County at its sole expense.

Contractor shall provide County with telephone support services for Software from 4:00 a.m. to 6:00 p.m. Pacific Time, Monday through Friday, excluding the following holidays: New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after Thanksgiving, and Christmas Day.

On-Site Support If Customer does not wish for Contractor to resolve its maintenance requests remotely, Contractor will provide on-site assistance to Customer at Contractor's then-current time-and-materials rates. In addition to these charges, Customer will compensate Contractor for associated airfare, lodging, rental transportation, meals, and other incidental expenses as such expenses accrue.

- 7.5 Response Policy

Contractor shall respond to any Errors reported by County based on the priority code assigned to each such Error, as further described in Appendix C-1. County shall identify

the priority code when it initially reports the Error to Contractor. Contractor may, in its reasonable discretion, re-classify the Error after its initial investigation. In the event Contractor does not meet the service level response for the Error as described in the table below, the County may request to escalate the Error to a higher priority code, which request the Contractor shall not unreasonably deny.

7.6 Remedies

In the event Contractor fails to meet the service level standards described herein, County may, without penalty, withhold payment for maintenance and support fees until said standards are met.

8.0 Right to Modify or Cancel Support

8.1 County may choose to cancel software maintenance and support at the next renewal date upon thirty (30) calendar days' notice to Contractor.

8.2 County may delete a subset of licenses that are no longer in use from software maintenance and support at the agreement next renewal date upon thirty (30) days' notice to Contractor, so long as County relinquishes the license rights.

8.3 County may resume software maintenance and support for lapsed periods by paying Contractor an amount equal to one hundred ten percent (110%) of the support fee that would have been due if maintenance and support had been continued over the lapsed period. Upon payment of such fees for lapsed periods, Contractor agrees to provide County with right to any software upgrades released during that period.

8.4 Maintenance Limitations

The following are not covered by this Software Maintenance Agreement, but may be separately available at rates and on terms that may be agreed by the Parties:

- a) Services required due to misuse of the Contractor-maintained software products;
- b) Services required due to software corrections or modifications not developed or authorized by Contractor;
- c) Services required by County to be performed by Contractor outside of Contractor's usual working hours;
- d) Services required due to external factors including, but not necessarily limited to, County's use of software or hardware not authorized by Contractor;
- e) Services required due to the operation of interfaces between the Contractor-maintained software products and other software products or systems, even where such interfaces were provided or implemented by Contractor; except as follows: Contractor warrants that all Contractor-prepared interfaces, to the extent that deficiencies or failures in performance are attributable to interfaces or portions thereof which were developed by Contractor and are maintained by Contractor, will be free from material errors, faults, and defects and in material conformance with the terms of this Agreement for a period of six (6) months following acceptance. This warranty is not available for any interface which has been developed or materially-modified by parties other than Contractor. Should County request Contractor to provide services for an issue that is determined to fall outside the scope of the warranty, County will compensate Contractor for its effort to determine the cause, in accordance with Contractor's then-current hourly rate.
- f) Services required to resolve or work around conditions which cannot be reproduced in Contractor's support environment and are found to stem from County's environment;
- g) Services which relate to tasks other than maintenance of County's existing implementation and configuration of the Contractor-maintained software products including, but not necessarily limited to, enhancing or adapting such products for specific operating environments;

- h) Services requested by County to implement software updates provided by Contractor pursuant to this Software Maintenance Agreement, although Contractor agrees to be reasonably available to offer a basic level of assistance to answer questions or inquiries related to implementation of software updates; and
- i) New or additional applications, modules, or functionality released by Contractor during the term of this Maintenance.

8.5 The parties agree that County may request additional services not covered under this Agreement by delivering to Contractor a Change Order request. Services to be provided pursuant to a Change Order may include, without limitation, services related to: (a) additional Training; (b) programming, configuration and data migration or repair; (c) research, development and business analysis related to the estimates and bidding for Customizations and Enhancements. Contractor shall provide County with a written response to the Change Order request which describes in general the work requested, an estimate of the time required to perform such services, and a schedule of the fees related thereto. For clarity, the scope and nature of a requested Change Order may require the development of specific requirements and an analysis of the impact on the Software and reports in order to provide detailed estimate for the requested work. The County understands and acknowledges that Contractor shall not undertake detailed specification development or estimate preparation until a signed Change Order authorizing such work is signed by County. The County shall be charged at the rates set forth in Schedule E for the development of requirements by Contractor. All work detailed in a Change Order will be performed on a time and materials basis at the rates set forth in Schedule E, unless specified otherwise in the Change Order. Any impact on the Software License Fee will also be reflected in the Change Order.

Appendix C-1 Incident Handling Procedures

The following incident handling time frames are applicable only to a live-production environment.

- 1 **Incident Handling** - Accela will provide an incident handling mechanism for Customer maintenance requests. The incident handling process will include the following:
 - Ability to call, e-mail or use an Accela provided online tracking system.
 - All incidents will be recorded into the tracking system.
 - Customer will receive an e-mail with your case number.
 - Customer Priority and Severity will be determined by the problem based upon the definitions below.
 - Customer will designate contacts that will interface with the Customer Support Department.
- 2 **On Line Self Support** - Accela will provide to Customer at no expense an online Knowledge Base and Online Self Support Site where Customer can research issues and questions, report maintenance incidents and download patches and other fixes.
- 3 **Case Handling** – Case Handling defines the priority assigned to a specific maintenance request which therefore sets the order, timing and level of effort in resolving a case:

A. Critical Severity

Definition: System or application is non-functional or seriously affected and there is no reasonable workaround available, for example, business is halted.

Response Time: Accela will respond with confirmation of receipt of incident within 1 business hour and provide follow-up every 60 minutes when the Critical Incident is phoned into the Customer Resource Center.

Resolution Time: Upon confirmation of receipt, Accela begins continuous work on the problem and will put forth the effort to provide a workaround, fix, or estimated completion date within 72 hours after the problem has been diagnosed and/or replicated, or provided there is an agency representative available to assist with issue diagnosis and testing during the resolution process.

B. High Severity

Definition: System or application is affected and there is no workaround available or the workaround is impractical, for example, Customer cannot process payments or system response time is very slow.

Response Time: Accela will respond with confirmation of receipt of incident within 4 business hours and provide follow-up every 48 hours.

Resolution Time: Upon confirmation of receipt of incident, Accela will put forth the best effort to provide a workaround or fix or estimated completion date within 14 business days after the problem has been diagnosed and/or replicated.

C. Moderate Severity

Definition: System or application feature is non-functional and a convenient workaround exists, for example, non-critical feature is unavailable or requires additional user intervention.

Response Time: Accela will respond with confirmation of receipt of incident within 8 business hours and provide follow-up every 7 days.

Resolution Time: Accela will put forth the best effort to provide a workaround or fix or estimated completion date within 21 business days after the problem has been diagnosed and/or replicated.

D. Low Severity

Definition: System or application feature works, but there is a minor problem, for example, a field is mislabeled or a help file is missing.

Response Time: Accela will respond with confirmation of receipt of incident within 24 business hours and provide follow-up every 14 days.

Resolution Time: Resolution for the issue may be released as a patch set or be incorporated into a future release of the product.

Contact Customer Support by Phone or E-mail

Hours: M - F 4:00 AM - 6:00 PM Pacific Time

Phone: (888) 722-2352, ext. 5

E-mail: support@accela.com

Escalation

- *Customer Support has escalation points in*
 - Engineering
 - Data Conversions
 - Services
 - Account Management

- *Escalation to Customer Support Management*
 - Chris Alderson
 - 888-722-2352 ext.5
 - calderson@accela.com

SCHEDULE D: SCOPE OF PROFESSIONAL SERVICES

County shall contract separately with TruePoint Solutions, LLC for implementation services required to implement Accela Automation for County's land use management needs.

Contractor acknowledges that TruePoint Solutions, LLC is a certified implementation partner of Contractor and is thereby authorized and qualified to perform implementation services as described in TruePoint Solutions' proposal to County dated August 14, 2014 as subsequently amended to provide for a County-hosted implementation.

SCHEDULE E—SCHEDULE OF CHARGES AND PAYMENTS

1.0 License Fees

Product	QTY	Net Price
Accela Citizen Access Module Fee	1	\$6,489
Accela Citizen Access Server Software	1	\$6,489
Accela Citizen Access Population Fee	98,764	\$4,662
Accela Land Management Server Software (includes 5 named users)	1	\$32,444
Accela Land Management User License Packs (includes 5 named users per pack)	10	\$64,888
Accela Mobile Office Server Software (includes 5 named users)	1	\$29,494
Accela Mobile Office User License Packs (includes 5 named users)	2	\$12,978
Accela GIS Server Software (includes 5 named users)	1	\$6,489
Accela GIS User License Packs (includes 5 named users)	4	\$7,764
TOTAL:		\$171,697

Contractor agrees to allow County to purchase the License Packs of five (5) named users identified below for a period of five (5) years for the effective date of this Agreement at the following prices:

(i) Accela Land Management Server Software (includes 5 named users)	\$27,495
(ii) Accela Land Management User License Packs (includes 5 named users)	\$ 5,499
(iii) Accela Mobile Office Server Software (includes 5 named users)	\$24,995
(iv) Accela Mobile Office User License Packs (includes 5 named users)	\$ 5,499
(v) Accela GIS Server Software (includes 5 named users)	\$ 5,499
(vi) Accela GIS User License Packs (includes 5 named users)	\$ 1,645

2.0 Maintenance and Support Fees

The Maintenance and Support Fees for the Licensed Software are as follows:

Product	Year 1	Year 2	Year 3	Year 4	Year 5
Accela Citizen Access Module Annual Maintenance and Support	waived	\$1,144	\$1,190	\$1,237	\$1,287
Accela Citizen Access Server Annual Maintenance and Support	waived	\$1,144	\$1,190	\$1,237	\$1,287
Accela Citizen Access Population Annual Maintenance and Support	waived	\$821	\$854	\$889	\$924
Accela Land Management Server Packs Annual Maintenance and Support	waived	\$5,719	\$5,948	\$6,186	\$6,433
Accela Land Management User License Packs Annual Maintenance and Support	waived	\$11,438	\$11,895	\$12,371	\$12,866
Accela Mobile Office Annual Maintenance and Support	waived	\$5,199	\$5,407	\$5,623	\$5,848

Product	Year 1	Year 2	Year 3	Year 4	Year 5
Accela Mobile Office Annual Maintenance and Support	waived	\$2,288	\$2,380	\$2,475	\$2,573
Accela GIS Server Software Annual Maintenance and Support	waived	\$1,144	\$1,190	\$1,237	\$1,287
Accela GIS User License Packs Annual Maintenance and Support	waived	\$1,369	\$1,423	\$1,480	\$1,540
Total Maintenance and Support Fees	\$0	\$30,266	\$31,477	\$32,735	\$34,045

3.0 Payments

3.1 License Fees are fixed-price deliverables for which payment is due upon execution of this Agreement and payable as follows:

50% within 30 days of execution of this Agreement.

25% within 180 days of execution of this Agreement.

25% within 360 days of County's execution of this Agreement.

The above payment terms are applicable to the initial purchase only. Any subsequent purchases of product(s) or maintenance will be due upon execution of the applicable, executed agreement to purchase and payable within thirty (30) days of execution.

3.2 The Maintenance and Support Fees for Year One are waived. Maintenance and Support Fees for subsequent years are due on the anniversary date of execution of this Agreement. Contractor will submit to County an invoice for annual maintenance fees no later than thirty (30) days prior to the anniversary date.

3.3 The contractual amounts described in this Schedule to be paid to Contractor constitute the entire compensation due Contractor and all of Contractor's obligations regardless of the difficulty, materials or equipment required. The contractual amount includes fees, licenses, overhead, profit and all other direct and indirect costs incurred or to be incurred by Contractor.

3.4 Any cost adjustments to the contract must be agreed upon by the parties by amending this contract. No claim for additional services, not specifically provided herein, will be allowed by County except to the extent provided by a valid amendment to this contract through the Change Request process.

3.5 Payment will be made by County upon receipt by County of invoices from Contractor. County will be allowed thirty days to process each payment.

3.6 The payment of an invoice by County will not prejudice County's right to object to or question that or any other invoice or matter in relation thereto. Contractor's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by County, on the basis of audits conducted in accordance with the terms of this contract, not to constitute allowable costs. Any payment will be reduced for overpayments, or increased for underpayments on subsequent invoices.

3.7 County reserves the right to deduct from amounts that are or will become due and payable to Contractor under this, or any contract between the parties, any amounts that are or will become due and payable to County by Contractor.

4.0 Payment Terms

All payments are due Net 30 Days following County's receipt of an accurate invoice/