



ORIGINAL

Contract Number

20-324

SAP Number

4400012695

Real Estate Services Department

Department Contract Representative	Jana Kay Norris
Telephone Number	(909) 387-5109
Contractor	Robert Stephen Consulting, LLC
Contractor Representative	Robert Stephen
Telephone Number	
Contract Term	06/02/2020 – 05/31/2025
Original Contract Amount	\$ 767,529
Amendment Amount	
Total Contract Amount	\$ 767,529
Cost Center	7830001000

IT IS HEREBY AGREED AS FOLLOWS:

The complete Contract includes all of the Contract Documents to wit:

- A. Cost per Department Unit (Attachment A)
- B. MicroView End User License Agreement (Attachment B)
- C. cadNOW/SpaceView Software License Agreement (Attachment C)

WHEREAS, the County of San Bernardino (County) desires to contract with a business partner for ongoing technical support of Archibus System Software; and

WHEREAS, Robert Stephen Consulting, LLC ("RSC" or "Consultant") is an approved and qualified Consultant of the Archibus System Software to provide these services. RSC was selected as a result of a competitive process in 2006, and has provided Archibus System Software support services to the County since that time, through issuance of purchase orders as authorized by the Board of Supervisors. RSC has been intimately involved in maintenance, customizations, upgrades, roll out of new Archibus System Software modules, etc., and is extremely familiar with County processes and procedures. Continuing this relationship and formalizing it in contract is in the best interest of the County, as loss of the same would significantly disrupt the productivity and operations of the Real Estate Services Department. Additionally, RSC licenses software, (1) MicroView and (2) cadNOW/SpaceView, which is used in coordination with the Archibus software.

WHEREAS, the County finds Consultant qualified to provide consulting services and technical support relating to the Archibus System Software; and

WHEREAS, the County desires that such services be provided by Consultant and Consultant agrees to perform these services as set forth below;

NOW, THEREFORE, the County and Consultant mutually agree to the following terms and conditions:

A. RESERVED

B. CONSULTANT RESPONSIBILITIES

Consultant shall:

- B.1** As the Archibus System business partner, RSC will provide on-call technical support, as more fully set forth in this Section B, and report developments in the Archibus System Software ("Work") at the request and direction of the County, subject to approval of the Archibus End User License Agreement and related Amendment No. 1, by the Board of Supervisors (Board). All Work to be performed by Consultant is subject to written preapproval by the County.
- B.2** The Consultant will provide technical support, which includes but is not limited to SQL database changes, annual Archibus System upgrades and Archibus System bug fixes, County specific custom software modifications and support, County specific custom Facilities Management work order system, Custom County mandated energy management reporting, real property and leasing portfolio tracking, and County building condition assessment software modifications and support with the County maintaining proprietary rights to all customizations.
- B.3** Maintain the Archibus System database security, data integrity and software support.
- B.4** Troubleshoot issues that arise with the Archibus Software as relates to daily use. Provide 24/7 emergency support for the Archibus Software.
- B.5** Be the Technical Advisor for using Archibus in an efficient, effective and timely manner. Be the Technical Advisor or Consultant with implementation of new modules and features within Archibus based on continuous changing requirements by the County.
- B.6** License additional software, MicroView and cadNOW/SpaceView, which is proprietary to RSC, to be used in coordination with the Archibus Software, and agree that use of the same shall be governed by the modified terms and conditions as set forth in the MicroView End User License Agreement (Attachment B) and the cadNOW/SpaceView Software License Agreement (Attachment C). The County's use shall be subject to Board approval of the terms and conditions for each software application.
- B.7** Process payment of the annual license fees for Archibus and MicroView, necessary for maintenance and use privileges, per Archibus and MicroView End User License Agreements. The cadNOW/SpaceView software shall be licensed free of charge, but will be subject to a License Agreement requiring Board approval.

C. GENERAL CONTRACT REQUIREMENTS

C.1 Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

C.2 Contract Amendments

Consultant agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Consultant and County.

C.3 Contract Exclusivity

This is not an exclusive Contract. The County reserves the right to enter into a contract with other consultants for the same or similar services. The County does not guarantee or represent that the Consultant will be permitted to perform any minimum amount of work, or receive a minimum amount of compensation, under the terms of this Contract.

C.4 Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

C.5 Background Checks for Consultant Personnel

Consultant shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide services to the County; and (c) are not otherwise disqualified from performing the services under applicable law. If requested by the County and not in violation of applicable law, Consultant shall conduct a background check, at Consultant's sole expense, on all its personnel providing services. If requested by the County, Consultant shall provide the results of the background check of each individual to the County. Such background check shall be in the form generally used by Consultant in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. Consultant personnel who do not meet the County's hiring criteria, in County's sole discretion, shall not be assigned to work on County property or services, and County shall have the right, at its sole option, to refuse access to any of Consultant's personnel to any County facility.

C.6 Change of Address

Consultant shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

C.7 Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

C. 8 Compliance with County Policy

In performing the services and while at any County facilities, Consultant personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the services, and all amendments and modifications to each of the items addressed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Consultant or Consultant personnel or may be made available to Consultant or Consultant personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Consultant shall be responsible for the promulgation and distribution of County Policies to Consultant personnel to the extent necessary and appropriate.

County shall have the right to require Consultant's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

C.9 Confidentiality

Consultant shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving services pursuant to this Contract, except for statistical information not identifying any participant. Consultant shall not use or disclose any identifying information for any other purpose other than carrying out the Consultant's obligations under this Contract, except as may be otherwise required by law. This provision will remain in force even after the termination of the Contract.

C.10 Primary Point of Contact

Consultant will designate an individual to serve as the primary point of contact for the Contract. Consultant or designee must respond to County inquiries within two (2) business days. Consultant shall not change the primary contact without written acknowledgement to the County. Consultant will also designate a back-up point of contact in the event the primary contact is not available.

C.11 County Internship Initiative

Contractor agrees to be contacted by the County to solicit its participation in an internship initiative known as GenerationGo! Career Pathways, involving the potential placement and hiring of interns by Contractor's business. Contractor is encouraged, and agrees to make good faith efforts, to utilize the County's program to aid the ***County's Vision for a skilled workforce and jobs that create countywide prosperity***, and its ***goal to Create, Maintain and Grow Jobs and Economic Value in the County***. The County's objective with its internship initiative is to focus on training, education, employment and support services to develop a more highly-educated and trained workforce. When participating in the County's internship initiative, the Contractor remains an independent contractor and shall not be construed as agents, officers, or employees of the County. More information about the County's GenerationGo! Career Pathways Program can be located at <http://wp.sbcounty.gov/workforce/career-pathways/>.

C.12 County Representative

The Director of the Real Estate Services Department or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the services/Scope of Work by Consultant. If this Contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

C.13 Damage to County Property

Consultant shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Consultant or its employees or agents. Such repairs shall be made immediately after Consultant becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Consultant fails to make timely repairs, the County may make any necessary repairs. The Consultant, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Consultant from the County, as determined at the County's sole discretion.

C. 14 Debarment and Suspension

Consultant certifies that neither it nor its principals or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Consultant further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

C.15 Drug and Alcohol Free Workplace

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Consultant agrees that the Consultant and the Consultant's employees, while performing service for the County, on County property, or while using County equipment:

- C.15.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- C.15.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- C.15.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Consultant or Consultant's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

Consultant shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate for default or breach of this Contract and any other Contract the Consultant has with the County, if the Consultant or Consultant's employees are determined by the County not to be in compliance with above.

C.16 Duration of Terms

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

C.17 Employment Discrimination

During the term of the Contract, Consultant shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Consultant shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

C.18 Environmental Requirements

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Consultant to use recycled paper for any printed or photocopied material created as a result of this Contract. Consultant is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Consultant must be able to annually report the County's environmentally preferable purchases. Consultant must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

C.19 Improper Influence

Consultant shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Consultant or officer or employee of the Consultant.

C.20 Improper Consideration

Consultant shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Consultant shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Consultant. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

C.21 Informal Dispute Resolution

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

C.22 Legality and Severability

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

C.23 Licenses, Permits and/or Certifications

Consultant shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County, and municipal laws, ordinances, rules and regulations. The Consultant shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Consultant will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

C.24 Material Misstatement/Misrepresentation

If during the course of the administration of this Contract, the County determines that Consultant has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

C.25 Mutual Covenants

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

C.26 Nondisclosure

Consultant shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Consultant or an agent of Consultant or otherwise made available to Consultant or Consultant's agent in connection with this Contract; or, (2) acquired, obtained, or learned by Consultant or an agent of Consultant in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

C.27 Notice of Delays

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

C.28 Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Consultant pursuant to the Contract shall be considered property of the County upon payment for services (and products, if applicable). All such items shall be delivered to County at the completion of work under the Contract, subject to the requirements of Article D—Term of the Contract. Unless otherwise directed by County, Consultant may retain copies of such items. Archibus, MicroView and cadNOW/SpaceView software applications are not owned by the County, and are subject to separate End User License Agreements, which shall be separately approved by the County and may be incorporated into this agreement as attachments.

C.29 Participation Clause

The County desires that Municipalities, School Districts, and other Tax Districts within the County of San Bernardino requiring the same services provided herein may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Consultant agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this bid, with the provisions that:

C.29.1 Such governmental body does not have and will not have in force any other contract for like purchases.

C.29.2 Such governmental body does not have under consideration for award any other bids or quotations for like purchases.

Such governmental body shall make purchases directly through and to the Consultant. The County will not be liable for any such purchase made between the Consultant and another governmental body who avails themselves of this contract.

C.30 Air, Water Pollution Control, Safety and Health

Consultant shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

C.31 Records

Consultant shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Consultant's personnel, consultants, subcontractors, services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

C.32 Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto. In the performance of this Contract, Consultant, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino. Any provision of this Contract that may appear to give the County any right to direct the Consultant concerning the details of performing the services/Scope of Work, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the County concerning the end results of the performance.

C.33 Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or Consultant's relationship with County may be made or used without prior written approval of the County.

C.34 Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

C.35 Subcontracting

Consultant shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the services to County. At County's request, Consultant shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Consultant shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Article G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Consultant Personnel.

For any subcontractor, Consultant shall:

- 35.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 35.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 35.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Articles B. Consultant Responsibilities and C. General Contract Requirements.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the subcontractors. Consultant agrees that its arrangements with subcontractors will not prohibit or restrict such subcontractors from entering into direct contracts with County.

C. 36 Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided under this Contract is served upon Consultant or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Consultant and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Consultant for County.

C.37 Termination for Convenience

The County and the Consultant each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Consultant for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Consultant shall promptly discontinue services unless the notice directs otherwise. Consultant shall deliver promptly to County and transfer title (if necessary) to all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

C.38 Time of the Essence

Time is of the essence in performance of this Contract and of each of its provisions.

C.39 Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

C.40 Conflict of Interest

Consultant shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Consultant shall make a reasonable effort to prevent officers, employees, subcontractors, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Consultant's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

C.41 Former County Administrative Officials

Consultant agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Consultant. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Consultant. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

C.42 Disclosure of Criminal and Civil Procedures

County reserves the right to request the information described herein from Consultant. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Consultant also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Consultant is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Consultant will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Consultant is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Consultant will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

C.43 Copyright

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the County of San Bernardino as the funding agency and Consultant as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Consultant in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

C.44 Artwork, Proofs and Negatives

All artwork, proofs, and/or negatives in either print or digital format for anything produced under the terms of this Contract are the property of the County. These items must be returned to the County within ten (10) days, upon written notification to the Consultant. In the event of a failure to return the documents, the County is entitled to pursue any available legal remedies. In addition, Consultant will be barred from all future solicitations, for a period of at least six (6) months.

C.45 Iran Contracting Act

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Consultant certifies that at the time the Contract is signed, the Consultant signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Consultants are cautioned that making a false certification may subject the Consultant to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

C.46 Reserved.

C. 47 Errors, Omissions and/or Conflicts

Consultant shall be responsible for the integrity of all design and research studies prepared or approved by the Consultant and should County suffer damages due to errors, omissions, and/or conflicts within such documents, the Consultant shall be responsible to County for costs of all such damages.

C. 48 Reserved

C. 49 Reserved

D. TERM OF CONTRACT

This Contract is effective as of June 2, 2020 and expires May 31, 2025 but may be terminated earlier in accordance with provisions of this Contract. If at any time, County discontinues use of the Archibus, cadNOW/SpaceView and/or Microview software, County shall have the right to immediately terminate this agreement.

E. COUNTY RESPONSIBILITIES

- E.1** The County will provide a Virtual Private Network for Consultant to access the County server to support upgrades and troubleshooting.
- E.2** The County reserves the right to approve or reject any servicing methods, material, supplies, and/or equipment to be used by Consultant, as well as approval or disapproval of all personnel.
- E.3** The County will maintain all proprietary rights to customizations of software and County specific information related to services entered in the Archibus System software.

F. FISCAL PROVISIONS

- F.1** The maximum amount of payment under this Contract shall not exceed \$ 767,527 as more particularly set forth in section F.3 of this Contract, and shall be subject to availability of other funds to the County. Consulting services are subject to written preapproval by the County. The consideration to be paid to Contractor, as provided herein, shall be in full payment for all

Contractor's services and expenses incurred in the performance hereof, including travel and per diem.

Consultant bears the risk that it may not be able to generate its anticipated (or any) profit in completing its performance of all required items of work for the specified level of compensation. In no event shall Consultant be entitled to receive compensation for any item of work required of Consultant under the terms of the Contract, which item of work is not performed by Consultant (including Consultant's agents and approved subcontractors).

F.2 Reserved

F.3 Consultant shall provide County itemized monthly invoices, in arrears, and in a format acceptable to the County, for services performed under this Contract within twenty (20) days of the end of the previous month. The County shall make payment to Consultant within sixty (60) working days after receipt of invoice or the resolution of any billing dispute.

Invoicing will be based on time and material in accordance with the Standard Schedule of Compensation hourly rate based on position detailed on Attachment A. Services will be invoiced based on the scope of work requested by the County. Payment will be set as a not to exceed by fiscal year as indicated below. The cost of consulting services shall be calculated based on Consultant's hourly rate for time spent, and is subject to written preapproval by the County. The scheduled annual costs per division includes a 5% annual increase to license fees and 3% annual increase in consultant fees. A detailed breakdown of consulting and license fees is set forth in Attachment A.

Fiscal Year	FMD Consult	FMD License	LAD Consult	LAD License	UTL Consult	UTL License	Maximum Payment per Fiscal Year
2019/20	\$ 10,400	\$ 0	\$ 5,850	\$ 0	\$ 25,750	\$ 0	\$ 42,000
2020/21	\$ 36,050	\$ 25,232	\$ 25,750	\$ 20,707	\$ 70,600	\$ 1,339	\$ 179,678
2021/22	\$ 37,132	\$ 26,494	\$ 26,523	\$ 21,742	\$ 21,218	\$ 1,406	\$ 134,515
2022/23	\$ 38,245	\$ 27,818	\$ 27,318	\$ 22,830	\$ 21,855	\$ 1,476	\$ 139,542
2023/24	\$ 39,393	\$ 29,209	\$ 28,138	\$ 23,971	\$ 22,510	\$ 1,550	\$ 144,771
2024/25	\$ 30,431	\$ 30,670	\$ 21,736	\$ 25,170	\$ 17,389	\$ 1,627	\$ 127,023
							\$ 767,529

F.4 Consultant shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Consultant's designated checking or other bank account. Consultant shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

F.5 County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Consultant or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.

F.6 Reserved.

F.7 Reserved.

F.8 Consultant shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Consultant is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

G.1 Indemnification

G.1.1 Infringement Indemnification

Consultant will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify Consultant promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve Consultant of its obligations only if and to the extent that such delay or failure materially prejudices Consultant's ability to defend such lawsuit or claim. County will give Consultant sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that Consultant may not settle the claim or suit absent the written consent of County unless such settlement (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the goods or services that are the subject of the claim. In the event that Consultant fails to or elects not to defend County against any claim for which County is entitled to indemnity by Consultant, then Consultant shall reimburse County for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from County. After thirty (30) days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by County to Consultant. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit Consultant's account at any time; and County, at its sole discretion, may settle the claim or suit.

If, in Consultant's opinion, any goods or services become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Consultant may, at its option: (i) procure for County the right to continue using the goods or receiving the services; (ii) replace or modify the goods or services to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of Consultant, County shall cease use of the goods or services upon written notice from Consultant, and Consultant shall provide County with a pro-rata refund of the unearned fees paid by County to Consultant for such goods or services.

G.1.2 General Indemnification

The Consultant agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Consultant indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

G.2 Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the

scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

G.3 Waiver of Subrogation Rights

Consultant shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Consultant and Consultant's employees or agents from waiving the right of subrogation prior to a loss or claim. Consultant hereby waives all rights of subrogation against the County.

G.4 Policies Primary and Non-Contributory

All policies required, except Workers Compensation, herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

G.5 Severability of Interests

Consultant agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Consultant and County or between County and any other insured or additional insured under the policy.

G.6 Proof of Coverage

Consultant shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department except in the event of nonpayment of premium, then ten (10) days' notice will be given, and Consultant shall maintain such insurance from the time Consultant commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, Consultant shall furnish a copy of the Declaration page for all applicable policies and will provide complete copies of the policies and endorsements immediately upon request.

G.7 Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

G.8 Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.

G.9 Failure to Procure Coverage

In the event that any policy of insurance required under this Contract does not comply with the requirements, is not procured, or is canceled and not replaced, County has the right but not the obligation or duty to cancel this Contract or obtain insurance if it deems necessary and any premiums paid by County will be promptly reimbursed by Consultant or County payments to the Consultant will be reduced to pay for County purchased insurance.

G.10 Insurance Review

Insurance requirements are subject to periodic review by County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of County. In addition, if the Department of Risk Management determines that heretofore

unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Consultant agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of County.

- G.11** Consultant agrees to provide insurance set forth in accordance with the requirements herein. If Consultant uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Consultant agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, Consultant shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- G.11.1** Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Consultant and all risks to such persons under this contract.

If Consultant has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Consultants that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- G.11.2** Commercial/General Liability Insurance – Consultant shall carry General Liability Insurance covering all operations performed by or on behalf of Consultant providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

- G.11.3** Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than

one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If Consultant is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If Consultant owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

G.11.4 **Umbrella Liability Insurance** – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury. The coverage shall also apply to automobile liability.

G.11.5 **Professional Liability** – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.

G.11.6 **Reserved**

G.11.7 **Cyber Liability Insurance** - Cyber Liability Insurance with limits of no less than \$1,000,000 per claim for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties. Coverage and Limits are shared with the Professional Liability Policy.

H. SUCCESSORS AND ASSIGNS

H.1 This Contract shall be binding upon County and Consultant and their respective successors and assigns.

H.2 Neither the performance of this Contract, nor any part thereof, nor any monies due or to become due thereunder may be assigned by Consultant without the prior written consent and approval of County.

H.3 **Death or Incapacity:** If the Consultant transacts business as an individual, his/her death or incapacity shall automatically terminate this Contract as of the date of such event, and neither he/she nor his/her estate shall have any further right to perform hereunder, and County shall pay him/her or his/her estate the compensation payable under Article F, Fiscal Provisions, for any services rendered prior to such termination not heretofore paid, reduced by the amount of additional costs which will be incurred by County by reason of such termination. If there be more than one Consultant and any one of them die or become incapacitated and the others continue to render the services covered herein, County will make payment to those continuing as though there had been no such death or incapacity and County will not be obliged to take any account of the person who died or became incapacitated or to make any payments to such person or his estate. The provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Consultant herein, and

if death or incapacity befalls the last one of such group before this Contract is fully performed, then the rights shall be as if there had been only one Consultant.

I. RIGHT TO MONITOR AND AUDIT

- I.1** The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Consultant in the delivery of services provided under this Contract. Consultant shall give full cooperation, in any auditing or monitoring conducted. Consultant shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.
- I.2** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under the Contract or until all pending County, State and Federal audits are completed, whichever is later.

J. CORRECTION OF PERFORMANCE DEFICIENCIES

- J.1** Failure by Consultant to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
- J.2** In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
- a. Afford Consultant thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
 - b. Discontinue reimbursement to Consultant for and during the period in which Consultant is in breach, which reimbursement shall not be entitled to later recovery; and/or
 - c. Withhold funds pending duration of the breach; and/or
 - d. Offset against any monies billed by Consultant but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
 - e. Terminate this Contract immediately and be relieved of the payment of any consideration to Consultant. In the event of such termination, County may proceed with the work in any manner deemed proper by County. The cost to County shall be deducted from any sum due to Consultant under this Contract and the balance, if any, shall be paid by Consultant upon demand.
- J.3** Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

K. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

County of San Bernardino
Real Estate Services Department
385 N. Arrowhead Ave., 2nd Floor
San Bernardino, CA 92415-0182

Robert Stephen Consulting, LLC
3070 Pine Valley Rd.
San Ramon, CA 94583-3543

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

L. ENTIRE AGREEMENT

This Contract, including all Attachment, Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

M. CONTRACT EXECUTION

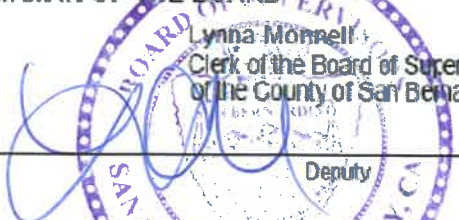
This Contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Contract. The parties shall be entitled to sign and transmit an electronic signature of this Contract (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request

IN WITNESS WHEREOF, the County of San Bernardino and Consultant have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

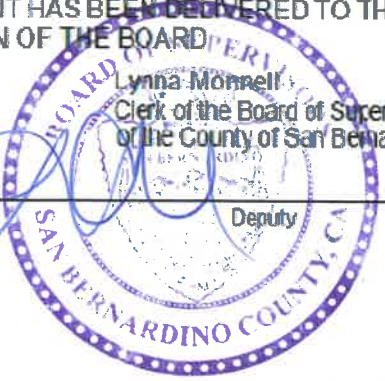
COUNTY OF SAN BERNARDINO


Curt Hagman, Chairman, Board of Supervisors

Dated: JUN 02 2020
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD


Lynna Monnell
Clerk of the Board of Supervisors
of the County of San Bernardino

By 
Deputy



ROBERT STEPHEN CONSULTING, LLC

By Laura A. Stephen
(Authorized signature - sign in blue ink)

Digitally signed by Laura A. Stephen
DN: cn=Laura A. Stephen, o=Robert
Stephen Consulting, LLC, ou,
email=lstephen@RSCCLC.com, c=US
Date: 20200614 23:06:04 -0700

Name Laura A. Stephen
(Print or type name of person signing contract)

Title CFO/Office Manager
(Print or Type)

Dated: 05/14/2020

Address 3070 Pine Valley Rd

San Ramon, CA 94583


FOR COUNTY USE ONLY

Approved as to Legal Form


Katherine Hardy, County Counsel

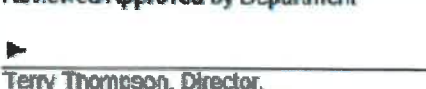
Date 5-20-20

Reviewed for Contract Compliance


Steven Castillo, Administrative Manager,
RESO - Administrative and Finance
Division

Date 5.20.20

Reviewed/Approved by Department


Terry Thompson, Director,
Real Estate Services Department

Date _____

ATTACHMENT A

FEE SCHEDULE



STANDARD SCHEDULE OF COMPENSATION

January 2020 through December 2020

COMPENSATION

HOURLY RATES

The following list of hourly rates, daily rates, and reimbursable expense items shall be used in providing service in the agreement. The prices of these fees and items shall be annually adjusted, upon issuance of an updated Standard Schedule of Compensation:

CEO/Managing Director	\$400/hour	CAD Drafter.....	\$95/hour
Account Manager.....	\$220/hour	Programmer.....	\$240/hour
IWMS Administrator	\$180/hour	Word Processor/Administrator	\$80/hour
Data Entry.....	\$90/hour		

DAILY RATES

Weekly Status meetings

1-5 RSC staff	\$300/meeting	6 or more RSC staff	\$500/meeting
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Training sessions below include manuals. Installation sessions do not include training or manuals.

Full day training (under 6 students) ...	\$1,500/day	Full day training (over 6 students)	\$2,400/day
Half day training (under 6 students)	\$750/day	Half day training (over 6 students)	\$1,200/day
Full day on-site installation	\$1,500/day	Half day on-site installation	\$750/day

SQUARE FOOTAGE RATES

Square footage rates are based upon the completed project and are used for on-site field verification.

Field Survey, CAD Draft, and poly-line BOMA standards (Core and Shell and cubical panels)	\$0.35/SF
Field Survey, CAD Draft, and poly-line BOMA standards (Core and Shell and detailed cubical and modular furniture inventory).....	\$0.48/SF
CAD draft from existing paper drawings and poly-line BOMA standards	\$0.10/SF
CAD draft poly-lines to BOMA standards on existing AutoCAD drawing	\$0.02/SF
CAD connect poly-lines to CAFM system (room standards, etc.).....	\$0.03/SF
CAD draft drawing cleanup prior to poly-lining	\$0.03/SF

CONSULTING BLOCK

These blocks include 15 hours. Hours are for that month only. They are not accumulated and must be used each month.

Fifteen (15) hours of Support @ \$160.00/hour for up to 15 hours per month.	\$2,400.00/month
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TERMS AND CONDITIONS

REIMBURSABLE EXPENSES

All costs for printing and plotting, special delivery, insurance certificate charges, local business licenses, sales taxes, and outside services, and all other costs directly related to the project will be billed as a reimbursable expense at our cost plus a fifteen percent administration charge.

PAYMENTS

Payments are due within thirty days after billing with amounts more than ninety days past due subject to a 1 1/2% per month interest charge. Retainer amounts, if indicated, are due upon signing the agreement and shall be applied to the final invoice for the project. RSC bills on a monthly basis.

2010 Crow Canyon Place, Suite 102
San Ramon, CA 94583
Phone 925-834-3110
Fax 925-831-8008
Email info@rsc2lc.com

Space Management
Furniture Management
Work Order Management
Lease Management
Telecom Management

COST BY DEPARTMENT DIVISION

Fiscal Year	3% annual increase FMD Consult	5% annual increase FMD License	3% annual increase LAD Consult	5% annual increase LAD License	3% annual increase UTL Consult	5% annual increase UTL License	Maximum Payment per Fiscal Year
2019/20	\$ 15,400	\$ -	\$ 5,850	\$ -	\$ 25,750	\$ -	\$ 42,000
2020/21	\$ 36,050	\$ 25,232	\$ 25,750	\$ 20,707	\$ 70,600	\$ 1,339	\$ 179,678
2021/22	\$ 37,132	\$ 26,494	\$ 26,523	\$ 21,742	\$ 21,218	\$ 1,406	\$ 134,515
2022/23	\$ 38,245	\$ 27,818	\$ 27,318	\$ 22,830	\$ 21,855	\$ 1,476	\$ 139,542
2023/24	\$ 39,393	\$ 29,209	\$ 28,138	\$ 23,971	\$ 22,510	\$ 1,550	\$ 144,771
2024/25	\$ 30,431	\$ 30,670	\$ 21,736	\$ 25,170	\$ 17,389	\$ 1,627	\$ 127,023
							\$ 767,529

Detailed breakdown based on licensure usage by division

FY20/21	TOTAL	50.38% FMD	46.60% LAD	3.01% UTL
ARCHIBUS	\$44,431.80	\$22,386.00	\$20,707.05	\$1,338.75
MICROVIEW	\$2,846.00	\$2,846.00		
SpaceView	\$0.00	\$0.00		
CADNow	\$0.00	\$0.00		
FY21/22	Annual increase 5% each fiscal year			
ARCHIBUS	\$46,653.39	\$23,505.30	\$21,742.40	\$1,405.69
MICROVIEW	\$2,988.30	\$2,988.30		
SpaceView	\$0.00	\$0.00		
CADNow	\$0.00	\$0.00		
FY22/23	Annual increase 5% each fiscal year			
ARCHIBUS	\$48,986.06	\$24,680.57	\$22,829.52	\$1,475.97
MICROVIEW	\$3,137.72	\$3,137.72		
SpaceView	\$0.00	\$0.00		
CADNow	\$0.00	\$0.00		
FY23/24	Annual increase 5% each fiscal year			
ARCHIBUS	\$51,435.36	\$25,914.59	\$23,971.00	\$1,549.77
MICROVIEW	\$3,294.61	\$3,294.61		
SpaceView	\$0.00	\$0.00		
CADNow	\$0.00	\$0.00		
FY24/25	Annual increase 5% each fiscal year			
ARCHIBUS	\$54,007.13	\$27,210.32	\$25,169.55	\$1,627.26
MICROVIEW	\$3,459.34	\$3,459.34		
SpaceView	\$0.00	\$0.00		
CADNow	\$0.00	\$0.00		

Total Contract Costs by Service Type

	License	Consult	Total
	\$0	\$ 42,000	\$ 42,000
\$	47,278	\$ 132,400	\$ 179,678
\$	49,642	\$ 84,873	\$ 134,515
\$	52,124	\$ 87,418	\$ 139,542
\$	54,730	\$ 90,041	\$ 144,771
\$	57,467	\$ 69,556	\$ 127,023
	\$261,241	\$506,288	\$ 767,529

Detailed License by Division

COUNTY OF SAN BERNARDINO - 2019-2020 ARCHIBUS-MICROVIEW SUBSCRIPTION COSTS IN EXCEL FORMAT

ARCHIBUS						LICENSE FEE SPLITS					
Part Number	Description	last year	SRP	QTY	EXTENSION	FMD	LAD	UTL	FMD	LAD	UTL
24-SS-ICP-A-E	(Subscription) ICP (Windows-based) - Concurrent User/Authoring	\$ 239.00	\$311.00	12	\$3,732.00	\$1,866.00	\$1,866.00		6	6	
24-SS-RPLM-E	(Subscription) Real Property and Lease Management	\$ 311.00	\$405.00	2	\$810.00		\$810.00			2	
24-SS-SM-E	(Subscription) Space Management	\$ 311.00	\$405.00	2	\$810.00	\$405.00	\$405.00		1	1	
24-SS-STMP-E	(Subscription) Strategic Master Planning	\$ 311.00	\$405.00	2	\$810.00	\$405.00	\$405.00		1	1	
24-SS-ODM-E	(Subscription) Overlay with Design Management for AutoCAD	\$ 311.00	\$405.00	2	\$810.00	\$405.00	\$405.00		1	1	
24-SS-TCM-E	(Subscription) Telecommunications & Cable Management	\$ 311.00	\$405.00	1	\$405.00		\$405.00			1	
24-SS-BOM-E	(Subscription) Building Operations Management	\$ 311.00	\$405.00	6	\$2,430.00	\$2,430.00			6		
24-SS-CA-E	(Subscription) Condition Assessment	\$ 239.00	\$311.00	3	\$933.00	\$933.00			3		
24-SS-CA-PDA-E	(Subscription) Condition Assessment - Win CE edition	\$ 23.00	\$30.00	3	\$90.00	\$90.00			3		
24-SS-WERC-CORE-E	(Subscription) Web Central Core Program	\$ 859.00	\$1,117.00	1	\$1,117.00	\$558.50	\$558.50		0.5	0.5	
24-SS-WERC-REPM-E	(Subscription) Bundled Package - Real Estate Portfolio Management	\$4,417.00	\$5,742.00	1	\$5,742.00		\$5,742.00			1	
24-WEBC-CB-E	(Subscription) Capital Budgeting	\$ 981.00	\$1,275.00	1	\$1,275.00	\$637.50	\$637.50		0.5	0.5	
24-WEBC-PM-E	(Subscription) Project Management	\$ 981.00	\$1,275.00	1	\$1,275.00		\$1,275.00			1	
24-WEBC-95MB-E	(Subscription) Bundled Package - Space Management	\$2,945.00	\$3,828.00	1	\$3,828.00	\$1,914.00	\$1,914.00		0.5	0.5	
24-SS-WERC-AP-E	(Subscription) Asset Portal	\$ 490.00	\$637.00	1	\$637.00	\$318.50	\$318.50		0.5	0.5	
24-SS-WERC-COMPMGMT250-E	(Subscription) Compliance Management for up to 250 users.	\$ 981.00	\$1,275.00	1	\$1,275.00	\$1,275.00			1		
24-WEBC-EM250-E	(Subscription) Energy Management for up to 250 Concurrent Users	\$ 981.00	\$1,275.00	1	\$1,275.00			\$1,275.00			1
24-SS-WERC-CA-E	(Subscription) Condition Assessment	\$ 981.00	\$1,275.00	1	\$1,275.00	\$1,275.00			1		
24-SS-WERC-3MNT-E	(Subscription) Bundled Package - On-Demand Work + Preventative Maintenance + Service Desk	\$2,945.00	\$3,828.00	1	\$3,828.00	\$3,828.00			1		
24-SS-WERC-SCEAC-E	(Subscription) Smart Client Extension for AutoCAD	\$ 318.00	\$413.00	2	\$826.00	\$413.00	\$413.00		1	1	
24-SS-WERC-APMF250-E	(Subscription) ARCHIBUS Performance Metrics Framework (for up to 250 Users)	\$1,575.00	\$2,047.00	1	\$2,047.00	\$1,023.50	\$1,023.50		0.5	0.5	
24-SS-ACP-50-E	(Subscription) ACPs - 50 Concurrent User Package	\$1,792.00	\$2,930.00	2	\$4,660.00	\$2,330.00	\$2,330.00		1	1	
24-SS-EAL-25-E	(Subscription) EALs - 25 simultaneous access points	\$ 933.00	\$1,213.00	2	\$2,426.00	\$1,213.00	\$1,213.00		1	1	
Subscription				50	\$42,316.00	\$21,320.00	\$19,721.00	\$1,275.00	29.5	19.5	1
TOTAL COSTS ARCHIBUS SOFTWARE					\$42,316.00						

ATTACHMENT B

MicroView End User License Agreement

END-USER LICENSE AGREEMENT (EULA) MicroView FM™



BY OPENING, ACCESSING OR USING THE RSC SOLUTION, YOU AGREE TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS SET FORTH BELOW. IF YOU DO NOT AGREE TO THESE TERMS, YOU MAY NOT OPEN, ACCESS OR USE THE SOLUTION.

1. Introduction

1.1 The term "RSC" refers to Robert Stephen Consulting, LLC. All users of the RSC Solution including all software supplied or accessible in connection with the Solution (collectively the "Solution") must adhere to these Authorized Use Terms (the "Terms"). An "Authorized User" is any user of the Solution who is permitted by password or other user identification to access and use the Solution, and who is bound by these terms. The "Client" is a licensee which has entered into a Services Agreement with RSC for access to and use of the Solution, and through which an Authorized User may access and use the Solution. Any violation of these Terms by an Authorized User or any third party acting on behalf of a Client will be considered a violation by the Client. Only Authorized Users are permitted to access and use the Solution. If you have any questions about these Terms, you should contact RSC at 925-833-8965.

1.2 By accessing and using the Solution, the Authorized User agrees to be bound by the terms and conditions specified herein. The Authorized User is granted the limited, non-exclusive non-transferable right to use the Solution on a single computer at a single location pursuant to the terms, conditions and restrictions herein.

1.3 The Authorized User acknowledges and agrees :

- (1) that RSC exclusively owns and retains any and all right, title and interest to the MicroView FM™ Software;
- (2) that any related software of third party vendors or licensors provided in association with the Solution is subject to any proprietary rights of those respective vendors or licensors; and
- (3) to refrain from any act or omission that derogates from or infringes upon exclusive proprietary rights of (i) RSC in the MicroView FM™ Software; and (ii) any third party vendors or licensors in their software. In the event that the Authorized User becomes aware that a third party or third parties are improperly using or infringing upon any proprietary rights in the MicroView FM™ Software, or any third party software, the Authorized User will promptly notify RSC of all facts known to it relating to such use.

1.4 RSC reserves the right to protect in any and all jurisdictions, by copyright, patent, trade-mark, trade name and all other forms of legal and equitable protection, its right, title and interest to the Solution or any part thereof.

2. Copy And Use Restriction

2.1 The Authorized User may display, access and use the Solution upon the specific terms, conditions and restrictions herein contained. The Authorized User may print out certain portions of the data on the Solution for the limited purposes of facilities management in association with the business of the Client. The Authorized User is not permitted to make any permanent backup copies of the Solution or parts thereof, other than those elements to which the Authorized User may have independent rights. The Authorized User will not interfere with or obstruct any copyright and trademark notices on any and all display copies, whether in whole or in part, in any form. The Authorized User may not modify, adapt, translate, reverse engineer, decompile, disassemble or create derivative work based on the Solution. The Solution may not be rented or leased to others.

Robert Stephen Consulting, LLC
Management

Space

Space Management Space Management

2010 Crow Canyon Place Ste. 100
San Ramon CA 94583
Phone 925.224.3123
Management
Email info@rsc2lc.com

Furniture Management
Work Order Management
Lease
Lease Management
Telecom Management

2.2 The Authorized User will comply with RSC's security and operating procedures. The Authorized User may not compromise the security of the Solution or any part thereof. Examples of violations of the security of the Solution include, without limitation, the following: (1) accessing data not intended for such Authorized User;

- (2) logging into a server or account which the Authorized User is not authorized to access;
- (3) attempting to probe, scan or test the vulnerability of the Solution;
- (4) attempting to interfere with service to any user, host or network including, without limitation, via means of overloading, "flooding," "mailbombing," or "crashing";
- (5) taking any action in order to obtain services to which the Authorized User is not entitled;
- (6) assisting anyone to do any of the above.

3. Privacy and Data

3.1 The Authorized User is solely responsible for the content, structure, and security options for its Data, and for ensuring that the Authorized User has obtained any and all necessary third party consents for the use, publication and display of the Data; and has the right to use, publish and display its Data.

3.2 The Solution may only be used for lawful purposes. For example, Authorized Users may not use the Solution to create, transmit, distribute, or store material that:

- (1) violates a trademark, copyright, trade secret or other intellectual property rights of others;
- (2) violates the privacy, publicity or other personal rights of others;
- (3) contains obscene, offensive or inappropriate content;
- (4) may be threatening, abusive or hateful;
- (5) encourages conduct that would constitute a criminal offense or give rise to civil liability;
- (6) violates reasonable regulations of other service providers with respect to the network. If the Authorized User becomes aware of any such activities, the Authorized User is obligated to immediately notify RSC and take all other appropriate actions to cause such activities to cease.

3.3 Without limiting the generality of the foregoing the Authorized User represents and warrants that its use, publication or display of Data on the Solution is and will be in accordance with privacy laws, policies and regulations in effect in the United States of America and in the home jurisdiction of the Client, or wherever the Client is accessing or using the Solution.

3.4 Posting unsolicited e-mail messages, bulk commercial advertising or informal announcements to one or more groups (known as "Spam") is prohibited.

4. Transfer Restriction

4.1 The Solution is licensed under these Terms only to the Authorized User, and may not be transferred, and may not be assigned by the Authorized User to anyone else.

5 Termination

5.1 RSC reserves the right to terminate or suspend access to the Solution if RSC receives notice of any violation of these Terms.

5.2 These Terms are in force until terminated. These Terms will be terminated automatically if the Authorized User fails to abide by any provisions or if any petition, assignment or proposal is made against or by the Authorized User under the Bankruptcy Act or any legislation of similar purport or if the Authorized User is adjudged bankrupt, or makes an assignment for the benefit of his/its creditors. The Authorized User may terminate this Agreement at any time with thirty (30) days' notice. On termination, the Authorized User will erase, delete or destroy

from the temporary internet files of its computer all copies of the Solution or parts thereof.

Notwithstanding the termination of these Terms, section 2.0 of this Schedule will remain in full force and effect.

5.3 This Agreement is not assignable, delegable, sublicenseable or otherwise transferable by any party in whole or in part without the prior written consent of the other party (or parties). Any transfer, assignment, delegation or sublicense by a party without such prior written consent is invalid.

6. Limitation, Warranty & Indemnity

6.1 THE AUTHORIZED USER ACKNOWLEDGES THAT THE SOLUTION IS NOT INTERRUPTION-FREE OR ERROR-FREE AND THAT RSC DOES NOT WARRANT THE USE OF THE SOLUTION OR ANY PART THEREOF BY THE AUTHORIZED USER. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND RSC DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY OTHER WARRANTY IMPLIED AT LAW OR IN EQUITY. RSC MAKES NO REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF USE OF THE SOLUTION OR ANY PART THEREOF IN TERMS OF CORRECTIONS, ACCURACY, RELIABILITY OR OTHERWISE. THE SOLUTION IS PROVIDED TO THE AUTHORIZED USER "AS IS" AND "AS AVAILABLE".

6.2 In no event will RSC be liable for special, indirect or consequential damages, including those damages arising from lost profits of the Authorized User in the use or misuse of the Solution even if RSC has been advised of the possibility of such damages.

6.3 RSC will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify RSC promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve RSC of its obligations only if and to the extent that such delay or failure materially prejudices RSC's ability to defend such lawsuit or claim. County will give RSC sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that RSC may not settle the claim or suit absent the written consent of County unless such settlement (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the goods or services that are the subject of the claim. In the event that RSC fails to or elects not to defend County against any claim for which County is entitled to indemnity by RSC, then RSC shall reimburse County for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from County. After thirty (30) days, County will be entitled to deduct any unpaid invoice or debit memo amount for any unpaid attorneys' fees or expenses due by RSC in accord with this paragraph, from any amounts owed by County to RSC. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit RSC's account at any time; and County, at its sole discretion, may settle the claim or suit.

If, in RSC's opinion, any goods or services become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, RSC may, at its option: (i) procure for County the right to continue using the goods or receiving the services; (ii) replace or modify the goods or services to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of RSC, County shall cease use of the goods or services upon written notice from RSC, and RSC shall provide County with a pro-rata refund of the unearned fees paid by County to RSC for such goods or services.

6.4 RSC's gross negligence, willful misconduct and indemnification obligations shall be excluded from any applicable limitation of liability.

7. Miscellaneous

7.1 These Terms will be governed by and construed in accordance with the laws of the California, without regard to its conflicts of laws rules. Venue of any action or claim brought by any party to this Contract will be the Superior Court of California County of San Bernardino, regardless of the inconvenience of the forum.

7.2 These Terms contain the entire agreement and understanding between RSC and the Authorized User with respect to the subject matter hereof and supersedes any prior agreement or understanding whether oral or written, relating to the subject matter hereof. No alterations, variations, modifications, or waivers of the provisions of the Terms, shall be valid unless reduced to writing and executed by the person(s) authorized to do so on behalf of each Party.

ATTACHMENT C

cadNOW/SpaceView Software End User License Agreement

SOFTWARE LICENSE AGREEMENT cadNOW and/ or SpaceView



This SOFTWARE LICENSE AGREEMENT (this "Agreement") governs your rights to use software generally known as CADNow and/or SpaceView (the Software"). By installing the Software and/or continuing to use the Software, you agree that you have read, understand, and agree to the terms of this Agreement.

Robert Stephen Consulting LLC (the "Licensor") is the sole owner of all rights, title, and interest in and to the Software as well as any and all related documentation, user manuals, and related material (collectively, the "Licensed Documentation").

You (the "Licensee") wish to obtain a nonexclusive license to the Licensed Software and the Licensed Documentation so that Licensee will have the right to use and distribute the Licensed Software and Licensed Documentation within the Licensee's organization in accordance with the terms of this Agreement.

Accordingly, the parties agree as follows:

1. GRANT OF LICENSE.

Licensor grants to Licensee for the term of this Agreement a worldwide, nonexclusive license to the executable and object code version of the Software and the Licensed Documentation, for the purposes and on the terms set forth in this Agreement.

This Agreement does not include other software used in conjunction with the Software. Other software used in conjunction with the Software may include a separate license agreement provided to Licensee which may be located on a computer where the software is installed. It is the Licensee's responsibility to abide by the terms of any license agreement provided by non-parties to this Agreement.

2010 Crow Canyon Place Ste. 100 Space Management San Ramon CA 94583 Furniture Management Phone 925.824.3123 Work Order Management
 Fax 253.981.8008 Lease Management
 Email info@rsc2k.com Telecom Management

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(b) Marketing and Demonstration. Licensee may display the Software in order to demonstrate, market, and promote the Software.

(c) Sublicensing And Distribution of Software. Licensee may reproduce, and distribute the Software under this Agreement provided that:

1. The Licensee shall not install or authorize installation of the software on any computing device not owned by, or under the direct control of, the Licensor.
2. The Licensee shall not authorize (or license to) any other party, including customers of the Licensee, to reproduce, resell, or distribute the Software.
3. The Licensee shall not reverse engineer, decompile or otherwise attempt to reproduce the Software using similar means.

(d) The Licensee may not modify the Software without the express written agreement of the Licensor.

(e) Ownership; Restrictions. Subject to the rights granted to Licensee under this Agreement, all right, title, and interest in and to the Software and Licensed Documentation are and shall remain at all times the sole and exclusive property of Licensor.

2. WARRANTIES.

(a) Mutual Warranties. Each party represents, warrants, and covenants to the other that it:

1. Is qualified or licensed to do business and in good standing in every jurisdiction where qualification or licensing is required; and

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2. Has the power and authority to negotiate, execute, deliver and perform its obligations under this Agreement.

3. It complies with all applicable Laws.

(b) Warranties by Licensee. Licensee represents, warrants, and covenants to Licensor that:

1. It is a political subdivision organized and existing under the constitution and the laws of the State of California;

(c) Warranties by Licensor. Licensor represents, warrants and covenants to Licensee that:


1. It is a company duly organized and validly existing and in good standing under the Laws of its jurisdiction of organization;

2. Warranty Length. For a period of thirty (30) days after receipt, the Software conforms to the requirements of this Agreement, is free from any defect in material and workmanship, and are free of all liens, claims and encumbrances of any kind.

(d) Disclaimer. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, LICENSEE AND LICENSOR EACH MAKE NO REPRESENTATIONS AND EXTEND NO WARRANTIES OR COVENANTS OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3. INDEMNIFICATION.

(a) Licensor will indemnify, defend, and hold harmless Licensee and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by the Software. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against Licensee, or Licensee receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, Licensee will use reasonable efforts to notify Licensor promptly of such lawsuit, claim or election. However, Licensee's failure to provide or delay in providing such notice will relieve Licensor of its obligations only if and to the extent that such delay or failure materially prejudices Licensor's ability to defend such lawsuit or claim. Licensee will give Licensor sole control of the defense (with counsel reasonably acceptable to Licensee) and settlement of such



claim; provided that Licensor may not settle the claim or suit absent the written consent of Licensee unless such settlement (a) includes a release of all claims pending against Licensee, (b) contains no admission of liability or wrongdoing by Licensee, and (c) imposes no obligations upon Licensee other than an obligation to stop using the Software. In the event that Licensor fails to or elects not to defend Licensee against any claim for which Licensee is entitled to indemnity by Licensor, then Licensor shall reimburse Licensee for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from Licensee. After thirty (30) days, Licensee will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by Licensee to Licensor. This shall not apply to any judgment or settlement amount, which amounts Licensee shall be entitled to notify, invoice or debit Licensor's account at any time; and Licensee, at its sole discretion, may settle the claim or suit.

(b) Licensor shall have no liability under this Section if: (i) the allegation of infringement is a result of a modification of the Software not performed or approved by Licensor, (ii) the Software is not being used in accordance with the Documentation, or (iii) the alleged infringement is a result of use of the Software in combination with any non-Licensor supplied third party product, or (iv) the alleged infringement arises from Licensor's compliance with directions provided by Licensee, relates solely to express written instructions that Licensee provided to Licensor, and is not attributable to Licensor's exercise of any discretion in determining how to comply with Licensee's directions.

4. COPYRIGHT

All title and copyrights in and to the Software (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets," incorporated into the Software), the accompanying printed materials, and any copies of the Software, are owned by the Licensor or its suppliers. The Software is protected by copyright laws and international treaty provisions among other forms of intellectual property protection. Therefore, you must treat the Software like any other copyrighted material.

5. TERM AND TERMINATION.

(a) Term. The term of this Agreement (together with any renewals, the "Term") begins on the Effective Date and expires 1 year later. Renewal is automatic at 1 month intervals unless either party notifies the other of an intent to cancel in writing. Licensee may terminate this Agreement with thirty (30) days notice, provided Licensee ceases its use of the software.

(b) **Survival.** This Agreement survives any termination except for the Grant of License which ends on termination.

(c) **Termination for Insolvency.** If either party is adjudged insolvent or bankrupt, or upon the institution of any proceedings by it seeking relief, reorganization or arrangement under any Laws relating to insolvency, or if an involuntary petition in bankruptcy is filed against a party and the petition is not discharged within sixty (60) days after filing, or upon any assignment for the benefit of a party's creditors, or upon the appointment of a receiver, liquidator or trustee of any of a party's assets, or upon the liquidation, dissolution or winding up of its business (each, an "Event of Bankruptcy"), then the party affected by any Event of Bankruptcy must immediately give notice of the Event of Bankruptcy to the other party, and the other party may terminate this Agreement by notice to the affected party.

(d) **Termination for Breach.** If either party breaches any provision contained in this Agreement, and the breach is not cured within thirty (30) days after the breaching party receives notice of the breach from the non-breaching party, the non-breaching party may then deliver a second notice to the breaching party immediately terminating this Agreement.

6. GENERAL TERMS.

(a) **Entire Agreement and Amendments.** This Agreement is the entire agreement between the parties and supersedes all earlier and simultaneous agreements regarding the subject matter, including, without limitation, any invoices, business forms, purchase orders, proposals or quotations. This Agreement may be amended only in a written document, signed by both parties.

(b) **Governing Law and Forum.** All claims regarding this Agreement are governed by and construed in accordance with the Laws of California. Venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, County of San Bernardino, regardless of the inconvenience of the forum. The parties acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

(c) **Assignment.** This Agreement binds and inures to the benefit of the parties' successors and assigns. This Agreement is not assignable, delegable, sublicenseable or otherwise transferable by any party in whole or in part without the prior written consent of the other party (or parties). Any transfer, assignment, delegation or sublicense by a

party without such prior written consent is invalid. However, any party may assign this Agreement to a third party purchasing: (a) majority control of the party's equity shares; or (b) all or substantially all of either (i) a party's assets or (ii) the assets of the party's relevant business unit under this Agreement, but must provide immediate notice of the assignment to the other party.

(d) **No Waivers, Cumulative Remedies.** A party's failure to insist upon strict performance of any provision of this Agreement is not a waiver of any of its rights under this Agreement. Except if expressly stated otherwise, all remedies under this Agreement, at Law or in equity, are cumulative and nonexclusive.

(e) **Severability.** If any portion of this Agreement is held to be unenforceable, the unenforceable portion must be construed as nearly as possible to reflect the original intent of the parties, the remaining portions remain in full force and effect, and the unenforceable portion remains enforceable in all other contexts and jurisdictions.

(f) **Notices.** All notices, including notices of address changes, under this Agreement must be sent by registered or certified mail or by overnight commercial delivery to the address set forth in this Agreement by each party.

(g) **Captions and Plural Terms.** All captions are for purposes of convenience only and are not to be used in interpretation or enforcement of this Agreement. Terms defined in the singular have the same meaning in the plural and vice versa.

8. Customer Remedies. Licensor and its suppliers' entire liability and your exclusive remedy for Licensor's breach of warranty shall be, at Licensor's option, either (a) return of the price paid, or (b) repair or replacement of the Software, excluding liability for Licensor's gross negligence, willful misconduct and indemnification obligations. Any replacement Software will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer.