




COUNTY OF HUMBOLDT

AGENDA ITEM NO.  
C8

For the meeting of: March <sup>13</sup> 6, 2018

Date: February 9, 2018

To: Board of Supervisors

From: Amy S. Nilsen, County Administrative Officer 

Subject: Professional Services Agreement with MetaBIM, Inc. from March 15, 2018 to June 30, 2021 for Enterprise Asset Management Software

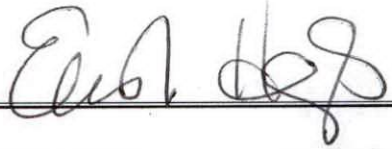
RECOMMENDATION(S):

That the Board of Supervisors:

- 1) Award the Enterprise Asset Management Software contract to MetaBIM, Inc., for an annual amount of \$35,000;
- 2) Approve and authorize the Chair to sign two copies of the contract between the County of Humboldt and MetaBIM, Inc. for the term of March 15, 2018 to June 30, 2021; and
- 3) Direct the Clerk of the Board to return all executed copies of the attached contracts to County Administrative Office (CAO) for further processing.

SOURCE OF FUNDING: CAO Information Technology (3550)

Prepared by: Ana Hartwell

CAO Approval 

REVIEW: Auditor  County Counsel  Human Resources  Other \_\_\_\_\_

TYPE OF ITEM:  
 Consent  
 Departmental  
 Public Hearing  
 Other \_\_\_\_\_

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT  
Upon motion of Supervisor Wilson Seconded by Supervisor Bass  
Ayes Bass, Sundberg, Bohn, Wilson  
Nays \_\_\_\_\_  
Abstain \_\_\_\_\_  
Absent Fennell

PREVIOUS ACTION/REFERRAL:

Board Order No. C-6

Meeting of: 05-10-16

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: 3/13/18

By:   
Kathy Hayes, Clerk of the Board

## DISCUSSION:

Real property assets owned by the county (including general office buildings, health and human services, correctional facilities, public works, fairgrounds, airports, parks, and Veterans Halls) and fixed assets are key components of the infrastructure necessary to carry out the programs, services and activities that the county provides to the public. The county is entrusted with managing fixed assets, real property assets and public projects to safeguard the public trust and maximize public benefits while minimizing expenses. This responsibility includes proper utilization and maintenance of public assets and managing space as necessary to meet increased needs for public services.

The County, therefore, recognizes the need for continuous improvement and long-range planning to properly manage real property and fixed assets and better manage public projects. Enterprise Asset Management (“EAM”) software is viewed as a tool to better manage facility investments and improvements by incorporating facilities master planning assessments and information into an enterprise solution for the purpose of standardization and improved stewardship of public assets. Additionally, EAM software will assist in developing and maintaining a 5 year capital improvement program, track initiated and completed work orders and optimize space needs from a single platform.

On December 4, 2017 the county, by and through its County Administrative Office – Management and Budget Team, released Request for Proposal (RFP) No. 17-002-MBT to solicit proposals regarding the provision of EAM software and related services from qualified proposers. Such services were to include designing, installing and implementing the EAM software pursuant to the terms and conditions of the final Professional Services Agreement, as well as testing user acceptance, system integration and connectivity to existing resources.

The proposals were due on January 11, 2018 at 3:00 p.m. The county received five responses to the RFP, which are listed below and ranked in order:

1. MetaBIM
2. RSC
3. AssetWorks
4. Accela Civic Platform Solution
5. ValuD

The RFP evaluation committee composed of representatives from CAO’s office, Public Works and the Department of Health and Human Services reviewed, evaluated, and ranked all of the submissions, and of the responses received, the MetaBIM, Inc. response was the most thorough, comprehensive, and best value. Staff recommends the Board approve, and authorize the Chair of the Board to execute, the attached professional services agreement with MetaBIM, Inc. for a not to exceed annual fee of \$35,000.

## FINANCIAL IMPACT:

The attached agreement is for an annual licensing fee of \$35,000 to be paid initially from CAO Information Technology (3550-118-8041), which has sufficient fund balance to cover the associated cost. In subsequent years, the cost of the annual licensing fee, \$35,000 annually, will be split amongst CAO ADA Compliance (152), Public Works Facility Management (162) and the Department of Health and Human Services Administration (516).

The recommended actions conform to the Board of Supervisors' Strategic Framework Core Roles of providing for and maintaining county infrastructure.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board discretion.

ATTACHMENTS:

Attachment A: Professional Services Agreement by and between County of Humboldt and MetaBIM, Inc.  
from March 15, 2018 to June 30, 2021

Attachment B: MetaBIM Application Services Agreement

**SOFTWARE LICENSE AND SUPPORT SERVICES AGREEMENT  
BY AND BETWEEN  
COUNTY OF HUMBOLDT  
AND  
METABIM, INC.  
FOR FISCAL YEARS 2017-2018 THROUGH 2020-2021**

This Agreement, entered into this 15 day of March, 2018, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and MetaBIM, Inc., a California corporation, hereinafter referred to as "CONTRACTOR," is made upon the following considerations:

WHEREAS, COUNTY, by and through its County Administrative Office – Management and Budget Team, desires to retain a qualified professional to develop, install, implement, host, support and maintain an enterprise asset management software system and provide training and support services related to the use and operation thereof; and

WHEREAS, such work involves the performance of professional, expert and technical services of a temporary and occasional character; and

WHEREAS, COUNTY has no employees available to perform such services and is unable to hire employees for the performance thereof for the temporary period; and

WHEREAS, CONTRACTOR represents that it is adequately trained, skilled, experienced and qualified to perform the services required by COUNTY.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. GRANT OF LICENSE AND DESCRIPTION OF SERVICES:

A. Grant of License. Subject to the terms and conditions of this Agreement, CONTRACTOR hereby grants to COUNTY a non-exclusive, non-transferable and non-sublicensable license for unlimited access to, and use of, the MetaBIM Application Suite, including, without limitation, Campus Site Maps, Building Information, CAD Floor Plans, Space Management, Divisions & Departments, Categories of Space, Indirect Cost Accounting, Major Capital Projects, Minor Improvements, Moves and Relocations, Digital Plan Room, Property Database, Lease Administration, Equipment Inventory, Occupancy Tracking, Locks and Key Control, Work Order Management and Accessibility Surveys.

B. Provision of Professional Services. CONTRACTOR agrees to furnish the development, installation, implementation, hosting, technical support, maintenance and training services described in Exhibit A – Scope of Services, which is attached hereto and incorporated herein by reference. In providing such services, CONTRACTOR agrees to fully cooperate with the Humboldt County Administrative Officer, or a designee thereof, hereinafter referred to as "County Administrative Officer."

2. TERM:

This Agreement shall begin on March 15, 2018 and shall remain in full force and effect until June 30, 2021, unless sooner terminated as provided herein.

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3. TERMINATION:

- A. Breach of Contract. Either party may terminate this Agreement in the event that the other party fails to adequately perform any of its obligations hereunder within the time limits specified herein, violates any ordinance, regulation or other law applicable to its performance hereunder or otherwise fails to comply with the terms or conditions set forth herein, and such default or violation continues un-remedied for a period of ten (10) days following written notice thereof.
- B. Without Cause. COUNTY may terminate this Agreement without cause upon thirty (30) days advance written notice. Such notice shall state the effective date of the termination.
- C. Insufficient Funding. COUNTY's obligations under this Agreement are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated. COUNTY shall provide CONTRACTOR seven (7) days advance written notice of its intent to terminate this Agreement due to insufficient funding.
- D. Compensation Upon Termination. In the event this Agreement is terminated, CONTRACTOR shall be entitled to compensation for unpaid license and/or service fees incurred pursuant to the terms and conditions of this Agreement through and including the effective date of such termination. However, this provision shall not limit or reduce any damages owed to COUNTY due to a breach of this Agreement by CONTRACTOR.
- E. Effect of Termination. Upon termination of this Agreement, CONTRACTOR shall cease providing any and all services hereunder and promptly return all copies of COUNTY data in CONTRACTOR's possession within thirty (30) days of such termination.

4. COMPENSATION:

- A. Maximum Amount Payable. The maximum amount payable by COUNTY for the licenses and services provided, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement is One Hundred Sixteen Thousand Eight Hundred Sixty-Five Dollars (\$116,865.00). In no event shall the maximum amount paid under this Agreement exceed Eleven Thousand Eight Hundred Sixty-Five Dollars (\$11,865.00) for partial fiscal year 2017-2018 and Thirty-Five Thousand Dollars (\$35,000.00) per fiscal year for fiscal years 2018-2019 through 2020-2021. CONTRACTOR agrees to provide all licenses and perform all services required by this Agreement for an amount not to exceed such maximum dollar amount. However, if local, state or federal funding or allowance rates are reduced or eliminated, COUNTY may, by amendment, reduce the maximum amount payable for the licenses and services provided hereunder, or terminate this Agreement as provided herein.
- B. Rate of Compensation. COUNTY shall compensate CONTRACTOR for all licenses and services provided, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement at an annual rate which equals COUNTY's total building gross square footage divided by one million (1,000,000) and multiplied by Ten Thousand Dollars (\$10,000.00).
- C. Additional Licenses and Services. Any additional licenses and services not otherwise provided for herein shall not be provided by CONTRACTOR, or compensated by COUNTY, without written authorization by COUNTY. All unauthorized costs and expenses incurred above the maximum payable amount set forth herein shall be the responsibility of CONTRACTOR. CONTRACTOR shall notify COUNTY, in writing, at least six (6) weeks prior to the date upon which CONTRACTOR estimates that the maximum payable amount will be reached.

5. PAYMENT:

CONTRACTOR shall submit to COUNTY annual invoices at the beginning of each annual service period, which itemize all of the licenses and services provided, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement. Invoices shall be in a format approved by, and shall include backup documentation as specified by the County Administrative Officer and the Humboldt County Auditor-Controller. Payment for the licenses and services provided, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement will be made within thirty (30) days after the receipt of approved invoices. All invoices submitted by CONTRACTOR shall be sent to COUNTY at the following address:

COUNTY: County Administrative Office – Management & Budget Team  
Attention: Christopher Shaver, Assistant County Administrative Officer  
825 Fifth Street, Room 112  
Eureka, California 95501

6. NOTICES:

Any and all notices required to be given pursuant to the terms of this Agreement shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: County Administrative Office – Management & Budget Team  
Attention: Christopher Shaver, Assistant County Administrative Officer  
825 Fifth Street, Room 112  
Eureka, CA 95501

CONTRACTOR: MetaBIM, Inc.  
Attention: Roger Anderson, President/CEO  
5321 Scotts Valley Drive, Suite 105  
Scotts Valley, California 95066

7. REPORTS:

CONTRACTOR agrees to provide COUNTY with any and all reports that may be required by local, state and/or federal agencies for compliance with this Agreement. Reports shall be submitted no later than fifteen (15) days after the end of each calendar quarter using the format required by the State of California as appropriate.

8. RECORD RETENTION AND INSPECTION:

A. Maintenance and Preservation of Records. CONTRACTOR agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the licenses and services provided pursuant to the terms and conditions of this Agreement, and to maintain and preserve said records for at least three (3) years from the date of final payment hereunder, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising therefrom. Such records shall be original entry books with a general ledger itemizing all debits and credits for the licenses and services provided pursuant to the terms and conditions of this Agreement.

B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records,

documents, conditions and activities of CONTRACTOR, and its subcontractors, related to the licenses and services provided pursuant to the terms and conditions of this Agreement, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after the date of final payment hereunder. CONTRACTOR hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by COUNTY and any other duly authorized local, state and/or federal agencies. CONTRACTOR further agrees to allow interviews of any of its employees who might reasonably have information related to such records by COUNTY and any other duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this Agreement, including, without limitation, the costs of administering this Agreement.

- C. Audit Costs. In the event of an audit exception or exceptions related to the licenses and/or services provided pursuant to the terms and conditions of this Agreement, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because CONTRACTOR's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

9. MONITORING:

CONTRACTOR agrees that COUNTY has the right to monitor all activities related to this Agreement, including, without limitation, the right to review and monitor CONTRACTOR's records, programs or procedures, at any time, as well as the overall operation of CONTRACTOR's programs, in order to ensure compliance with the terms and conditions of this Agreement. CONTRACTOR will cooperate with a corrective action plan, if deficiencies in CONTRACTOR's records, programs or procedures are identified by COUNTY. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of CONTRACTOR's performance hereunder.

10. CONFIDENTIAL INFORMATION:

- A. Use and Disclosure of Proprietary Information. In the performance of this Agreement, each party may receive information of the other party that is not generally known to the public, including, but not limited to, trade secrets, know-how, inventions, technical designs, techniques, algorithms, programs, documentation and data which may be designated as being confidential, or which under the circumstances surrounding disclosure, ought to be treated as confidential (collectively, "Proprietary Information"). Each party shall use and disclose only the minimum amount of Proprietary Information necessary to accomplish the intended purpose of this Agreement. Each party further agrees to protect all Proprietary Information in accordance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards.
- B. Use and Disclosure of Personally Identifiable Information. In the performance of this Agreement, CONTRACTOR may receive personally identifiable information that is confidential under local, state or federal law. CONTRACTOR hereby agrees to protect all personally identifiable information in conformance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, including, but not limited to: California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act ("CMIA"); the United States Health Information Technology for Economic and Clinical Health Act ("HITECH Act"); the United States Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any current and future

implementing regulations promulgated thereunder, including, without limitation, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations (“C.F.R.”) Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.

- C. Continuing Compliance with Confidentiality Laws. The parties acknowledge that local, state and federal laws, regulations and standards pertaining to confidentiality, electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws, regulations or standards.

#### 11. NON-DISCRIMINATION COMPLIANCE:

- A. Professional Services and Employment. In connection with the execution of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state or federal laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.
- B. Compliance with Anti-Discrimination Laws. CONTRACTOR further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, et seq.; California Government Code Sections 4450, et seq.; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or federal laws and regulations, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing California Government Code Section 12990, set forth in Chapter 5, Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

#### 12. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

CONTRACTOR certifies by its signature below that it is not a Nuclear Weapons Contractor, in that CONTRACTOR is not knowingly or intentionally engaged in the research, development, production or testing of nuclear warheads, nuclear weapons systems or nuclear weapons components, as defined by the Nuclear Free Humboldt County Ordinance. CONTRACTOR agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if CONTRACTOR subsequently becomes a Nuclear Weapons Contractor.



### 13. DRUG-FREE WORKPLACE CERTIFICATION:

By executing this Agreement, CONTRACTOR certifies that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, et seq.) and will provide a drug-free workplace by doing all of the following:

- A. Drug-Free Policy Statement. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.
- B. Drug-Free Awareness Program. Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about the following:
  - 1. The dangers of drug abuse in the workplace;
  - 2. CONTRACTOR's policy of maintaining a drug-free workplace;
  - 3. Any available counseling, rehabilitation and employee assistance programs; and
  - 4. Penalties that may be imposed upon employees for drug abuse violations.
- C. Drug-Free Employment Agreement. Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides services pursuant to the terms and conditions of this Agreement will:
  - 1. Receive a copy of CONTRACTOR's Drug-Free Policy Statement; and
  - 2. Agree to abide by CONTRACTOR's Drug-Free Policy as a condition of employment.
- D. Effect of Noncompliance. Failure to comply with the above-referenced requirements may result in suspension of payments under this Agreement and/or termination thereof, and CONTRACTOR may be ineligible for award of future contracts if COUNTY determines that the foregoing certification is false or if CONTRACTOR violates the certification by failing to carry out the above-referenced requirements.

### 14. INDEMNIFICATION:

- A. Hold Harmless, Defense and Indemnification. CONTRACTOR shall hold harmless, defend and indemnify COUNTY and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, CONTRACTOR's negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of COUNTY.
- B. Effect of Insurance. Acceptance of the insurance required by this Agreement shall not relieve CONTRACTOR from liability under this provision. This provision shall apply to all claims for damages related to CONTRACTOR's performance hereunder regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided hereunder.

15. INSURANCE REQUIREMENTS:

This Agreement shall not be executed by COUNTY, and CONTRACTOR is not entitled to any rights hereunder, unless certificates of insurance, or other proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

A. General Insurance Requirements. Without limiting CONTRACTOR's indemnification obligations provided for herein, CONTRACTOR shall, and shall require that all subcontractors hereunder, take out and maintain, throughout the entire period of this Agreement, and any extended term thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of CONTRACTOR and its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence for any one (1) incident, including, but not limited to, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.
2. Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all owned, hired and non-owned vehicles. Said coverage shall be at least as broad as Insurance Service Offices Form Code 1 (any auto).
3. Workers' Compensation Insurance, as required by the Labor Code of the State of California, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY and its agents, officers, officials, employees and volunteers.
4. Professional Liability Insurance – Error and Omission Coverage including coverage in an amount no less than Two Million Dollars (\$2,000,000.00) for each occurrence (Four Million Dollars (\$4,000,000.00) general aggregate). Said insurance shall be maintained for the statutory period during which CONTRACTOR may be exposed to liability. CONTRACTOR shall require that such coverage be incorporated into its professional services agreements with any other entities.

B. Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1. The above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice provisions set forth herein. It is further understood that CONTRACTOR shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.
2. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, and its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, CONTRACTOR. The coverage shall contain no special limitations on the scope of

protection afforded to COUNTY or its agents, officers, officials, employees and volunteers. Said policy shall also contain a provision stating that such coverage:

- a. Includes contractual liability.
  - b. Is the primary insurance with regard to COUNTY.
  - c. Does not contain a pro-rata, excess only and/or escape clause.
  - d. Contains a cross liability, severability of interest or separation of insureds clause.
3. The inclusion of more than one (1) insured shall not operate to impair the rights of one (1) insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one (1) insured shall not operate to increase the limits of the insurer's liability.
  4. For claims related to this Agreement, CONTRACTOR's insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained thereby are excess to CONTRACTOR's insurance and will not be used to contribute therewith.
  5. Any failure to comply with the provisions of this Agreement, including, without limitation, the breach of any and all applicable warranties, shall not affect the coverage provided to COUNTY or its agents, officers, officials, employees and volunteers.
  6. CONTRACTOR shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager or County Counsel. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If CONTRACTOR does not keep all required policies in full force and effect, COUNTY may, in addition to other available remedies, take out the necessary insurance, and CONTRACTOR agrees to pay the cost thereof. COUNTY is also hereby authorized with discretion to deduct the cost of said insurance from the monies owed to CONTRACTOR under this Agreement.
  7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and CONTRACTOR shall be required to purchase additional coverage to meet the above-referenced aggregate limits.
- C. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms of this Agreement shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

COUNTY: County of Humboldt  
Attention: Risk Management  
825 Fifth Street, Room 131  
Eureka, California 95501

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CONTRACTOR: MetaBIM, Inc.  
Attention: Roger Anderson, President/CEO  
5321 Scotts Valley Drive, Suite 105  
Scotts Valley, California 95066

16. RELATIONSHIP OF PARTIES:

It is understood that this Agreement is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that CONTRACTOR shall not be entitled to any benefits to which COUNTY employees are entitled, including, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation. CONTRACTOR shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

17. COMPLIANCE WITH APPLICABLE LAWS AND LICENSURE REQUIREMENTS:

CONTRACTOR agrees to comply with any and all local, state and federal laws, regulations, policies and procedures applicable to the licenses and services provided pursuant to the terms and conditions of this Agreement. CONTRACTOR further agrees to comply with any and all applicable local, state and federal licensure and certification requirements.

18. PROVISIONS REQUIRED BY LAW:

This Agreement is subject to any additional local, state and federal restrictions, limitations, or conditions that may affect the provisions, terms or funding of this Agreement. This Agreement shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

19. REFERENCE TO LAWS AND RULES:

In the event any law, regulation or standard referred to in this Agreement is amended during the term hereof, the parties agree to comply with the amended provision as of the effective date thereof.

20. PROTOCOLS:

Both parties recognize that the inclusion of additional protocols may be required to make this Agreement specific. All such protocols shall be negotiated, determined and agreed upon by the County Administrative Officer and CONTRACTOR.

21. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

22. SEVERABILITY:

If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

23. ASSIGNMENT:

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent. This Agreement may be assigned by CONTRACTOR to an

affiliate thereof, whether currently an affiliate or hereafter an affiliate by reason of merger, acquisition, consolidation or other change of control, without the prior written consent of COUNTY. Any assignment by either party in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

24. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this Agreement shall be fully binding upon, and inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

25. WAIVER OF DEFAULT:

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement. In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement or any default which may then exist on the part of CONTRACTOR. Nor shall such payment impair or prejudice any remedy available to COUNTY with respect to any breach or default. COUNTY shall have the right to demand repayment of, and CONTRACTOR shall promptly refund, any funds disbursed to CONTRACTOR which COUNTY determines were not expended in accordance with the terms of this Agreement.

26. AMENDMENT:

This Agreement may be amended at any time during the term of this Agreement upon the mutual consent of both parties. No addition to, or alteration of, the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

27. STANDARD OF PRACTICE:

CONTRACTOR warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. CONTRACTOR's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

28. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

29. ADVERTISING AND MEDIA RELEASE:

All informational material related to this Agreement shall receive approval from COUNTY prior to being used as advertising or released to the media, including, but not limited to, television, radio, newspapers and internet. CONTRACTOR shall inform COUNTY of all requests for interviews by the media related to this Agreement before such interviews take place; and COUNTY shall be entitled to have a representative present at such interviews. All notices required by this provision shall be given to the County Administrative Officer.

30. SUBCONTRACTS:

CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services to be provided pursuant to the terms and conditions of this Agreement. Any and all subcontracts shall be subject to all applicable terms and conditions of this Agreement, including, without limitation, the licensing, certification and confidentiality requirements set forth herein. CONTRACTOR shall remain legally responsible for the performance of all terms and conditions of this Agreement, including work performed by third parties under subcontracts, whether approved by COUNTY or not.

31. ATTORNEYS' FEES:

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees, including the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, "prevailing party" means the party who dismisses an action or proceeding in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

32. SURVIVAL:

The duties and obligations of the parties set forth in Section 3(D) – Compensation Upon Termination, Section 8 – Record Retention and Inspection, Section 10 – Confidential Information and Section 14 – Indemnification shall survive the expiration or termination of this Agreement.

33. ADDITIONAL TERMS AND CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this Agreement, the terms and conditions set forth herein shall have priority. Any and all additional definitions, terms and conditions set forth in Addendum A – Additional Terms and Conditions, which is attached hereto, are incorporated herein by reference, shall be binding upon the parties hereto as though fully set forth herein. In the event of a conflict between the definitions, terms and conditions set forth in this Agreement, including any and all exhibits attached hereto, and the definitions, terms and conditions set forth in Addendum A – Additional Terms and Conditions, the definitions, terms and conditions set forth in this Agreement shall control to the exclusion of any different, contrary or conflicting definitions, terms or conditions.

34. INTERPRETATION:

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both of the parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

35. INDEPENDENT CONSTRUCTION:

The titles of the sections, subsections and paragraphs set forth in this Agreement are inserted for convenience of reference only, and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

36. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

37. ENTIRE AGREEMENT:

This Agreement contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this Agreement are hereby ratified.

38. COUNTERPART EXECUTION:

This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. A signed copy of this Agreement transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes.

39. AUTHORITY TO EXECUTE:

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized.

[Signatures on Following page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the first date written above.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

**METABIM, INC.:**

By: Roger Anderson

Date: 3/6/18

Name: Roger Anderson

Title: President / CEO

By: Pamela And

Date: 3/6/18

Name: Pamela Anderson

Title: Secretary

**COUNTY OF HUMBOLDT:**

By: Ryan Sundberg  
Ryan Sundberg  
Chair, Humboldt County Board of Supervisors

Date: 3/13/18

**INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:**

By: [Signature]  
Risk Management

Date: 3/7/18

**LIST OF EXHIBITS:**

Exhibit A – Scope of Services

**LIST OF ADDENDUMS:**

Addendum A – Additional Terms and Conditions



**EXHIBIT A**  
**SCOPE OF SERVICES**

MetaBIM, Inc.

For Fiscal Years 2017-2018 Through 2020-2021

1. SERVICES:

- A. Development, Installation, Implementation and Hosting Services. CONTRACTOR shall develop, install, implement and host the MetaBIM FacilitiesLink Asset Management Software system, including, without limitation, loading existing COUNTY databases onto the system provided pursuant to the terms and conditions of this Agreement, in accordance with any and all protocols agreed upon by CONTRACTOR and the County Administrative Officer.
- B. Technical Support Services. CONTRACTOR shall respond to COUNTY inquiries regarding any issues involving the implementation and operation of the MetaBIM FacilitiesLink Database system, including, without limitation, verification of any reported errors, provide acceptable problem workarounds and communicate with designated COUNTY contacts on status and/or additional problem information. Any and all support issues will be tracked and managed by CONTRACTOR's Account Manager. Simple issues and requests will generally be resolved within twenty-four (24) hours from receipt of notification thereof. Moderately complex issues and requests will generally be resolved within one (1) week from receipt of notification thereof. Complex issues and requests that are beyond the scope of the support services provided pursuant to the terms and conditions of this Agreement and will be fielded through discussion and potentially lead to an additional project proposal from CONTRACTOR's Account Manager to the County Administrative Officer.
- C. Maintenance Services. CONTRACTOR shall maintain and update the MetaBIM FacilitiesLink Database system, including, without limitation, providing any and all necessary security updates, routine backups, software upgrades and ongoing program development, in accordance with any and all protocols agreed upon by CONTRACTOR and the County Administrative Officer.
- D. Training Services. CONTRACTOR shall provide a comprehensive training program regarding the implementation and operation of the MetaBIM FacilitiesLink Database system which includes, without limitation, all of the following:
  - 1. "Train-the-Trainer" training sessions which include individualized one (1) on one (1) instruction with key COUNTY personnel.
  - 2. "End-User Training" sessions with selected COUNTY user groups with periodic annual refresher training sessions as-needed.
  - 3. "One-Time Remedial Training" session with COUNTY staff who may be experiencing difficulties with the MetaBIM FacilitiesLink Database system.

2. SCHEDULE:

- A. Start-Up Meeting. Within one (1) month after commencement of this Agreement, CONTRACTOR shall schedule a program start-up meeting with key COUNTY personnel. The program start-up meeting shall include, without limitation, discussion regarding program organization, responsibilities of COUNTY personnel and stakeholders, development of program objectives, scheduling of CONTRACTOR's initial database loading efforts, scheduling and

prioritization of COUNTY's unit goals by quarter and development of a program communications plan that will be used to update COUNTY on program progress.

- B. Initial Database Loading. Within two (2) months after commencement of this Agreement, CONTRACTOR shall begin loading the MetaBIM FacilitiesLink Database system with any and all necessary information, including, without limitation, a COUNTY buildings inventory, a rooms and space inventory, COUNTY maps and floor plans, COUNTY property and grounds information, a COUNTY divisions and units organizational tree, COUNTY employee data integration and a digital plan room with any and all applicable as-built drawings.
- C. Monthly Program Update Meetings. Each month after commencement of this Agreement, CONTRACTOR shall hold monthly program update meetings with key COUNTY personnel which include, without limitation, review of any and all progress towards COUNTY's unit goals, discussion of specific action items, job planning and item delegation for the next monthly program update meeting.
- D. Quarterly Review Roadmaps. Each quarter after commencement of this Agreement, CONTRACTOR shall provide COUNTY with quarterly review roadmaps which summarize all progress made during the previous quarter and set any and all goals and objectives for the upcoming quarter.

3. DELIVERABLES:

CONTRACTOR shall provide COUNTY with a turnkey, hosted version of the MetaBIM FacilitiesLink Database system which includes data center facilities, server hardware, network bandwidth and systems administration, application licensing and database migration functions.

4. ACCEPTANCE CRITERIA:

The effectiveness of the development, installation, implementation, hosting, technical support and maintenance services provided pursuant to the terms and conditions of this Agreement shall be based on whether the MetaBIM FacilitiesLink Database system maintains a ninety-nine percent (99%) reliability rating throughout the term of this Agreement and any extensions thereof.

5. PLACE OF PERFORMANCE:

Any and all hosting services provided pursuant to the terms and conditions of this Agreement shall be performed at CONTRACTOR's offices and data center facilities. Any and all training sessions and meetings conducted pursuant to the terms and conditions of this Agreement shall be held at COUNTY designated locations within Humboldt County.

6. COUNTY RESPONSIBILITIES:

- A. Designation of a Program Manager. COUNTY shall designate a Program Manager that is responsible for managing the program. COUNTY's Program Manager shall be CONTRACTOR's primary point-of-contact for any and all issues related to the licenses and/or services provided pursuant to the terms and conditions of this Agreement, including, without limitation, coordination of data loading efforts during the initial months of engagement.
- B. Provision of Necessary Facilities. COUNTY shall provide a classroom and/or computer lab for the "End-User Group Training" sessions provided pursuant to the terms and conditions of this Agreement.

- C. Data Preparation. Any and all data provided by COUNTY shall be digitized and reasonably clean and organized prior to being loaded onto the MetaBIM FacilitiesLink Database system provided pursuant to the terms and conditions of this Agreement. CONTRACTOR may assist with general data processing and systematic cleanup efforts, but will not be responsible for the digitization of legacy data or data scrubbing of individual records.

**ADDENDUM A**  
**ADDITIONAL TERMS AND CONDITIONS**  
MetaBIM, Inc.  
For Fiscal Years 2017-2018 Through 2020-2021

This Addendum to the Software License and Support Services Agreement dated \_\_\_\_\_, 2018, by and between the County of Humboldt, hereinafter referred to as "COUNTY," and MetaBIM, Inc., a California corporation, hereinafter referred to as "CONTRACTOR," is intended to supplement the terms and conditions contained in the Software License and Support Services Agreement dated \_\_\_\_\_, 2018.

WHEREAS, pursuant to Section 33 – "Additional Terms and Conditions" of the Software License and Support Services Agreement dated \_\_\_\_\_, 2018 ("Agreement"), the definitions, terms and conditions set forth herein have been incorporated into the Agreement by reference and shall be fully binding upon the parties as though fully set forth therein; and

WHEREAS, notwithstanding anything to the contrary, any and all definitions, terms and conditions set forth in the Agreement, including any and all exhibits incorporated therein by reference, shall control to the exclusion of any different, contrary or conflicting definitions, terms or conditions contained in this Addendum.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. APPLICATIONS:

- A. Development and Modification of Applications. CONTRACTOR develops certain Internet-based software programs and databases ("Applications"). Applications include, without limitation, source code, algorithms, schematics, database designs, and graphical user interface elements such as screen layouts, menus, viewers, reports, interactive forms, text, images, logos, photographs and illustrations. CONTRACTOR reserves the right to update, modify or improve the Applications from time to time.
- B. Terms of Use. CONTRACTOR will provide the Applications for use by COUNTY for the duration of the term of the Agreement ("Service"). Service will be provided to COUNTY under the following terms and conditions:
- 1 COUNTY may grant an unlimited number of accounts on the Service to COUNTY's employees or to individual parties directly affiliated or associated with COUNTY, each of whom has registered for access to the Service and been approved by the COUNTY to use the Service, subject to the terms of use set forth herein.
  - 2 The Service is provided to COUNTY for its internal business use, the administration of its campus and the management of its capital assets, physical facilities and space.
  - 3 Unauthorized use of the Service, in whole or in part, is prohibited. COUNTY agrees it will not provide access to the Service to parties outside of the COUNTY's organization and its business affiliates. COUNTY agrees it will not attempt to copy, reproduce, translate, decompile, disassemble, reverse engineer, create derivative works based upon, or otherwise duplicate or distribute the functionality or user interface of the Service or the Applications. The list of actions in the preceding sentence is illustrative only and not meant to be exclusive.

4. COUNTY recognizes and agrees that the Applications are the property of CONTRACTOR and are protected by copyright, trademark and other intellectual property laws, and that COUNTY shall not acquire any right, title, or interest in or to the Applications except the limited and temporary right to use them as necessary for COUNTY's use of the Service, as defined herein.
5. COUNTY shall keep any and all account credentials secret. It is a violation of the Agreement to share passwords or enable others to use the system under another person's login. COUNTY hereby acknowledges that all activity on the system is logged and audited, and that access to the system may be terminated at any time without cause or notification.
6. COUNTY hereby acknowledges that while efforts are made to keep information on the system as current and free of errors as possible, and to repair software defects, no representations or warranties are made as to system performance or accuracy of information.
7. COUNTY shall use the system in a responsible manner, for authorized business purposes only. COUNTY hereby acknowledges that some of the information maintained on the system may be sensitive or confidential in nature, and should be maintained as such. The aggregation, sale or transfer of information on the site is prohibited.
8. COUNTY shall maintain technical information about the system in confidence, including user interfaces, program designs, and storage architectures. COUNTY hereby acknowledges that reverse engineering or copying elements of the system without the express written permission of CONTRACTOR is expressly prohibited and may violate intellectual property and copyright laws.

## 2. HOSTING SERVICES:

- A. Network Connectivity. CONTRACTOR will supply all required computer equipment, operating systems, databases and software ("Servers"), provide such technical expertise, time and effort as needed to administer the Servers, and maintain reliable network connectivity for delivery of the Service to COUNTY over the Internet.
- B. Data Center Facilities. CONTRACTOR will utilize a commercial-grade data center facility ("Data Center") chosen by CONTRACTOR at its sole discretion. CONTRACTOR is responsible for all reasonable costs and fees associated with the Data Center, including broadband connectivity to the Internet ("Network").
- C. Service Levels. CONTRACTOR will provide to COUNTY the same service levels for the Network as the Data Center guarantees to CONTRACTOR under the Service Level Agreement ("SLA") between the Data Center and CONTRACTOR. In the event service levels for the Network repeatedly fail to meet the guarantees set forth in the SLA, CONTRACTOR will relocate to a new data center of its choosing. If such relocation does not resolve the problem, COUNTY may pursue its rights under the Agreement and this Addendum.
- D. Redundant Servers. CONTRACTOR will maintain redundant Servers at the Data Center for backups and fail-over purposes. Backups will be configured to transmit all incremental changes to COUNTY Data on a nightly basis.

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3. TECHNICAL SUPPORT SERVICES:

CONTRACTOR will provide the COUNTY with technical support for the Service as set forth in Schedule 1 – Technical Support Services, which is attached hereto and incorporated herein by reference. COUNTY's support requests must be directly related to the use of the Service within the COUNTY's organization for its internal business purposes. COUNTY shall designate a support contact with adequate technical expertise to serve as a liaison with CONTRACTOR on technical matters.

4. SERVICE INTERRUPTIONS:

CONTRACTOR will exercise reasonable care to minimize the likelihood of an interruption in the Service ("Service Interruption"). In the event of a Service Interruption, COUNTY will provide prompt notice to CONTRACTOR by email or telephone. If the Service Interruption lasts for more than ten (10) business days, COUNTY may, at its discretion, terminate the remainder of the Agreement for cause and receive a prorated refund of the payments based on the remainder of the Term. Upon payment of the refund, CONTRACTOR will have no further obligation to provide the Service to COUNTY.

5. COUNTY DATA:

COUNTY Data includes, without limitation, maps, models, plans, designs, photos, graphics and text-based information describing COUNTY property, facilities, infrastructure, buildings, rooms, departments, occupants, access, equipment, floor plans, diagrams of facilities and other facilities-related information that COUNTY uploads or enters into the system ("COUNTY Data"). COUNTY Data maintained by the COUNTY through the Service shall be stored separately from the Applications and is at all times deemed the property of the COUNTY. COUNTY assumes any and all risks associated with the provision of inaccurate COUNTY Data.

6. DATA PROTECTION:

- A. Computer Security. CONTRACTOR will provide a professional level of computer security consistent with industry best practices and standards. Such computer security shall include, without limitation, patching servers, maintaining firewalls, encrypting network traffic, enforcing passwords, enforcing authorization rules and securing programming logic.
- B. Security Breaches. In the event of a security breach, CONTRACTOR will report to the COUNTY the nature and extent of the compromise. CONTRACTOR will remedy the breach by wiping clean the compromised disks for the compromised system, and reinstalling systems with all available measures taken to prevent compromise along the same exploit vector.
- C. Data Monitoring. COUNTY agrees to screen all new account applications for improper access, establish a Terms of Use policy for its users, maintain user access levels and authorization rules, and monitor improper conduct on the part of its users to protect COUNTY Data.
- D. Acknowledgment and Assumption of Risk. CONTRACTOR makes no representation that the Service is invulnerable to security breach via the internet. The COUNTY acknowledges the computer security risks that may arise out of unauthorized access to the COUNTY Data. The Service is intended to be used to manage COUNTY's facilities information. Uploading personal information such as medical records, credit card numbers, student records or similar types of personal information onto the Service shall be at COUNTY's own risk.

7. DISCLAIMER OF WARRANTIES:

Except as provided in this Addendum, CONTRACTOR and COUNTY make no warranties hereunder and expressly disclaim any and all other warranties, express, implied, statutory or allegedly extended in any communication between the parties, including, without limitation, to any warranty of merchantability, satisfactory quality or fitness for a particular purpose or warranty that the provision of the services will be uninterrupted or error-free.

8. LIMITATION OF LIABILITY:

- A. Damages. In no event shall either party be liable for any indirect, special, incidental, punitive or consequential damages of any kind or nature whatsoever, including, without limitation, loss of profits or other economic loss or interruption of business, arising out of the Agreement, even if such party has been advised of the possibility of such damages.
- B. Cumulative Liability. CONTRACTOR's cumulative liability to COUNTY with respect to the Agreement, for any and all causes of action under any theory of liability, whether in contract or tort or otherwise, will not exceed the payment paid by COUNTY to CONTRACTOR under the Agreement for the term thereof.
- C. Time Limitations. Unless otherwise preempted by state or federal law, the parties agree that any claim or cause of action arising out of or in connection with the Agreement must be brought within one (1) year of its occurrence, or it will be barred forever, notwithstanding any statute of limitations or law to the contrary.

9. SURVIVAL:

The duties and obligations of the parties set forth in Section 7 – Disclaimer of Warranties of this Addendum shall survive the expiration or termination of the Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the first date written

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the first date written above.

**TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:**

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

**METABIM, INC.:**

By: Roger Anderson

Date: 3/6/18

Name: Roger Anderson

Title: President / CEO

By: Pamela Anderson

Date: 3/6/18

Name: Pamela Anderson

Title: Secretary

**COUNTY OF HUMBOLDT:**

By: Ryan Sundberg  
Ryan Sundberg  
Chair, Humboldt County Board of Supervisors

Date: 3/13/18

**INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:**

By: K. Barnes  
Risk Management

Date: 3/7/18

**LIST OF SCHEDULES:**

Schedule 1 – Technical Support Services



## **TECHNICAL SUPPORT SERVICES**

MetaBIM, Inc.

For Fiscal Years 2017-2018 Through 2020-2021

CONTRACTOR shall provide full, open-door technical support for any issues pertaining to CONTRACTOR's Applications with regard to COUNTY's internal business activities.

COUNTY shall designate a primary support contact to serve as a formal liaison with CONTRACTOR on support requests. Support incidents are logged as they are received by CONTRACTOR. CONTRACTOR will respond to requests within one (1) business day, providing explanations, solutions, or further guidance.

Routine technical support matters are ordinarily handled within twenty-four (24) hours. Examples of routine support include assistance with application configuration, questions about the use of the Applications, basic software customizations or bug fixes. There is no charge or limitation on the quantity of these requests.

Requests that rise to the level of a small project are slightly more involved, and turn-around time can be expected to take two (2) to three (3) business days. Examples include database loading and ETL projects, software customizations, basic report-writing and data extraction requests. Also included are routine program management meetings, and on-site training for the COUNTY's program coordinators and key technical support staff.

Major support projects or the development of new capabilities or software upgrades are not included in the technical support services to be provided by CONTRACTOR. CONTRACTOR will field such requests and respond to COUNTY within three (3) to five (5) business days with a feasibility assessment. Such projects typically require two (2) to four (4) weeks to complete, occasionally longer, and would be executed and managed under separate agreement, under mutual consent of both parties.

Note that management of COUNTY Data is not included herein. COUNTY Data belongs to the COUNTY and COUNTY needs to provide such time, effort and skill as is required to maintain COUNTY Data on the Service. The COUNTY may decide to engage CONTRACTOR in a separate agreement for the acquisition, maintenance or upkeep of certain COUNTY Data.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****BLANKET ADDITIONAL INSURED – LIABILITY EXTENSION**

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS LIABILITY COVERAGE FORM**

Coverage afforded under this extension of coverage endorsement does not apply to any person or organization covered as an additional insured on any other endorsement now or hereafter attached to this Policy.

**1. ADDITIONAL INSURED – BLANKET VENDORS**

WHO IS AN INSURED is amended to include as an additional insured any person or organization (referred to below as vendor) with whom you agreed, because of a written contract or agreement to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:
  - a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
  - b. Any express warranty unauthorized by you;
  - c. Any physical or chemical change in the product made intentionally by the vendor;
  - d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
  - e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
  - f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
  - g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
  - h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its

own acts or omission or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (1) The exceptions contained in Subparagraphs d. or f.; or
- (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
3. This provision 2. does not apply to any vendor included as an insured by an endorsement issued by us and made a part of this Policy.
4. This provision 2. does not apply if "bodily injury" or "property damage" included within the "products-completed operations hazard" is excluded either by the provisions of the Policy or by endorsement.

**2. MISCELLANEOUS ADDITIONAL INSUREDS**

WHO IS AN INSURED is amended to include as an insured any person or organization (called additional insured) described in paragraphs 2.a. through 2.h. below whom you are required to add as an additional insured on this policy under a written contract or agreement but the written contract or agreement must be:

1. Currently in effect or becoming effective during the term of this policy; and
2. Executed prior to the "bodily injury," "property damage" or "personal and advertising injury," but

Only the following persons or organizations are additional insureds under this endorsement and coverage provided to such additional insureds is limited as provided herein:

**a. Additional Insured – Your Work**

That person or organization for whom you do work is an additional insured solely for liability

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due to your negligence specifically resulting from your work for the additional insured which is the subject of the written contract or written agreement. No coverage applies to liability resulting from the sole negligence of the additional insured.

The insurance provided to the additional insured is limited as follows:

- (1) The Limits of Insurance applicable to the additional insured are those specified in the written contract or written agreement or in the Declarations of this policy, whichever is less. These Limits of Insurance are inclusive of, and not in addition to, the Limits of Insurance shown in the Declarations.
- (2) The coverage provided to the additional insured by this endorsement and paragraph F.9. of the definition of "insured contract" under **Liability and Medical Expenses Definitions** do not apply to "bodily injury" or "property damage" arising out of the "products-completed operations hazard" unless required by the written contract or written agreement.
- (3) The insurance provided to the additional insured does not apply to "bodily injury," "property damage," or "personal and advertising injury" arising out of the rendering or failure to render any professional services.

**b. State or Political Subdivisions**

A state or political subdivision subject to the following provisions:

- (1) This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:
  - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
  - (b) The construction, erection, or removal of elevators; or
- (2) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.

This insurance does not apply to "bodily injury," "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality.

**c. Controlling Interest**

Any persons or organizations with a controlling interest in you but only with respect to their liability arising out of:

- (1) Their financial control of you; or
- (2) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for such additional insured.

**d. Managers or Lessors of Premises**

A manager or lessor of premises but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or
- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

**e. Mortgagee, Assignee or Receiver**

A mortgagee, assignee or receiver but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of a premises by you.

This insurance does not apply to structural alterations, new construction or demolition operations performed by or for such additional insured.

**f. Owners/Other Interests – Land is Leased**

An owner or other interest from whom land has been leased by you but only with respect to liability arising out of the ownership, maintenance or use of that specific part of the land leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (1) Any "occurrence" which takes place after you cease to lease that land; or

- (2) Structural alterations, new construction or demolition operations performed by or on behalf of such additional insured.

**g. Co-owner of Insured Premises**

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owners liability as co-owner of such premises.

**h. Lessor of Equipment**

Any person or organization from whom you lease equipment. Such person or organization are insureds only with respect to their liability arising out of the maintenance, operation or use by you of equipment leased to you by such person or organization. A person's or organization's status as an insured under this endorsement ends when their written contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded these additional insureds, the following additional exclusions apply:

This insurance does not apply:

- (1) To any "occurrence" which takes place after the equipment lease expires; or
- (2) To "bodily injury," "property damage" or "personal and advertising injury" arising out of the sole negligence of such additional insured.

Any insurance provided to an additional insured designated under paragraphs b. through h. above does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard."

**3. The following is added to Paragraph H. of the BUSINESSOWNERS COMMON POLICY CONDITIONS:**

**H. Other Insurance**

- 4. This insurance is excess over any other insurance naming the additional insured as an insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement specifically requires that this insurance be either primary or primary and noncontributing.

**4. LEGAL LIABILITY – DAMAGE TO PREMISES**

- A. Under B. Exclusions, 1. Applicable to Business Liability Coverage, Exclusion k.

**Damage To Property**, is replaced by the following:

**k. Damage To Property**

"Property damage" to:

- 1. Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- 2. Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- 3. Property loaned to you;
- 4. Personal property in the care, custody or control of the insured;
- 5. That particular part of any real property on which you or any contractors or subcontractors working directly or indirectly in your behalf are performing operations, if the "property damage" arises out of those operations; or
- 6. That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph 2 of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs 1, 3, and 4, of this exclusion do not apply to "property damage" (other than damage by fire or explosion) to premises:

- (1) rented to you;
- (2) temporarily occupied by you with the permission of the owner, or
- (3) to the contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to Damage To Premises Rented To You as described in Section D – Liability and Medical Expenses Limits of Insurance.

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Paragraphs 3, 4, 5, and 6 of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph 6 of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

- B. Under **B. Exclusions, 1. Applicable to Business Liability Coverage**, the last paragraph of 2. Exclusions is deleted and replaced by the following:

Exclusions **c, d, e, f, g, h, i, k, l, m, n, and o**, do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner or to the contents of premises rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to this coverage as described in **Section D. Liability And Medical Expenses Limits Of Insurance**.

- C. The first Paragraph under item **5. Damage To Premises Rented To You Limit of Section D. Liability And Medical Expenses Limits Of Insurance** is replaced by the following:

The most we will pay under Business Liability for damages because of "**property damage**" to any one premises, while rented to you, or temporarily occupied by you, with the permission of the owner, including contents of such premises rented to you for a period of 7 or fewer consecutive days, is the Damage to Premises Rented to You limit shown in the Declaration.

**5. Blanket Waiver of Subrogation**

We waive any right of recovery we may have against:

- a. Any person or organization with whom you have a written contract that requires such a waiver.

**6. Broad Knowledge of Occurrence**

The following items are added to **E. Businessowners General Liability Conditions** in the **Businessowners Liability Coverage Form**:

- e. Paragraphs **a.** and **b.** apply to you or to any additional insured only when such "occurrence," offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;

- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

This paragraph **e.** applies separately to you and any additional insured.

**7. Bodily Injury**

**Section F. Liability and Medical Expenses Definitions**, item 3. "Bodily Injury" is deleted and replaced with the following:

"**Bodily injury**" means bodily injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury by that person at any time which results as a consequence of the bodily injury, sickness or disease.

**8. Expanded Personal and Advertising Injury Definition**

- a. The following is added to **Section F. Liability and Medical Expenses Definitions, item 14. Personal and Advertising Injury, in the Businessowners General Liability Coverage Form**:

- h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is:

- 1. Not done intentionally by or at the direction of:
  - a. The insured; or
  - b. Any "executive officer," director, stockholder, partner, member or manager (if you are a limited liability company) of the insured; and

- 2. Not directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person or person by any insured.

- b. The following is added to Exclusions, **Section B.:**