

**AGREEMENT TO PROVIDE A TURN-KEY FLEET MANAGEMENT
OPERATIONS SYSTEM FOR MONTEREY COUNTY
FLEET MANAGEMENT**

This AGREEMENT is made and entered into by and between, the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "County," and FASTER ASSET SOLUTIONS, hereinafter referred to as "CONTRACTOR."

RECITALS

- A. WHEREAS, County has invited proposals through a Request for Proposal (RFP #10417) for a Turn-Key Fleet Management Operations System, in accordance with the specifications set forth in this AGREEMENT; and
- B. WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform such services; and
- C. WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

1.0 PERFORMANCE OF THE AGREEMENT

- 1.1 After consideration and evaluation of the CONTRACTOR'S proposal, the County hereby engages CONTRACTOR to provide the services set forth in CONTRACTOR's responses to RFP #10417 and in this AGREEMENT on the terms and conditions contained herein and in the CONTRACTOR's responses to RFP #10417. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

- CONTRACTOR'S Proposal dated June 14, 2013, including all attachments and exhibits, to RFP #10417
 - AGREEMENT
 - Certificate of Insurance
 - Additional Insured Endorsements

- 1.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: AGREEMENT; CONTRACTOR'S Proposal (with all attachments and exhibits) in

response to RFP #10417, Addendums #1 and #2; Certificate of Insurance; and Additional Insured Endorsements.

- 1.3 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the County, or immediate family of an employee of the County.
- 1.4 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 1.5 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

2.0 SCOPE OF SERVICE

- 2.1 Contractor Minimum Work Performance Percentage: CONTRACTOR shall perform with his/her own organization contract work amounting to not less than fifty (50) percent of the original total contract price, except that any designated "Specialty Items" may be performed by subcontract and the amount of any such "Specialty Items" so performed may be deducted from the original total AGREEMENT price before computing the amount of work required to be performed by CONTRACTOR with its organization.
- 2.2 The Scope of Work includes but is not limited to the following:

The CONTRACTOR shall furnish a complete Turn-Key Fleet Management Software System and Support for the COUNTY.

As described with particularity in the following documents in this order of precedence: this AGREEMENT (which includes CONTRACTOR'S **LICENSE, SOFTWARE MAINTENANCE & SOW AGREEMENT** (Exhibit A) dated June 14, 2013) and **CONTRACTOR'S SCHEDULE-A: STATEMENT OF WORK (SOW) & PRICING** (Exhibit B) dated June 14, 2013, and CONTRACTOR'S proposal dated June 14, 2013 in response to COUNTY'S Request for Proposal RFP# 10417, dated May 16, 2013, all of which are either included as exhibits or incorporated by reference as though fully set forth herein. In case of any conflicts between the terms of these documents, the terms of this AGREEMENT shall control and prevail.

3.0 TERM OF AGREEMENT

- 3.1 CONTRACTOR shall begin work November 5, 2013 and CONTRACTOR shall thereupon work diligently to provide all the required services and activities described herein. The term of this AGREEMENT shall be five (5) years, commencing November 5, 2013 and ending November 5, 2018.
- 3.2 County reserves the right to cancel the AGREEMENT, or any extension of the AGREEMENT, without cause, with a thirty (30) day written notice, or immediately with cause. Should County cancel the AGREEMENT without cause, County will be responsible for all actual fees and costs incurred prior to cancellation.

4.0 COMPENSATION AND PAYMENTS

- 4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the pricing sheet attached hereto as Exhibit A.
- 4.2 Total maximum compensation to be paid hereunder for the satisfactory accomplishment and completion of all tasks set forth above shall in no event exceed the sum of \$260,000.
- 4.3 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety (90) days prior to the expiration of this AGREEMENT.
- 4.4 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than 30 days.
- 4.5 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.
- 4.6 Tax:
- 4.6.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.
- 4.6.2 County is registered with the Internal Revenue Service, San Francisco office, registration number 94730022K. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 INVOICES AND PURCHASE ORDERS

- 5.1 Invoice amounts shall be billed directly to the ordering department.
- 5.2 CONTACTOR shall reference the RFP/RFQ number on all invoices submitted to County. CONTRACTOR shall submit such invoices periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. County shall certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to County Auditor-Controller for payment. County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- 5.3 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included the AGREEMENT must be approved by County in writing via an Amendment.

6.0 PAYMENT TO CONTRACTOR

- 6.1 Payment will be made on a calendar-month basis in arrears. Invoices shall be submitted to the attention of:
- Monterey County Fleet Manager
855 East Laurel Drive Building A
Salinas, CA 93905
- 6.2 In the event this AGREEMENT becomes effective or terminates during the course of a month, the amount paid to the CONTRACTOR for the past month shall be determined by prorating the amount on the basis of the number of calendar days involved. Processing of payment will be delayed for CONTRACTOR'S failure to include reference to AGREEMENT (including number) on the invoice **and failure to maintain current insurance information with the COUNTY in accordance with insurance requirements hereunder.**
- 6.3 In no event shall COUNTY be obligated to pay late fees or interests, whether or not such requirements are contained in the CONTRACTOR'S invoice. Invoices for services provided in June or for any services not previously invoiced shall be submitted within ten

(10) working days after June 30th to facilitate COUNTY fiscal year end closing. Failure to comply with this invoice submission requirement may delay payment.

In connection with any cash discount specified within the CONTRACTOR'S bid response, if applicable, time will be computed from the date correct invoices are received by the person and address specified in the AGREEMENT or purchase order. For the purpose of earning the discount, payment is deemed to be made on the date of mailing of the COUNTY warrant or check.

7.0 MODIFICATION

This AGREEMENT shall not be modified, except by written amendment, executed by all parties. Oral change orders are not permitted. No change in this AGREEMENT shall be made unless the COUNTY gives its prior written approval. Any specification change not properly ordered by written modification to this AGREEMENT executed by COUNTY shall be void at the sole option of the COUNTY and CONTRACTOR shall be liable for all costs or expenses arising therefrom and/or for satisfactory correcting or replacing same.

8.0 STANDARD INDEMNIFICATION

CONTRACTOR shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with CONTRACTOR's performance of this AGREEMENT, unless such claims, liabilities, or losses arise out of the negligence or willful misconduct of County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

9.0 INSURANCE REQUIREMENTS

9.1 Evidence of Coverage:

9.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition CONTRACTOR upon request shall provide a certified copy of the policy or policies.

- 9.1.2 This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by County. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.
- 9.1.3 Qualifying Insurers: All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County's Purchasing Officer.

9.2 Insurance Coverage Requirements:

- 9.2.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:
- 9.2.1.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
- 9.2.1.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.
- 9.2.1.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.
- 9.2.1.4 Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, CONTRACTOR shall, upon the

expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.

9.3 Other Insurance Requirements:

- 9.3.1 All insurance required by this AGREEMENT shall be with a company acceptable to County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.
- 9.3.2 Each liability policy shall provide that County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
- 9.3.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- 9.3.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.

9.3.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

10.0 RECORDS AND CONFIDENTIALITY

- 10.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.
- 10.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT.
- 10.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT.
- 10.4 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. Pursuant to Government Code section 8546.7, if this AGREEMENT involves the expenditure of public funds in excess of \$10,000, the parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

11.0 NON-DISCRIMINATION

- 11.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).
- 11.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of 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.
- 11.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTs with subcontractors to perform work under the contract.

12.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- 12.1 Independent Contractor: CONTRACTOR shall be an independent contractor and shall not be an employee of Monterey County, nor immediate family of an employee of County. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc.) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.
- 12.2 Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent of the original total AGREEMENT amount, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT amount before computing the amount of work required to be performed by CONTRACTOR with his own organization or per a consortium.

13.0 CONFLICT OF INTEREST

CONTRACTOR covenants that CONTRACTOR, its responsible officers, and its employees having major responsibilities for the performance of work under the AGREEMENT, presently have no interest and during the term of this AGREEMENT will not acquire any interests, direct or indirect, which might conflict in any manner or degree with the performance of CONTRACTOR'S services under this AGREEMENT.

14.0 COMPLIANCE WITH APPLICABLE LAWS

- 14.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
- 14.2 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.
- 14.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

15.0 LEGAL DISPUTES

- 15.1 CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
- 15.2 Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.
- 15.3 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.
- 15.4 The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

16.0 FORCE MAJEURE

- 16.1 "Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to acts of God, civil or military disruption, fire, strike, flood, riot, war, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.
- 16.2 If any party hereto is delayed or prevented from fulfilling its obligations under this AGREEMENT by Force Majeure, said party will not be liable under this AGREEMENT for said delay or failure, nor for damages or injuries resulting directly from the inability to perform scheduled work due to Force Majeure.
- 16.3 CONTRACTOR shall be granted an automatic extension of time commensurate with any delay in performing scheduled work arising from Force Majeure. CONTRACTOR agrees to resume such work within three (3) days after the Force Majeure has subsided enough to do so.

17.0 RIGHTS AND REMEDIES OF THE COUNTY FOR DEFAULT

In the case of default by CONTRACTOR, County may procure the articles or services from other sources and may recover the loss occasioned thereby from any unpaid balance due to CONTRACTOR or by proceeding against any performance bond of CONTRACTOR, if any, or by suit against CONTRACTOR. The prices paid by County shall be considered the prevailing market price at the time such purchase(s) may be made. Inspections of deliveries or offers for deliveries that do not meet specifications shall be made at the expense of CONTRACTOR.

18.0 TRAVEL REIMBURSEMENT

Travel reimbursements shall not exceed the IRS allowance rates as per County of Monterey Travel Policy. A copy of County's Travel Policy is available on the Auditor-Controller's web site at: <http://www.co.monterey.ca.us/auditor/policy.htm>.

19.0 NON-APPROPRIATIONS CLAUSE

Notwithstanding anything contained in this AGREEMENT to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for County for any reason whatsoever in any fiscal year, for payments due under this AGREEMENT, County will immediately notify CONTRACTOR of such occurrence, and this AGREEMENT shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for County or are otherwise available for

payments. To the extent permitted by law, this provision will not be construed so as to permit County to terminate this AGREEMENT in order to acquire or lease any other equipment or to allocate funds directly or indirectly to perform the same application and in the same manner for which the equipment is intended.

20.0 GUARANTEE OF MALWARE-FREE GOODS

All software/hardware purchased must be free of malicious code such as viruses, Trojan horse programs, worms, spyware, etc. Validation of this must be written into the contract. Malicious code or malware (short for malicious software) is defined as software (or firmware) designed to damage or do other unwanted actions on a computer system. Common examples of malware include viruses, worms, Trojan horses and spyware. Viruses, for example, can cause havoc on a computer's hard drive by deleting files or directory information. Spyware can gather data from a user's system without the user knowing it. This can include anything from the web pages a user visits to personal information, such as credit card numbers.

21.0 INTELLECTUAL PROPERTY RIGHTS

- 21.1 All data provided by County belongs to County. All records compiled by CONTRACTOR in completing the work described in this AGREEMENT, including but not limited to written reports, studies, drawings, blueprints, negatives of photographs, graphs, charts, plans, specifications and all other similar recorded data, shall become and remain the property of County. Use or distribution of County data by CONTRACTOR is prohibited unless CONTRACTOR obtains prior written consent from County.
- 21.2 For systems hosted or stored on equipment not owned by County, CONTRACTOR shall furnish all data to County upon request by County at any time during the term of this AGREEMENT in a useable format as specified by County and at no additional cost to County.
- 21.3 Notwithstanding anything to the contrary contained in this AGREEMENT, it is understood and agreed that CONTRACTOR shall retain all of its rights in its proprietary information including, without limitation, methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by CONTRACTOR prior to this AGREEMENT.

22.0 NOTICES

- 22.1 Non-Assignment: CONTRACTOR shall not assign this contract or the work required herein without the prior written consent of County.
- 22.2 Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's contract administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

TO COUNTY:

Contracts/Purchasing Officer
County of Monterey, Contracts/Purchasing
168 W. Alisal Street, 3rd Floor.
Salinas, CA 93901-2439
Tel. No.: (831) 755-4990
FAX No.: (831) 755-4969
derm@co.monterey.ca.us

TO CONTRACTOR:

Michael P. Brawley, VP Asset Product Manager
2700 International Parkway
Suite 300
Virginia Beach, VA 23452
Tel. No.: (833) 514-2513 Ext. 2108
FAX No.:
Mike.b@fasterasset.com

IN WITNESS WHEREOF, the County and CONTRACTOR execute this AGREEMENT as follows:

MONTEREY COUNTY

CONTRACTOR

Contracts/Purchasing Officer

By: Michael P. Brawley
Signature of Chair, President, or Vice-President

Dated: _____

Michael P. Brawley
Printed Name and Title VP, Asset Proc Mgr

Approved as to Fiscal Provisions:

Dated: 9-25-2013

Auditor/Controller

By: Jeannine Youngs
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Dated: 9-30-13

Approved as to Liability Provisions:

Jeannine Youngs CFO
Printed Name and Title

Risk Management

Dated: 9/23/2013

Dated: _____

Approved as to Form:

Assistant County Counsel

Deputy

Dated: 9-27-13

EXHIBIT-A

CONTRACTORS, LICENSE, SOFTWARE MAINTENANCE & SOW AGREEMENT



License, Software Maintenance & SOW Agreement

Contract No. MON130309

FASTER Asset Solutions hereinafter referred to as "*FASTER*," agrees to grant to the County of Monterey, CA, hereinafter referred to as "Customer," and Customer agrees to accept from *FASTER* in accordance with the following terms and conditions, a permanent non-exclusive single site license for use of *FASTER* proprietary software as detailed in Schedule A, which is incorporated herein by reference. In addition other services and products are also detailed in this contract.

I. *FASTER* SUPPLIED PRODUCTS

A. Software Designation

FASTER Web Fleet Management System as detailed in Schedule A

B. Support Services

As listed in Section VI & Schedule A

C. Other Services

As listed in Schedule A

II. PAYMENT AND ACCEPTANCE TERMS

A. Purchase Order

The Customer must provide *FASTER* with a purchase order within 30 days of contract execution.

B. Basic Software/Services

Payment is due for software and other products and services listed in this contract in accordance with Schedule A. The payment will be due 30-days from the date of delivery of the items listed in Schedule A.

System Acceptance of the *FASTER* basic software will occur at go-live where a *FASTER* Support person will be on-site to answer questions, assist with go-live, and review a checklist that confirms that the system is functioning and that there is system acceptance. This also will trigger that you will be turned over to our Support Team for on-going 24/7 support and upgrades.

Post-go-live Customized Software/Services Payment is due on all delivered customized software and services in accordance with the following schedule:

<p>Post-go-live Customized Software/Services</p> <p>None requested</p>	<p>Net 30 days</p>	<p>50% upon requirements signoff</p> <p>50% upon delivery</p>
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License, Software Maintenance & SOW Agreement

Contract No. MON130309

III. TAXES

Prices and fees are exclusive of all federal, state, municipal, or other government, excise, sales, use, occupational, or like taxes now in force or enacted in the future and, therefore, prices are subject to an increase equal in amount to any tax *FASTER* may be required to collect, or pay, upon the sale or delivery of items purchased or licensed. If a certificate of exemption, or similar document or proceeding, is to be made in order to exempt the sale from sales or use tax liability, the Customer will obtain and pursue such certificate, document or proceeding.

IV. PROPRIETARY RIGHTS OF *FASTER* IN THE SOFTWARE

A. The Nature of These Rights, and Title

Customer recognizes that the computer programs, system documentation manuals, and other materials supplied by *FASTER* to Customer are subject to the proprietary rights of *FASTER*. Customer agrees that the programs, documentation, and all information or data supplied by *FASTER*, in machine-readable form are trade secrets of *FASTER*, are protected by civil and criminal law, and by the law of copyright, are very valuable to *FASTER*, and that their use and disclosure must be controlled. Customer further understands that operator manuals, training aids, and other written materials are subject to the copyright act of the United States.

TITLE: *FASTER* retains title to the programs, documentation, information or data furnished by *FASTER* in machine-readable form, and training materials. *FASTER* does not retain title to operator manuals and other materials bearing the *FASTER* copyright notice, but these items shall not be copied except as herein provided.

Customer shall keep each and every item to which *FASTER* retains title free and clear of all claims, liens and encumbrances except those of *FASTER*; and any act of Customer, voluntary or involuntary, purporting to create a claim, lien, or encumbrance on such an item shall be void.

B. Restrictions on Customer Use

The computer programs and other items supplied by *FASTER* hereunder are for the sole use of Customer and Customer's employees/agents.

1. **COMPETITIVE USES:** Customer agrees that while this agreement is in effect or while it has custody or possession of any property of *FASTER*, it will not directly or indirectly lease, license, sell, offer, negotiate, or contract to provide any software similar to that supplied hereunder for any third party, but this clause shall not be construed to prohibit Customer from acquiring, for its own use, software from third parties.
2. **COPIES:** Customer understands that it is able to make regular backups of all programs and data. Customer agrees that while this agreement is in effect, or while it has custody or possession of any property of *FASTER*, it will not:



License, Software Maintenance & SOW Agreement

Contract No. MCN130309

- a) Copy or duplicate, or permit anyone else to copy or duplicate, any physical or magnetic version of the programs, documentation, or information furnished by *FASTER* in machine-readable form.
 - b) Create or attempt to create, or permit others to create or attempt to create, by reverse engineering or object program or otherwise, the source programs, or any part thereof, from the object program or from other information made available under this agreement otherwise, (whether oral, written, tangible, or intangible). Customer may copy for its own use, and at its own expense, operator manuals, training materials, and other terminal copies made for their distribution.
3. **ENVIRONMENT.** Customer understands that it may use *FASTER*'s proprietary software in a single environment. A test environment may be temporarily set up prior to upgrading to a new release of *FASTER*, for the sole purpose of testing operability of the new release. Once the upgrade is completed, the test environment must be removed. In this Agreement, an "environment" is defined as "a single instance of the *FASTER* application and a single instance of the *FASTER* database." These two component parts of the "environment" may reside on either a single server or separate servers.
4. **THIRD PARTY USES.** Customer understands that it cannot use *FASTER*'s proprietary software to manage the assets for any third-party, unless expressly authorized by *FASTER* in writing.
5. **MERGER.** Customer's rights hereunder are non-transferable and, unless expressly authorized by *FASTER* in writing, extinguish upon merger with another entity, acquisition by another entity, or the acquisition of another entity.
6. **INSPECTION:** To assist *FASTER* in the protection of its proprietary rights, Customer shall permit representatives of *FASTER* to inspect, at all reasonable times, any location at which items supplied are being used or kept.
7. **DEMONSTRATIONS:** Due to the proprietary nature of *FASTER*'s Fleet Management System, Customer agrees not to demonstrate this system to any competitors, or consultants that work with competitors, of *FASTER*.

C. Transfer or Expansion of Rights

The Customer's rights to use the programs, documentation, manuals, and other materials supplied by *FASTER* under this agreement shall not be assigned, licensed, or transferred to a successor, affiliate or any other person, firm, corporation, or organization voluntarily, by operation or law, or in any other manner without the prior written consent of *FASTER*, which shall not be unreasonably withheld.

D. Remedies

If Customer attempts to use, copy, license, or convey the items supplied by *FASTER* hereunder, in a manner contrary to the terms of this agreement or in competition with *FASTER* or in derogation of *FASTER*'s proprietary rights, whether these rights are explicitly herein stated, determined by



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law, or otherwise, *FASTER* may, in addition to other remedies available to it, seek equitable relief enjoining such action.

E. Binding Effect and Definitions

The Customer agrees that this agreement binds the named Customer and each of its employees, agents, representatives, and persons associated with it. This agreement further binds each affiliated organization and any person, firm, corporation, or other organization with which the Customer may enter a joint venture or other cooperative enterprise. The term employee means individual on whose behalf the Customer withholds income taxes or makes contributions under the federal insurance contributions act or similar statutes in other nations.

V. WARRANTY

A. Software

For one (1) year following installation, *FASTER* will design, code, check out, document, and deliver promptly any amendments or alterations to the software that may be required to correct errors present at the time of acceptance. This warranty is contingent upon Customer advising *FASTER* in writing of such errors within one (1) year from installation as defined herein.

Following the warranty period Customer may continue to receive *FASTER*'s software maintenance by Customer's payment of *FASTER*'s then current charge for such maintenance.

B. No Other Warranties

EXCEPT FOR THE EXPRESS WARRANTIES STATED IN PARAGRAPH V.A. ABOVE, *FASTER* DISCLAIMS ALL WARRANTIES WITH REGARD TO THE *FASTER* PRODUCT SOLD HEREUNDER, INCLUDING ALL IMPLIED WARRANTIES OF MARKETABILITY AND FITNESS AND ALL OBLIGATIONS OR LIABILITIES ON THE PART OF *FASTER* FOR DAMAGES INCLUDING, BUT NOT LIMITED TO, CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THE USE OR PERFORMANCE OF THE SYSTEM.

C. Exclusion of Incidental, Consequential and Certain Other Damages

To the maximum extent permitted by applicable law, in no event shall *FASTER* or its suppliers be liable for any special, incidental, indirect, punitive or consequential damages whatsoever (including, but not limited to, damages for: loss of profits, loss of confidential or other information, business interruption, personal injury, loss of privacy, failure to meet any duty (including of good faith or of reasonable care), negligence, and any other pecuniary or other loss whatsoever) arising out of or in any way related to the use of or inability to use the *FASTER* components or the support services, or the provision of or failure to provide support services, or otherwise under or in connection with any provision of this agreement, even if *FASTER* or any supplier has been advised of the possibility of such damages.

D. Limitation of Liability

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Customer agrees that *FASTER's* liability, and that of its officers, directors, employees, agents and subcontractors to customer or any third party due to any negligent professional acts, errors or omissions or breach of contract by *FASTER* will be limited to an aggregate of *FASTER's* total fee.

VI. SOFTWARE MAINTENANCE

A. Terms

Software maintenance automatically renews on an annual basis with annual fees increasing 3% per year. Software maintenance may be terminated by either party providing 60 days written notice to the other party.

B. Fee

Maintenance fees shall be payable yearly in advance. The fee for the 12 month period beginning at delivery of COTS software is \$27,400.00. This fee covers support services for the *FASTER* Fleet Management System as specified in detail in Schedule A.

C. Changes in Terms, Conditions and Fees

FASTER may change its software maintenance fees, terms, and conditions upon 90 days written notice to customer, but no such change shall be effective until the current software maintenance period expires.

D. Taxes and Duties

There shall be added to maintenance fees and other charges to this agreement amounts equal to any tariff, duties and/or sales or use tax, or any tax in lieu thereof, imposed by any government or governmental agency with respect to the services rendered by *FASTER* under this agreement.

E. Coverage

The software covered in this agreement includes *FASTER*, the fleet management system, and all options/additions outlined in Schedule A. This agreement also covers all ongoing support, which includes, but is not limited to, phone consultation, remote diagnostic capabilities and periodic updates to the software, with accompanying updates to system manuals. Support is limited to a single environment, with the sole exception being the test environment described above in Section IV.B.3. Support is also limited to the customer having one *FASTER* Administrator and one *FASTER* Database Administrator at a time.

Customer shall inform *FASTER* in writing of any modifications made by Customer to the software or the *FASTER* Web database. (Other than changing the fuel configuration layout, any actions performed through the standard *FASTER* Web interface is NOT considered a modification for purposes of this contract.) *FASTER* shall not be responsible for maintaining Customer-modified portions of the software or for maintaining portions of the software affected by Customer-modified portions of the software.



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Support related to defects traceable to Customer errors or system changes will be billed at *FASTER's* standard time and materials rates. Any corrections or alterations to, or new versions of, the software that *FASTER* may deliver to customer under this agreement shall be limited to one copy of such software and documentation delivered to the customer.

F. Proprietary Rights

Any changes, additions, and enhancements in the form of new or partial programs or documentation as may be provided under this agreement, shall remain the proprietary property of *FASTER*. The software programs specified above will include, under their proprietary restrictions, any such additional programming and documentation provided under this agreement.

G. Termination

In the event of termination of the software maintenance specified above, through default by Customer, *FASTER's* obligations for software maintenance shall immediately end. *FASTER* may terminate this agreement in the event of default by Customer. Default by the Customer includes Customer's failure to pay the annual maintenance within 30 days notice that the same is thirty days or more delinquent.

VII. PROJECT CHANGES AND DELAYS

Once a contract and payment terms are finalized, *FASTER* will assign a project manager and implementation team for you. Depending on the current volume of implementations and the number of customizations you require, this may take anywhere from two to six weeks to provision a team. *FASTER* does not use outside consultants to do the implementation. And we need to ensure that our team of highly trained professionals are available to focus on your project. If you have customizations, *FASTER's* Enterprise Integrations and Customizations Team will work with your team to advise you on writing up your requirements for those customizations. This is an important step that the customer's team needs to do to insure that you ultimately get what you need.

The completion and sign-off requirements will then permit a project plan to be finalized. *FASTER's* Project Manager will work with your team to finalize a project plan that is mutually agreeable.

Once a project plan is agreed to by your team and *FASTER*, the project will move forward. It is important to note that only *FASTER's* Project Manager can agree to changes in the project plan on *FASTER's* behalf. Informing a *FASTER* consultant or trainer of a desired change will not guarantee that a project task can be accomplished. Because this implementation is a complex endeavor, the Project Manager is the only person that can provide a change on *FASTER's* behalf. And we will expect that your point-person is the only party in your organization that can agree to project changes as well.

Your team and *FASTER* will be allocating staff for important tasks that are key to your successful go-live. And most of the tasks have many dependencies. So once the project starts, tasks likely cannot be changed without increasing your cost and possibly delaying your go-live date. Also, it is critical that you be able to provide the people and resources that *FASTER* will need at the times that are planned.



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Please be aware that while we will make every attempt to accommodate changes you request to task time-frames, after you agree to those time frames FASTER may not be able to be accommodate due to our resources not being available. If you request a change after travel plans have been made, any added travel cost incurred by FASTER may be charged to you. And if you are traveling to FASTER's offices, and FASTER changes an agreed upon task date, any added travel cost incurred by you will be charged to FASTER.

Please be aware that if your employees don't show up for training this could lead to rescheduling additional training at an added cost.

Related to data conversions, after the customer has submitted their data to FASTER for FASTER to begin the data conversion process, any changes will lead to added cost.

VIII. GENERAL

This agreement can not be assigned without prior written consent of FASTER. Any attempt by Customer to assign any of the rights, duties, or obligations of this agreement without such consent is void.

This agreement can be modified by a written agreement duly signed by persons authorized to sign agreements on behalf of Customer and of FASTER, and variance from the terms and conditions of this agreement in any order or other written notification from the Customer will be of no effect.

If any provision or provisions of this agreement shall be held to be invalid, illegal, or non-enforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Neither party shall be liable in damages or have the right to terminate this agreement for any delay or default in performing hereunder if the delay or default is caused by conditions beyond its control including but not limited to Acts of God, Government restrictions, wars, insurrections and or any other causes beyond the reasonable control of the party whose performance is affected.

No action, regardless of form, arising out of this agreement may be brought by either party more than three (3) years after the cause of action has arisen, or, in the case of non-payment, more than three (3) years from the date of the last payment.

Contracts may be formed between public agencies utilizing an existing solicitation or current requirement contract of one of the public agencies that is party to the contract only if:

- a) The original contract met the requirements of this chapter;
- b) The contract allows other public agency usage of the contract; and
- c) The original contracting public agency concurs.

In addition to the County of Monterey and with approval of the contracted vendor, this Contract may be extended for use by other municipalities and government agencies of any state. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter, and/or rules and regulations of the respective political entity.



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This agreement will be governed by the laws of the State of California. The Customer acknowledges that he has read this agreement, understands it, and agrees to be bound by its terms and conditions. Further, the Customer agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this agreement.

The source code to all *FASTER* Fleet Management software is kept at the *FASTER* offices in Virginia Beach, VA. An escrow account may be established specifically for the Customer with the *FASTER* Escrow Agent. A setup fee and an annual maintenance fee for this escrow account will apply. However, *FASTER*, in the event that it is no longer able to support, enhance, and further market the *FASTER* software will make available all source code to all customers who are active and up to date on their support service contract with *FASTER*.

AGREED TO:

CUSTOMER:	<i>FASTER</i> Asset Solutions:
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT-B
CONTRACTOR'S SCHEDULE-A: STATEMENT OF WORK (SOW) & PRICING



Schedule A: Statement of Work (SOW) & Pricing

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SCHEDULE A: STATEMENT OF WORK (SOW) AND PRICING

FASTER COTS Fleet System Pricing

The below document is a Statement of Work (SOW) and associated pricing.

Pricing in this proposal is valid for 60 days.

Software & Services			
Section	Products and Services	Description	Cost
FMIS Core COTS System Modules	011: Software Cost: Standard Active Assets	This price includes up to 2,000 standard active assets (which are defined as originally valued at \$5000 or greater and active). Each additional asset will be \$50.	\$100,000
	100: Unlimited Named Accounts	Unlimited user access (named accounts) included.	\$0
Add-On Modules	207NC: Dashboard	Dashboard Add-On for New Customer Site	\$10,000
	208: Barcoding Software	Barcoding Software for Two Storerooms (allows for Label Scanning and Printing). Hardware is not included.	\$6,000
Go-Live Data Integrations	300: Single Vendor Standard Fuel Import - New Customer	<p>New Customer Standard Fuel Import</p> <p>In order for FASTER to build the fuel import, the customer will need to provide two items to FASTER:</p> <ol style="list-style-type: none"> 1. The five (5) most recent actual export files from your live production Fuel System for the Fuel Vendor which includes the complete disbursement transactions to be imported. It is important that this export file include data populated for all sites, pumps/dispensers and products you want imported. FASTER will then configure a Standard Fuel Import within the FASTER application to read and import the disbursement transactions from the Fuel System export file for this single fuel vendor. The exports from your production Fuel System must system generated flat files and not a Fuel System report that has been exported to a 	\$5,000



Schedule A: Statement of Work (SOW) & Pricing

Contract No. XX

		<p>particular format. Microsoft Excel is not an acceptable file for import due to the fact that Excel will change data when saving to an XLS, XLSX format.</p> <p>2. A current file layout definition must be obtained by the customer from their Fuel Vendor that defines and describes the export file's columns, positions and and/or delimiters if used; and it should match the export file the vendor will be providing you over time. Only a single file layout definition can be imported per Standard Fuel Import. Any differences in requirements for any single file layout definition or any additional file layout definitions that vary from the one provided will necessitate an additional Standard Fuel Import.</p>	
	304: Odometer and Trouble code Integration Estimate	This is an estimate for the one-way Odometer and Trouble Code Integration. The actual cost of integration can be determined once specifications are identified.	\$8,000
	304: Advantage Financial Integration Estimate	This is an estimate for the Advantage Financial one-way flat file. The actual cost of integration can be determined once specifications are identified.	\$8,000
Data	400: Data Cleanup and Scrubbing	The customer will be responsible for any data cleanup or scrubbing needed related to ensuring that the data in the current database is usable. (However, as part of the implementation process, FASTER Fleet Consultants will provide advice and guidance related to data cleanup.)	Customer Responsibility
	401: Data Extraction Method-1	FASTER can provide an MSSQL based data mapping product into which your team will map and populate your existing data. (After this work product is complete, FASTER will execute the conversion level you chose noted below to create your FASTER Web database and test.)	\$10,000
	402: Data Extraction Method-2	If you want to minimize cost and do not have staff familiar with MSSQL, FASTER can provide a pre-designed data mapping product using Excel spread sheets. This Excel-based data mapping product can be used by your less experienced staff to populate all your data. It requires basic knowledge of Excel and solid knowledge of your fleet data. (After this work product is complete, FASTER will execute the conversion level you chose noted below to create your FASTER Web database and test.)	\$2,000



Schedule A: Statement of Work (SOW) & Pricing

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	403: Data Extraction Method-3	FASTER can extract the data from your current database and populate it into the MSSQL data mapping product for you. This will be done at a rate of \$225/hour. (After this work product is complete, FASTER will execute the conversion level you chose noted below to create your FASTER Web database and test.)	Hourly Rate
	405: Data Conversion & Testing Level-1	Equipment Birth Certificates, Parts Birth Certificates, Vendor Birth Certificates, Employees/Users Records. This product utilizes a utility and series of packages to convert your data to a FASTER Web database. The process also involves work by one of FASTER's database developers. As part of conversion, FASTER will perform functional stability testing to ensure that there are no data conflicts with the FASTER Web table structure and includes data validation testing to test that data was converted properly.	\$6,000
	406: Data Conversion & Testing Level-2	Fuel Transaction Details, Work Order Transaction Details. (Data extraction will be significantly more complex due to the level of detail and amount of data that may be involved. Therefore, your internal time to populate the data or the hourly rate if you are paying FASTER may be significantly more.) This product utilizes a utility and series of packages to convert your data to a FASTER Web database. The process also involves work by one of FASTER's database developers. As part of conversion, FASTER will perform functional stability testing to ensure that there are no data conflicts with the FASTER Web table structure and includes data validation testing to test that data was converted properly.	\$9,000
Configuration, Training & Implementation	500: Project Management	Implementation and Project Management Services	\$15,000
	511: System Overview & Configuration Sessions	System overview and configuration session activities take place via live remote web-based session for a 6-hour period where customer will ensure key users are able to participate.	\$6,600
	512: System Training/Go Live	Combined On Site System Training and Go Live: 12-hours of End User training sessions over two days; Two 6-hour days of oversight, preparation and additional instruction. This includes a final review of the work process and the actual "production go live" of the FASTER application. Because training is hands-on, the maximum class size is 20 attendees and includes a single training location. If	\$9,600



Schedule A: Statement of Work (SOW) & Pricing

Contract No. XX

	additional classes are required, additional costs may apply.	
Software & Services Total		\$195,200

Upgrades & Support			
Section	Product/Service	Description	Cost
Annual FASTER Support	801: First Year Support Services	Annual support includes phone support, as well as upgrades for your <i>FASTER</i> Web software.	\$27,400
<p><i>Annual Support includes phone support, as well as upgrades for your FASTER Web software product. Annual software maintenance is purchased or renewed every 12 months. Support services apply to FASTER Web COTS System, Add-ons and Customizations. After the initial renewal year, support costs will increase at 3% annually.</i></p>			
Support Total			\$27,400

Payment Schedule - Software, Services, Support	
Milestone	Percent Due
Contract Signing	30%
COTS Software Delivery	30%
First Year Support Due at COTS Software Delivery	100%
System Configuration and Planning	20%
Delivery of Converted Data and Go Live	15%
30 Days Post Production Go Live	5%



Schedule A: Statement of Work (SOW) & Pricing

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Post Go-Live Data Integrations			
Section	Product/Service	Description	Cost
Add-On Modules	204: Web-Based Motor Pool	Web Based Motor Pool Reservations system. Software application only, does not include key box hardware or telematics hardware and infrastructure.	\$15,000
Post Go-Live Integrations Total			\$15,000

Payment Schedule - Post Go-Live Data Integrations	
Milestone	Percent Due
Start of Integration Project	50%
Delivery	50%