

PROGRAM SERVICES AGREEMENT

This PROGRAM SERVICES AGREEMENT (“Agreement”) is made and entered into and effective as of the last date opposite the signatures below, between Mynt Systems Inc. (“Contractor”), having its principal offices at 111 Mission Street, Santa Cruz, California 95060, and the County of Monterey, a political subdivision of the State of California, with offices located at County Administration Office, 168 W. Alisal Street, 3rd Floor, Salinas, California 93901 (“County”), collectively referred to as “the Parties” and individually referred to as a “Party”).

WHEREAS, Contractor is an energy services and solutions company with the technical and management capabilities and experience to perform integrated energy assessments (each, an “Assessment”) and to identify supply-side and/or demand-side Energy Conservation Measures (“ECMs”); and

WHEREAS, the County owns and/or operates certain public facilities, (collectively, the “Sites” and each individually, a “Site”), and the County wishes to reduce energy consumption and energy costs at certain of the Sites, while also improving energy quality and reliability, in furtherance of the County’s goal of achieving Net Zero carbon emissions in its buildings by 2030; and

WHEREAS, the Parties have initiated discussions whereby the County will engage Contractor to assist in the County’s Net Zero carbon emissions effort, pursuant to which Contractor will perform one or more Assessments, to be carried out in scoped phases as set forth in the “Scope of Work” which is attached and incorporated by this reference as Attachment A, and deliver recommendations identifying energy improvements and operational changes to be installed or implemented at such Sites (the “Recommendations”); and

WHEREAS, the primary purpose of the Assessment and the corresponding Site-specific Recommendations is to provide an engineering and economic basis for the implementation of the ECMs identified in the Recommendations, in furtherance of which the Parties intend to negotiate, execute and utilize a master definitive contract providing for, among other things, engineering, procurement, installation, construction and training services (the “Energy Services Contract”) consistent with the procedures established under California Government Code sections 4217.10 through 4217.8; and

WHEREAS, the Parties intend that the Phase I Assessment and corresponding Recommendations applicable to each Correctional Facility Site located at 1410 Natividad Road, Salinas, California 93906 (the “Natividad Site”) and the County Administrative Facility located at 1441 Schilling Place, Salinas, California 93901 (the “Schilling Site”) will be conducted as the initial, compensable assessment (“Initial Assessment”) as defined below; and

WHEREAS, to support the County’s implementation of certain ECMs, the Parties have identified a beneficial and time-sensitive funding opportunity under the Self Generation Incentive Program (“SGIP”), administered by Pacific Gas & Electric Company (“PG&E”), which funding, if granted, may be used to install a battery storage system that would be part of a

microgrid ready solar plus storage system; however, the Parties expressly agree that obtaining such funding is not a prerequisite to implementing a paid-by-savings project and that Contractor may include Recommendations in its Initial Assessment that do not include such funding; and

WHEREAS, on May 5, 2020, pursuant to County Board Report No. 20-332, the County Board of Supervisors authorized Contractor to apply for SGIP funding for both the Natividad Site and Schilling Site and Contractor accordingly submitted an application for SGIP funding (the "Application") applicable to the Natividad Site and the Schilling Site on the County's behalf on May 12, 2020, and Contractor is further prepared and authorized to submit the requisite deposit value of five percent (5%) of the total requested SGIP rebate (the "Application Fee") if and when the Application is approved by PG&E the deposit value is estimated to be \$94,435.97; and

WHEREAS, Parties agree that, pursuant to the terms of Section 3 below, the County will have no obligation to reimburse Contractor for the cost of the Application Fee *provided that* EITHER the County rejects the funds prior to the deadline of the SGIP requirements OR the County and Contractor enter into (i) the Energy Services Contract prior to the deadline to accept SGIP funding, and (ii) a Project Order (as defined in Section 1 below) for the Natividad Site and/or the Schilling Site that is materially consistent with the respective Recommendations within the same timeframe but not before thirty (30) calendar days after Contractor presents such Recommendations to the County.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. MASTER AGREEMENT/PROJECT ORDER STRUCTURE

As described herein, Parties intend to negotiate, execute and utilize a master agreement structure for the performance of the contemplated services in the Energy Service Contract for each applicable Site. Notwithstanding the foregoing, the execution of this Agreement and the Energy Service Contract alone, in the absence of any duly executed order ("Project Order") pursuant to which the County engages Contractor for services with respect to a particular Site and establishes Contractor's scope of services for such Site, shall neither create any obligation of Contractor to perform hereunder, nor any obligation of the County to give Contractor any compensation (except as expressly set forth in Section 3 below). Any actions taken or not taken by Contractor in anticipation of execution of the Energy Service Contract or any Project Order are taken at its sole risk and expense.

Prior to the issuance of any Project Order by the County, the County may request that Contractor submit to the County a written proposal for a proposed Site (a "Proposal"). Upon receipt of such a request, Contractor shall promptly provide the County with a Proposal for such proposed Site.

Contractor intends to perform the services contemplated under the Energy Service Contract (once it is executed) on a project-by-project basis pursuant to individual Project Orders issued during the term of the Energy Service Contract. Each Project Order shall define the applicable

Site and establish the specific scope of services that Contractor shall undertake, as well as the Site-specific terms and any other terms and conditions agreed upon by the County and Contractor with respect to the applicable Site. Except as specifically provided in a Project Order, each Project Order issued under the Energy Service Contract shall be subject to the terms and conditions of the Energy Service Contract. The County and Contractor intend to execute each Project Order issued under the Energy Service Contract to evidence acceptance of such Project Order and the terms set forth therein.

2. ASSESSMENT AND RECOMMENDATIONS

Contractor agrees to complete Phase I of the Assessment (as described in Attachment A “Scope of Work”) for the Natividad Site and the Schilling Site and to present corresponding Recommendations to the County within thirty (30) calendar days after the date on which Contractor receives, pursuant to a Non-Disclosure Agreement (“NDA”) to be signed by the Parties, the information listed in the “Required Information” which is attached and incorporated by this reference as Attachment B. The County agrees to deliver, subject to the NDA, the Required Information for the Natividad Site and the Schilling Site, to Contractor no later than twenty (20) calendar days after the effective date of this Agreement, which is the last day opposite the respective signatures below.

As will be further described in the Energy Services Contract and subject to the terms thereof, Contractor agrees to complete all additional phased Assessments and to present corresponding Recommendations for each Site to the County within ninety (90) calendar days after the date on which Contractor receives the Required Information for each applicable Site. The County further agrees to assist Contractor in performing the Assessment for each of the Sites (including the Natividad Site and the Schilling Site) by (i) providing Contractor with access to key decision makers and stakeholders of the County, (ii) providing Contractor, including both its employees and agents, such access to the Sites and other relevant facilities of the County as Contractor deems necessary, and (iii) providing, or causing the County’s energy suppliers to provide, complete and accurate data concerning energy usage and costs related to the Sites and other relevant facilities. Contractor will be entitled to rely upon the accuracy and completeness of all information provided to Contractor by the County and the County’s energy suppliers. Contractor will promptly provide written notice to the County if Contractor determines there is any incorrect data included in the information provided by the County or the County’s energy suppliers, but Contractor will have no obligation to correct or confirm any such information unless otherwise specified in the Scope of Work for an applicable Site. Any Change in the Scope of Work will be set forth in a Change Order executed by the Parties.

3. COMPENSATION TO MYNT SYSTEMS

Parties agree that, provided that Parties, in good faith, negotiate, *and* execute (i) the Energy Services Contract within sixty (60) calendar days of Contractor presenting Recommendations in its Initial Assessment to the County; and (ii) a Project Order for the Natividad Site and/or Natividad Site and the Schilling Site that is materially consistent with the corresponding approved Recommendations within thirty (30) calendar days of execution of the Energy

Services Contract by the Contractor and the County, the County shall not be obligated to remit any separate, upfront compensation to Contractor for the fees, expenses, disbursements, overhead and related costs incurred and expended by Contractor in preparing the Assessment, the Recommendations and in preparing and submitting the SGIP Application, inclusive of the Application Fee, (collectively, the “Costs”), but such Costs shall be incorporated into the total contract amount payable to Contractor under the Project Orders for the Natividad Site and the Schilling Site. Contractor warrants that it understands that, while the County intends to use its best efforts and act in good faith to timely execute the Energy Services Contract, circumstances beyond its control, including, but not limited to, public notice requirements and those events defined as Force Majeure, under section 13 of this Agreement, below, may prevent it from meeting this deadline. Should such an event occur, and the deadline not be met, Contractor agrees that an event of default will not be triggered.

Notwithstanding the foregoing, if the County terminates this Agreement or, unreasonably refuses to execute either the Energy Services Contract within sixty (60) calendar days of entering into this Agreement or to execute the Project Order for either the Natividad Site or the Schilling Site within thirty (30) days of executing the Energy Services Contract and at least thirty (30) days of receiving the respective Site Recommendations, the County shall reimburse Contractor for the full non-refundable cost of the Application fee, if such Application Fee has in fact been already been paid, in addition to such Site’s actual Costs incurred during the Phase 1 Assessments, that shall not exceed Twenty-Five Thousand Dollars (\$25,000.00) per Site (an “Assessment Fee”). As further described in the Energy Services Contract, in the event Contractor terminates this Agreement, or is unable, in the reasonable exercise of Contractor’s discretion, to substantially perform the scope of work specified in a Project Order for a particular Site, the County may, at its option, elect to remit the Assessment Fee to Contractor and will, in exchange for payment in full of the Assessment Fee, obtain an irrevocable and non-exclusive license to use the Work Product (as defined below in Section 7) that is solely related to, and may solely be applied to, the applicable Site.

4. TERMINATION

Each of the County and Contractor reserves the right to terminate this Agreement at any time prior to the execution of the Energy Services Contract by delivery of both written and electronic notice to the other at the address listed below.

TO Contractor : Contractor Inc.
Mynt Systems Inc.
111 Mission Street
Santa Cruz, California 95060
Tel: (408) 426-5420
E-Mail: rhymes@myntsystems.com

TO the County: County of Monterey, County Administrative Office
Attn: Ashley L. Paulsworth, Management Analyst III
168 W. Alisal Street, 3rd Floor

5. INSURANCE

Prior to execution of this Agreement, Contractor shall provide the County with a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. Additionally, Contractor shall, upon request, provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County Administrative Office, Contracts/Purchasing Division, unless otherwise directed. Contractor shall not receive a "Notice to Proceed" with this Agreement until it has obtained all required insurance and the County has approved such insurance. Contractor shall file a new or amended certificate of insurance within ten (10) business 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 Section 9. INDEMNIFICATION of this Agreement, which shall continue in full force and effect.

All coverage, except surety, shall be issued by companies that hold a current policy holder's alphabetic incidental size category rating of not less than A-VII, the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

Without limiting Contractor's duty to indemnify, as defined in this Agreement, Contractor shall maintain in effect throughout the term of this Agreement the policy or policies of insurance with the following minimum limits of liability:

A. Workers' Compensation/Employers Liability for states in which Contractor is not a qualified self-insured. Limits as follows:

- Workers' Compensation: Statutory
- Employers Liability: Bodily Injury by accident \$1,000,000 each accident
Bodily Injury by disease \$1,000,000
each employee Bodily Injury by
disease \$1,000,000 policy limit

B. Commercial General Liability including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations with coverage of at least \$1,000,000 per occurrence and limits of:

- \$2,000,000 each occurrence for Bodily Injury and Property Damage
- \$4,000,000 General Aggregate - other than Products/Completed Operations
- \$4,000,000 Products/Completed Operations Aggregate
- \$2,000,000 Personal & Advertising Injury
- \$ 100,000 Damage to premises rented to Contractor

Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (04/13) or its equivalent forms.

C. Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.

D. Professional Liability insurance with limits of:

- \$1,000,000 per occurrence
- \$2,000,000 aggregate

Coverage to be written on a claims-made form. Consequently, 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.

E. Umbrella/Excess Liability Insurance. Limits as follows:

- \$1,000,000 each occurrence
- \$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims-made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

F. Other Requirements

All insurance required by this Agreement shall be with a company reasonably acceptable to the 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 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.

To the extent commercially practicable and permitted by Contractor’s insurance carrier, each liability policy shall provide that the County shall be given notice in writing at least thirty (30) calendar 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.

Failure by Contractor to maintain such insurance will be considered a default of this Agreement, and if Contractor fails to cure any such default within ten (10) business days following written notice thereof from the County, the County will have the

right, at its sole discretion, to terminate this Agreement immediately thereafter.

G. Policy Endorsements.

- The insurance provided for Workers Compensation and Employers Liability above will contain waivers of subrogation rights against the County, but only to the extent of the indemnity obligations contained in this Agreement.
- The insurance provided for Commercial General Liability and Auto Liability above will:
 - (1) Include the County, its officers, agents, and employees as Additional Insureds with respect to liability arising solely out of Contractor's System's work, including ongoing and completed operations, and shall further provide that any insurance or self-insurance maintained by the County, and the insurance of the Additional Insureds, shall be non-contributory. 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).
 - (2) Provide that Contractor's insurance is primary with respect to all insureds, but only to the extent of the indemnity obligations contained in this Agreement.

6. INDEPENDENT CONTRACTOR

Contractor, and the agents and employees of Contractor, its subcontractors and/or consultants, are acting in an independent capacity in the performance of this Agreement, and not as public officials, officers, employees, consultants, or agents of the County or the State of California for purposes of conflict of interest laws or any other applicable law. This Agreement may not be construed to represent the creation of an employer/employee or principal/agent relationship.

No offer or obligation of permanent employment with the County or County department or agency is intended in any manner, and Contractor shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits, including, but not limited to, sick leave, vacation, retirement benefits, workers' compensation coverage, insurance, or disability benefits. Contractor shall be solely liable for, and obligated to pay directly, all applicable taxes for which it is legally responsible under all applicable laws, including federal and state income taxes and social security, arising out of Contractor's performance of this Agreement. In connection therewith, Contractor shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such taxes.

Contractor will act in an independent capacity and retain sole discretion in the manner and means of carrying out its activities under this Agreement. Nothing in this Agreement or in the Energy Services Contract will restrict or prevent or be deemed to restrict or prevent Contractor from working with or for other municipalities, state or local agencies or any other third parties while performing services for the County under the Energy Services Contract.

7. WORK PRODUCT

Except as specifically licensed in Section 3 above, the County will not, by virtue of this Agreement, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used or developed in connection with the Assessment or the Recommendations. The Recommendations, and all data, proposals, plans, specifications, flow sheets, drawings, and other work product prepared or produced by Contractor hereunder (“Work Product”) and furnished directly or indirectly, in writing or otherwise, to the County under this Agreement will remain Contractor’s property and will be used only in connection with work performed by Contractor. Contractor will be deemed the author and owner of such Work Product and will retain all common law, statutory and other reserved rights, including copyrights. The Work Product may not be used by the County, except as specifically licensed in Section 3 above, as a basis for facility construction or implementation of ECMs developed herein by any entity other than Contractor, without the prior written agreement of Contractor in its sole and absolute discretion. Any unauthorized use of the Work Product will be at the County’s sole risk and without liability to Contractor, and the County will defend, indemnify and hold harmless, Contractor, its subcontractors, and their directors, employees, sub-subcontractors, and agents from any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants’ and attorneys’ fees and other defense expenses) and liabilities of any nature (collectively, “Losses”) associated with or resulting from such use.

8. LIMITATION OF LIABILITY

Notwithstanding anything to the contrary in this Agreement, (i) Contractor cannot guarantee that the County will receive funding from any energy efficiency rebate, incentive, and/or loan program(s), including but not limited to the SGIP (collectively, “Incentive Funds”); (ii) Contractor expressly disclaims any liability for the County’s failure to receive any portion of the Incentive Funds, and the County acknowledges and agrees that Contractor will have no liability for any failure to receive all or any portion of the Incentive Funds; and (iii) Contractor’s maximum liability under this Agreement shall not exceed \$1,000,000. However, this limitation shall not apply to Contractor’s indemnification obligation to the County as defined in section 9, below, which shall continue in full force and effect.

9. INDEMNIFICATION

Contractor shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all third party claims, liabilities, and Losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys’ fees) occurring 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 Losses for damage or injury, arising out of, or connected with, Contractor’s and its employees’, agents’, and subcontractors’ performance of this Agreement, except to the extent such claims, liabilities, or Losses arise out of the sole negligence or willful

misconduct of the County or any of its officers, agents, or employees.

10. RECORDS AND CONFIDENTIALITY

A. Confidentiality

Pursuant to the terms of the NDA, Contractor and its officers, employees, agents, and subcontractors shall comply with any and all applicable federal, state, and local laws, which provide for the confidentiality of records and other information. Except in compliance with the NDA, 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 third-party 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' obligations under this Agreement.

B. County Records.

When this Agreement expires or terminates, Contractor shall return to the County any records that Contractor used or received from the County to perform services under this Agreement.

C. Maintenance of Records

As further described in the Energy Services Contract, Contractor shall prepare, maintain, and preserve all reports and records that may be required by applicable federal, state, and County rules and regulations related to services performed under this Agreement. Contractor shall maintain such records for a period of at least three (3) years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then Contractor shall retain said records until such action is resolved.

D. Access to and Audit of Records

As further described in the Energy Services Contract, the County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the 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 the 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 (3) years after final payment under the Agreement.

11. NONDISCRIMINATION; COMPLIANCE WITH LAWS

During the performance of this Agreement, Contractor, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in Contractor's employment practices or in the furnishing of services to recipients. Contractor shall take commercially reasonable efforts to ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. Contractor and any subcontractor shall, in the performance of this Agreement, fully comply with all applicable federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

The Parties acknowledge and agree that Contractor is not a municipal advisor and cannot give advice to the County with respect to municipal securities or municipal financial products absent the County being represented by, and relying upon the advice of, an independent registered municipal advisor. Contractor is not subject to a fiduciary duty regarding the County or the provision of information to the County. The County will consult with an independent registered municipal advisor about the financing option(s) appropriate for the County's situation.

12. COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS

The Parties acknowledge and agree that as of the execution of this Agreement, the Parties do not contemplate that any of the services to be provided by Contractor hereunder or under any Project Order will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee. If the County desires, at any time in the future, to fund this Agreement or any Project Order with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, the County will deliver a copy of said contract to Contractor as soon as practicable and at no cost to Contractor, and, subject to good faith and reasonable agreement by both Parties, Contractor will comply with all the provisions of said contract, to the extent applicable to Contractor as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein.

13. FORCE MAJEURE

Neither Party will be considered in default in the performance of any material obligation under this Agreement (other than the obligation to make payments) when a failure of performance will be due to an event of Force Majeure. The term "Force Majeure" will mean any cause beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which, despite using commercially reasonable efforts, it has been unable to overcome. Neither Party will be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Either Party rendered unable to fulfill any of its obligations under this Agreement by reason of an event of Force Majeure will give prompt written notice of such fact to the other Party.

14. EVENTS OF DEFAULT

Events of Default by Contractor. Each of the following events or conditions will constitute an “Event of Default” by Contractor:

- (i) any substantial failure by Contractor to perform or comply with this Agreement, including a material breach of any covenant contained herein or therein, and such failure continues for thirty (30) calendar days after written notice to Contractor demanding that such failure to perform be cured; provided that (a) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Agreement or a Project Order, and (b) if such cure cannot be completed in thirty (30) calendar days, Contractor will be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or
- (ii) any representation or warranty furnished by Contractor in this Agreement that was false or misleading in any material respect when made.

Events of Default by County. Each of the following events or conditions will constitute an “Event of Default” by County:

- (i) any substantial failure (other than a failure to pay Contractor) by County to perform or comply with this Agreement, including a material breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to County demanding that such failure to perform be cured; provided that (a) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Agreement, and (b) if such cure cannot be completed in thirty (30) calendar days, County will be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or
- (ii) any representation or warranty furnished by County in this Agreement or in a Project Order that was false or misleading in any material respect when made; or
- (iii) any failure by County to pay any amount to Contractor which is not paid within ten (10) calendar days after written notice from Contractor that the amount is past due. Invoices will not be considered late until 45 days have passed since the certified invoice has been approved by the auditor controller’s office.

15. REMEDIES UPON DEFAULT

Termination for Cause. If there is an Event of Default by either Party under this Agreement, unless such Event of Default has been cured within the applicable time periods for a cure set forth in ARTICLE 16, the non-defaulting Party may terminate this Agreement or the corresponding Project Order by providing three (3) Business Days written notice to the defaulting Party in the case of a

monetary default and ten (10) Business Days written notice to the defaulting Party in the case of a non-monetary default. Upon termination of this Agreement or Project Order, each Party will promptly return to the other all papers, materials, and property of the other held by such Party in connection with this Agreement or Project Order, as the case may be, except as County may be required to otherwise maintain and retain thereof pursuant to California Government Code § 34090, County records retention policies and procedures, and the California Public Records Act. Each Party will also assist the other in the orderly termination of this Agreement and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party. If this Agreement is so terminated, Contractor will be entitled to payment for all Work satisfactorily performed.

16. INTEGRATION; AMENDMENT; COUNTERPARTS; AUTHORITY

This Agreement constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement may not be amended except by a writing executed by both Parties. No oral amendment shall be enforceable, even if supported by new consideration. Except as otherwise provided herein, the terms and provisions of this Agreement will apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by email shall be effective as delivery of a manually executed counterpart of this Agreement.

Each individual executing this Agreement and any and all agreements referenced herein or executed in connection with this Agreement, represents and warrants to the other Party that such individual has the authority to enter into and execute such agreements on such Party's behalf.

17. MISCELLANEOUS PROVISIONS

- A. Conflict of Interest. Contractor is not aware of any current conflicts of interest that would inhibit Contractor's ability to perform the services as contemplated under this Agreement, including any consulting, research, or other services agreement, and will not knowingly enter into any arrangements, (whether directly or indirectly), which would reasonably be expected to lead to any such conflicts, in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- B. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by both Parties. A waiver of any specific terms and conditions of this Agreement shall

not be construed as a waiver of any other terms or conditions in this Agreement.

- C. Disputes. Contractor shall continue to perform under this Agreement during any dispute.
- D. Assignment and Subcontracting: Neither Party may assign, sell, or otherwise transfer its interests or obligations in this Agreement without the prior written consent of the other Party. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County.
- E. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- F. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- G. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California; venue shall be the County of Monterey.
- H. Construction of Agreement. The County and Contractor agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- I. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

18. SEVERABILITY

If any term of this Agreement is declared by a court to be illegal, invalid or unenforceable, the legality, validity and enforceability of the other terms of this Agreement will not be affected or impaired thereby, and the rights and obligations of the Parties will be enforced as if the illegal, invalid or unenforceable term were revised to the minimum extent necessary to make such term legal, valid and enforceable.

[the Parties' signatures appear on the following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR*

By: _____
Contracts/Purchasing Officer

Mynt Systems Inc.

Contractor's Business Name

Date: _____

By: _____
(Signature of Chair, President or Vice President)

Approved as to Form
Office of the County Counsel-Risk Manager
Leslie J. Girard, County Counsel-Risk Manager

Its: _____
(Print Name and Title)

By: _____
Mary Grace Perry
Deputy County Counsel

Date: _____

By: _____
(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)

Date: _____

Its: _____
(Print Name and Title)

Approved as to Fiscal Provisions

By: _____
Auditor/Controller

Date: _____

Approved as to Indemnity and Insurance Provisions
Office of the County Counsel-Risk Manager
Leslie J. Girard, County Counsel-Risk Manager

By: _____

Name: _____

Title: _____

Date: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

ATTACHMENT A – SCOPE OF WORK

Contractor will perform an integrated energy assessment (the “Assessment”) for each applicable Site and will provide Recommendations (“Recommendations”) to the County, which may be provided on a successive basis as each Phase is completed. Each of Contractor’s Recommendations will include: (1) a draft Project Order that will include the contract amount, scope of work, and payment schedule and (2) a scope of work for each Energy Conservation Measure (“ECM”) per Site that is compatible with the County’s investment and infrastructure improvement goals.

I. Assessment

- A. Perform detailed review of documents delivered above.
- B. Perform an inspection survey to:
 1. Identify potential energy conservation measures (“ECMs”) and opportunities for distributed and renewable generation technologies.
 2. Identify the potential locations and type of application for solar photovoltaics (PV) and other ECM installations.
 3. Interview the facility manager, chief engineer, or others as needed.
 4. Identify comfort or system-function problems which may impact the performance of the recommended measures.
 5. Identify “process” energy use, such as production equipment, computer rooms, printing plants, parking garages, etc.
 6. Obtain the hours of operation for building systems and equipment, and expected occupancy and use.
 7. Survey major energy using equipment, and record (to extent available) the pertinent information for the following:
 - a. Lighting
 - b. Heating, Ventilation, and Air Conditioning (HVAC) equipment
 - c. Controls and automation
 - d. Other (process, outdoor lighting, etc.)
 - e. Pumps
 - f. Compressors
 - g. Boilers
 - h. Heat exchangers
 - i. Fan coil units

8. Perform Site survey, consisting of:
 - a. Site walk
 - b. Shading analysis
 - c. Logistics for Staging, Constructability, Access

C. Perform Utility Analysis and Solar Photovoltaic Production Analysis:

1. Identify current rate schedule, analyze electrical usage and model load profile for each Site.
2. Determine historical Site-specific rate escalation.
3. Determine expected solar photovoltaic production curve for proposed Sites.
4. Overlay electrical load profile with expected solar photovoltaic production curve, to right-size the solar photovoltaic system(s) and identify rate restructuring opportunities.
5. Model Energy Storage and Solar against load profiles, rate structures and Time of Use (TOU) to optimize for demand management, load shifting and maximum resilience/back-up capacity.

D. Analyze HVAC and electrical usage for each Site, where existing historical sub-meter data is available.

1. A general scope of the construction work required for installation of work.
2. Rough sizing of major equipment and a preliminary selection.

E. Calculate energy use and cost for all viable ECMs and renewable generation technologies:

1. For each ECM or renewable generation technology, calculate annual energy savings.
2. Model facility electrification/decarbonization in order to determine additional loads and demand, and subsequently right size onsite generation and energy storage.
3. Calculation methodology will be determined by Contractor and may include using modeling software such as Market Manager or Trace 700, or may involve spreadsheet analysis or other accepted, standard engineering procedures.
4. Calculations will follow American Society of Heating Refrigeration and Air Conditioning Engineers (ASHRAE) or other nationally recognized authority and will be based on sound engineering principle(s).
5. Operational and maintenance savings, if any, will be identified as a separate line item.

F. Identify how the proposed ECMs, renewable energy, operational efficiency measures, and other program elements could be utilized to leverage opportunities to promote the County, and local business, cultural, and public-private partnership and innovation, including workforce development, local school district and regional education curriculum development opportunities.

II. Technologies to be Considered

During the performance of each Site Assessment, Contractor will consider the below technologies and strategies, in addition to any other technologies and strategies as Contractor deems appropriate, in segmented phases (“Phase”) as exemplified below.

Phase I

1. Lighting
 - a. Lighting fixture retrofit
 - b. Lighting controls
 - c. LED parking lot lighting
 - d. Energy efficient security lighting
2. Building automation/direct digital controls
3. Air handling systems:
 - a. Variable volume conversion
 - b. Zone/area isolation & shutdown
 - c. Heat recovery
 - d. Outside air economizer
 - e. Return air conversion
4. Solar Photovoltaic
5. Energy Storage Systems
 - a. Demand management software
 - b. Alternative battery chemistries
 - c. Backup power, islanding and UPS
 - d. Microgrids
6. Electric vehicle charging stations
7. Electrification

Phase II

1. Envelope
 - a. Fenestrations
 - b. Insulation
 - c. Air Filtration
2. Plant/equipment modifications:
 - a. Chiller upgrade/replacement
 - b. Cooling tower upgrade/replacement
 - c. Variable flow chilled water conversion
 - d. Plant automation
 - e. Boiler burner conversion/upgrade
 - f. Fuel switching
 - g. Duct inspection – repairing broken ducts and/or duct cleaning
 - h. Energy efficient swimming pool equipment upgrades (if applicable)
3. Water Heating
 - a. Solar Thermal
 - b. CHP
 - c. Cogen

Phase III

1. Operational Efficiencies
 - a. Specialized Equipment
 - b. Behavioral Modifications
 - c. Scheduling
2. Building automation/direct digital controls

Phase IV

1. Water Efficiencies
 - a. Conservation
 - b. Filtration

III. Recommendations

Contractor will provide the County with Recommendations on a rolling basis as Assessments for each Phase are completed. If desired by the Parties, such Recommendations will be implemented through Change Orders. These Recommendations will include:

- A. A draft Project Order that will identify the contract amount, scope of work, and payment schedule.
- B. A scope of work for each ECM per Site that is compatible with the County's investment and infrastructure improvement goals.
- C. Prepare a Proposal, which includes a "Project Cost" and a list of "Services to Be Provided," in anticipation of Contractor and the County entering into a Project Order under the Energy Services Contract to design, construct, install, and monitor the approved projects proposed in the Recommendations. Cost calculations will explicitly state that the Project Order must be promptly executed to avoid price increases and that hazardous substance or abnormal subsurface/soil condition issues must not be present.

ATTACHMENT B – REQUIRED INFORMATION

Promptly after execution of this Agreement, Parties will enter into a Non-Disclosure Agreement (NDA) pursuant to which the County will produce the following detailed documentation where available for each applicable Site, to the extent doing so is permitted by applicable law:

1. One actual utility company invoice for all utilities serving the Sites and electronic access to all site utility data for a minimum of three (3) years, and preferably five (5) years, immediately prior to the date hereof, with, beginning with the most recently completed month.
2. Utility company demand interval recordings of 15/30-minute electrical demand for characteristic months of the year, where available.
3. Record drawings (AutoCAD or hard copy) for the Sites:
 - a. mechanical
 - b. plumbing
 - c. electrical
 - d. building automation and temperature controls
 - e. structural
 - f. architectural
 - g. modifications and remodels
 - h. site landscaping
4. A list of key contacts at each Site, including County personnel knowledgeable of the electrical, HVAC, lighting and controls systems.
5. Energy management system and HVAC equipment operating schedules, point lists and sequences of operation.
6. Original construction submittals and factory data (specifications, pump curves, etc.), where available.
7. Test and balance reports for water and air systems, where available.