

**AMENDMENT #2 TO AGREEMENT BETWEEN
COUNTY OF MONTEREY & FASTER ASSET SOLUTIONS**

THIS AMENDMENT No. 2 is made to the AGREEMENT for a "Turn-key" Fleet Management System by and between FASTER ASSET SOLUTIONS, hereinafter "CONTRACTOR", and the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "County".

WHEREAS, the County and CONTRACTOR entered the original AGREEMENT effective **November 5, 2013**, and with a term of November 5, 2013 through November 5, 2018. The AGREEMENT contained a total **not to exceed amount** of **\$260,000**; and,

WHEREAS, it appears the parties intended the total not to exceed amount to be \$360,000, though that is not reflected in the body of the AGREEMENT; and,

WHEREAS, at the time the AGREEMENT was entered into, the Monterey County Board of Supervisors authorized the Contracts/Purchasing Officer to execute the AGREEMENT in an amount not to exceed \$360,000, and to execute future AMENDMENTS to the AGREEMENT where the AMENDMENTS do not significantly change the scope of work or cause an increase in the AGREEMENT annual rates of more than fifteen percent (**15%**), hereinafter the BOARD ORDER; and,

WHEREAS, the parties discovered that certain services, which were intended to be covered in the original AGREEMENT, were not in fact sufficiently provided for in the AGREEMENT. The parties then entered into a new document on **January 6, 2014**, hereinafter the HOSTING ADDENDUM. The HOSTING ADDENDUM is on the County's standard contract template, and does not explicitly supersede the original AGREEMENT. However, it was always the intent of the parties that this document be construed as an amendment entirely superseding the original AGREEMENT, and the parties have both performed consistent with that understanding; and,

WHEREAS, the HOSTING ADDENDUM, an amendment to the original AGREEMENT, changed the effective date and term of the AGREEMENT to run **September 23, 2013 through September 23, 2018**, and contained an unchanged total **not to exceed amount** of **\$260,000**. However, the exhibits to the HOSTING ADDENDUM did contain additional responsibilities for CONTRACTOR (the *hosting services*) and additional charges relating to those services. Specifically, this HOSTING ADDENDUM added a one-time cost of \$3,274 and an ongoing monthly charge of \$2,889 (which was to increase 3% per year). These additional charges, over the remaining term of the contract totaled approximately \$175,000. As a result, this HOSTING ADDENDUM exceeded the authority granted in the BOARD ORDER, and resulted in inconsistency between the exhibits and the body of the HOSTING ADDENDUM; and,

WHEREAS, on **November 2, 2015** the parties entered into **AMENDMENT #1**. This amendment purported to correct a discrepancy between the HOSTING ADDENDUM's body and its exhibits, in the amount of \$26,130. AMENDMENT #1 also purported to add 15% to the total not to exceed amount of the AGREEMENT. AMENDMENT #1 purported to raise the total **not to exceed amount** to **\$416,000**. This represents a mathematical error (it is a 15.56% increase over the intended **not to exceed** of \$360,000) and a substantive error (the actual **not to exceed** being stated as \$260,000 which

renders this a much larger percentage increase). The parties intended for this AMENDMENT #1 to exercise the authority granted in the BOARD ORDER, though that authority had already been exceeded by way of the HOSTING ADDENDUM; and,

WHEREAS, the HOSTING ADDENDUM added services at a cost in excess of the amount authorized in the BOARD ORDER, the funds available under the present AGREEMENT were exhausted in approximately mid-2017, and County has no further authority to increase the *not to exceed* amount under the BOARD ORDER; and,

WHEREAS, CONTRACTOR wishes to continue providing services during the term of the AGREEMENT and County wishes to continue receiving and paying for such services; and,

WHEREAS, the parties also wish to extend the present AGREEMENT for a term with an expiration date of **May 31, 2023**; and,

WHEREAS, the parties wish to **add** CONTRACTOR'S **VIN DECODER SUPPORT** in the amount of **\$7,963.70** as listed in **Exhibit C** to allow users to scan VINs using a barcode scanner or to key in VIN to access an asset already in FASTER database system; and

WHEREAS, the parties have determined that in order to: (i) rectify the inconsistencies between the body of the current AGREEMENT (the HOSTING ADDENDUM) and its exhibits; (ii) fund the presently contracted for services through the term of the AGREEMENT; (iii) fund the newly added VIN services; and, (iv) fund this AMENDMENT #2 through the extended term ending **May 31, 2023**, the present *not to exceed* amount of \$416,000 will need to **increase by \$509,000**, for a total new *not to exceed* of **\$925,000.00**.

NOW THEREFORE, the County and CONTRACTOR hereby agree as follows:

1. The AGREEMENT means the version of the AGREEMENT which includes the HOSTING ADDENDUM and with a term from September 23, 2013 through September 23, 2018. Upon execution of that AGREEMENT it superseded and entirely replaced the original AGREEMENT.
2. AMENDMENT #1 was an amendment to the version of the AGREEMENT which includes the HOSTING ADDENDUM and with a term from September 23, 2013 through September 23, 2018.
3. Additionally, the County and CONTRACTOR hereby agree to amend the AGREEMENT in the following manner:
 - a. **Section 2.2** under **SCOPE OF SERVICE** shall be amended by adding **Exhibit C: Scope of Service / Term of Agreement / Compensation and Payments**, though that heading is for convenience only and the term and total *not to exceed* value of the AGREEMENT shall be those set forth in this AMENDMENT #2. All references in the AGREEMENT to Exhibit A and B shall be construed to refer to Exhibits A, B and C. Exhibit C shall be attached to this AMENDMENT #2.
 - b. **Section 3.1** under **TERM OF AGREEMENT** shall be amended by removing "The term of this AGREEMENT shall be five (5) years, commencing September 23, 2013 and

ending September 23, 2018” and replacing it with “The term of this AGREEMENT be *September 23, 2013 through May 31, 2023.*”

- c. *Section 4.2* under **COMPENSATION AND PAYMENTS** shall be amended by removing “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 \$416,000.00” and replacing it with “*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 \$925,000.00 [NINE-HUNDRED-TWENTY-FIVE-THOUSAND-DOLLARS-AND-NO-CENTS].*”

If there is any conflict or inconsistency between the provisions of the AGREEMENT, or this AMENDMENT No. 2, the provisions of this AMENDMENT No. 2, shall govern.

A copy of this AMENDMENT No. 2, shall be attached to the original superseded AGREEMENT executed by the County on *November 5, 2013*, along with the AGREEMENT (HOSTING ADDENDUM) and AMENDMENT No. 1. Except as provided herein, all remaining terms, conditions, provisions, entitlements and obligations of the AGREEMENT, and AMENDMENT No. 1, shall remain unchanged and unaffected by this **AMENDMENT No. 2**, and shall continue in full force and effect.

- - *This space is left blank intentionally* - -

IN WITNESS WHEREOF, the parties have executed this AMENDMENT No. 2 on the day and year written below.

MONTEREY COUNTY

Contracts/Purchasing Officer

Dated: _____

Approved as to Fiscal Provisions:

Deputy Auditor/Controller

Dated: _____

Approved as to Liability Provisions:

Risk Management

Dated: _____

Approved as to Form:

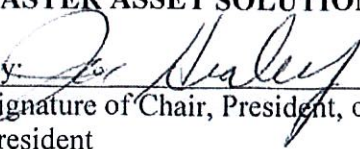


Deputy County Counsel

Dated: 5/11/18

CONTRACTOR:

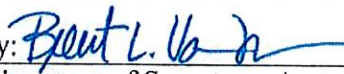
FASTER ASSET SOLUTIONS

By: 

Signature of Chair, President, or Vice-President

JOE HEALEY, PRESIDENT
Printed Name and Title

Dated: 5-9-18

By: 

(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer) *

Executive Vice President and General Counsel
Printed Name and Title

Dated: 5/9/2018

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the 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.