



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
Controller



DATE: February 13, 2012

BOARD MEETING DATE: February 28, 2012

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors

FROM: Tom Huening, Controller *[Signature]* *for Tom Huening*

SUBJECT: Amendment to the Agreement with SunGard Public Sector, Inc.

RECOMMENDATION:

Adopt a Resolution waiving the Request for Proposals process and authorizing:

1. An amendment to the agreement with SunGard Public Sector, Inc. (SunGard), for provision of application service provider (ASP) and maintenance services for the County's Integrated Financial and Administrative Solutions (IFAS) software, extending the term through June 30, 2014, decreasing the amount by \$113,346, no Net County Cost; and
2. The Controller to execute subsequent amendments and minor modifications in amounts not to exceed \$25,000.

BACKGROUND:

The County purchased proprietary financial accounting software (IFAS) in the 1994-95 fiscal year for use beginning in the 1995-96 fiscal year. Since that time, the software vendor, SunGard, has provided the County with annual maintenance and support services for this proprietary system.

The current contract ends September 30, 2012, has an optional two-year extension, and includes an annual fee increase of 5%. Under the current contract for the current year, the County is obligated to pay SunGard ASP fees of \$130,320 and maintenance service fees of \$78,826.

DISCUSSION:

The Controller wishes to continue to benefit from the services provided by SunGard but at a reduced cost. SunGard has provided the County with IFAS maintenance services for its software since 1995. IFAS is proprietary software, so this unique service is available only from SunGard. Therefore, we request that the Board waive the RFP process, since SunGard is the sole source provider of this service.

The proposed contract amendment extends the contract term and reduces the County's payment amounts. These amendments to the current contract are reflected in the new Exhibit B (Payments and Rates).

Amending the payment terms will save the County \$113,346 over the first three years and \$227,664 over five years if the Board subsequently authorizes the optional two-year extension. This amendment also changes the annual fee periods to coincide with the County's fiscal year.

The ASP fee savings result from reducing by 14.6% (\$111,192 versus \$130,320) the current year's fees with no annual increases for the subsequent two years. Afterwards, ASP fees for the optional two years increase by 5.2% to \$117,000. The software maintenance fee savings result from reducing by 10.1% (\$70,800 versus \$78,826) the current year's fees with no annual increases for the subsequent two years. Afterwards, maintenance fees for the optional two years increase by 4.5% to \$74,000.

The amended Exhibit B is retroactive to July 1, 2011. Accordingly, it includes credits, due to the County, of \$21,099 for maintenance services and \$9,604 for ASP services. These amounts represent the difference between what the County is to pay SunGard per the amended contract and what the County has already paid, between July 1, 2011 and January 31, 2012, per the original contract terms.

Approval of this Resolution contributes to the Shared Vision 2025 outcome of a Collaborative Community by approaching issues with fiscal accountability and concerns for future impacts.

County Counsel has reviewed and approved the Resolution as to form. The Information Services Department has reviewed and approved the contract amendment.

Performance Measure:

Measure	FY 2009/2010 Actual	FY 2010/2011 Actual	FY 2011/2012 Projected
Percentage IFAS Scheduled Availability During Business Hours	99%	99%	99%

FISCAL IMPACT:

No Net County Cost impact.

The total amount of this agreement is \$545,976 plus taxes of \$8,762. These costs are entirely funded through the IFAS Shared Pool with no increase in Net County Cost. Amending the contract will save the County \$113,346 over three years, and \$227,664 if optional two-year extension is subsequently approved.

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

*** * * * ***

RESOLUTION WAIVING THE REQUEST FOR PROPOSALS PROCESS AND AUTHORIZING (1) AN AMENDMENT TO THE AGREEMENT WITH SUNGARD, PUBLIC SECTOR, INC. (SUNGARD), FOR PROVISION OF APPLICATION SERVICE PROVIDER (ASP) AND MAINTENANCE SERVICES FOR THE COUNTY'S INTEGRATED FINANCIAL AND ADMINISTRATIVE SOLUTIONS (IFAS) SOFTWARE, EXTENDING THE TERM THROUGH JUNE 30, 2014, DECREASING THE AMOUNT BY \$113,346, NO NET COUNTY COST; AND (2) THE CONTROLLER TO EXECUTE SUBSEQUENT AMENDMENTS AND MINOR MODIFICATIONS IN AMOUNTS NOT TO EXCEED \$25,000

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, pursuant to Government Code Section 31000, the County may contract with independent contractors for the furnishing of such services to or for the County or any Department thereof; and

WHEREAS, SunGard has provided the County with IFAS software and maintenance services for its software since 1995, and is the owner of the IFAS system, and, as such, is the only vendor who can provide these ASP and maintenance services, and it is therefore in the County's best interest to waive the RFP process; and

WHEREAS, SunGard and the County desire to amend the Agreement between the County and Sungard, dated March 31, 2009, specifically the Agreement's Exhibit B, to extend the termination date to June 30, 2014, and reduce total payments; and

WHEREAS, executing amended Exhibit B of the Agreement will reduce the County's ASP and maintenance fees by \$113,346 over the first three years and \$227,664 over five years, if the Board subsequently authorizes the optional two-year extension to contract; and

WHEREAS, there has been presented to this Board for its consideration and acceptance an amended Exhibit B of Agreement dated March 31, 2009, reference to which is hereby made for further particulars, whereby Sungard shall provide ASP and maintenance services for IFAS for a three-year period, for a total compensation not to exceed \$545,976 plus taxes of \$8,762 during the contract term; and

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Request for Proposal is hereby waived with respect to the services set forth in the Agreement; and

BE IT FURTHER RESOLVED, that the Controller is authorized to execute subsequent amendments and minor modifications in amounts not to exceed \$25,000; and

BE IT FURTHER RESOLVED, that the President of the Board of Supervisors of the County of San Mateo, State of California, is hereby authorized and directed to execute said amended Exhibit B of Agreement for and on behalf of the County of San Mateo, and the Clerk of the Board shall attest the President's signature thereto.

* * * * *

EXHIBIT B – PAYMENTS AND RATES

AGREEMENT BETWEEN COUNTY OF SAN MATEO AND SUNGARD PUBLIC SECTOR

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

Customer Name:	County of San Mateo, CA		Yes	No
Agreement Number:	COSM-6069-120141-1	Initial Order Form	X	
		Replacement Order Form		X

- Commencement Date:** Begins July 1, 2011 and expires thirty-six (36) months from the date the initial Monthly Access Fee is due under this Schedule A – Order Form, with an optional additional twenty-four (24) months.

2. Application Groups: Monthly Access Fees and Annual Maintenance Fees

	Applications and/or Services	Monthly Access Fee	Annual Maintenance Fee
Existing Products, Annual Software Maintenance (Currently Licensed)	OS General Ledger - (OS-FIN-GL), OS Job/Project Ledger - (OS-FIN-JL), OS Budget Item Detail - (OS-FIN-BD), OS Accounts Payable - (OS-FIN-AP), OS Encumbrances - (OS-FIN-EN), OS Purchasing - (OS-FIN-PO), OS Bank Reconciliation - (OS-FIN-BK), OS Accounts Receivable - (OS-FIN-AR), OS Cash Receipts - (OS-FIN-CRCPT), OS Fixed Assets - (OS-FIN-FA), OS Triad, OS Table Formatter System, OS Person/Entity Database - (OS-FIN-PE), OS Contract Management - (OS-FIN-CM), OS Grant Management - (OS-FIN-GM), OS Click, Drag & Drill - (OS-FIN-CDD), OS EasyLaser Forms - (OS-FIN-ELF), OS Documents OnLine - (OS-DO), OS Insight, Adhoc Report Writer, Hassle Free Support (One Account)		\$70,800
ASP Hosting Services	Hardware Configuration and Setup, Disaster Recovery for SunGard Public Sector Applications	\$9,266	
Concurrent Sessions	110	Included in Monthly Fee	
Total Proposed System:		\$9,266	\$70,800

APPLICABLE TAXES ARE NOT INCLUDED IN THIS SCHEDULE, AND, IF APPLICABLE, WILL BE ADDED TO THE AMOUNT IN THE PAYMENT INVOICE(S) BEING SENT SEPARATELY TO THE CUSTOMER.

*Number of Concurrent Sessions listed above used in the calculation for the Monthly Access Fees. Changes to the number of Concurrent Sessions may impact the Monthly Access Fee.

3. Payment Terms:

Annual Maintenance Fee: Initial Annual Fee will be due July 1, 2011. Subsequent Annual Maintenance Fees will be due July 1 of each year thereafter.

Monthly Access Fee: The initial Monthly Access Fee will be due July 1, 2011. Subsequent Monthly Access Fees will be due on the first of the month thereafter. Monthly Access Fees will be invoiced in advance on a monthly basis for a term of thirty-six (36) months at the rates listed below.

July 1, 2011 – June 30, 2012 \$ 9,266.00 per month or \$111,192.00 per year;
July 1, 2012 – June 30, 2013 \$ 9,266.00 per month or \$111,192.00 per year;
July 1, 2013 – June 30, 2014 \$ 9,266.00 per month or \$111,192.00 per year;

Optional, Additional twenty-four (24) months:

July 1, 2014 – June 30, 2015 \$ 15,916.67 per month or \$191,000.00 per year;
July 1, 2015 – June 30, 2016 \$ 15,916.67 per month or \$191,000.00 per year;
(above fees are comprised of Annual ASP Fees of \$117,000.00 and Annual Maintenance Fees of \$74,000.00 for a combined total of \$191,000.00)

Following the initial term, Services will be provided on a year-to-year basis provided (1) the County Board of Supervisors approves the extension and (2) the County exercises the option by sending written notice to Contractor six (6) months prior to the expiration of the initial term and pays the then current Monthly Access Fee.

Travel and Living Expenses: Travel and living expenses are in addition to the prices quoted above and will be invoiced as incurred and shall be governed by the SunGard Public Sector Corporate Travel and Expense Reimbursement Policy. Travel and living expenses actually incurred in prior months for which SunGard Public Sector is seeking reimbursement, shall also be invoiced monthly.

Notes:

¹ Monthly Access Fees listed above are for the Applications and Services listed in this Schedule A-Order Form only.

4. **Maintenance Credit.** A credit in the amount of twenty-one thousand ninety-nine dollars (\$21,099.00) to be applied to maintenance bill for the term of July 1, 2012 through June 30, 2013. Customer shall also receive a credit in the amount of nine-thousand six-hundred four dollars (\$9,604.00) to be applied to the February 2012 ASP Monthly Invoice.

County of San Mateo, CA

SunGard Public Sector

BY: _____

BY: _____

PRINTED NAME: _____

PRINTED NAME: James A. Brescia

PRINTED TITLE: _____

PRINTED TITLE: Vice President, HR

DATE SIGNED: _____

DATE SIGNED: 01-31-2012

ATTEST:

By: _____

Clerk of the Board of Supervisors

Date: _____

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18320-09-R0699
CR20932
PO 903812

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
SUNGARD PUBLIC SECTOR INC.**

THIS AGREEMENT, entered into this 31ST day of MARCH, 2009, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and SUNGARD PUBLIC SECTOR INC., hereinafter called "Contractor";

W I T N E S S E I H:

WHEREAS, pursuant to Government Code Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing Application Service Provider (ASP) services for Integrated Financial and Administrative Solution (IFAS);

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits.

The following exhibits are attached hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments and Rates

2. Services to be performed by Contractor.

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth herein and in Exhibit "A."

3. Payments.

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B". Rates listed in Exhibit "B" are based on the products listed. Addition of products/services other than those listed in this Agreement and the attached Exhibits may alter the fees listed in Exhibit "B," and, accordingly, any such change must be made as a written amendment to this Agreement. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed **THREE HUNDRED EIGHTY TWO THOUSAND SIX HUNDRED AND TWENTY FOUR DOLLARS (\$382,624)**

4. Term and Termination.

Subject to compliance with all terms and conditions, the initial term of this Agreement shall be from the date of final execution by both parties and shall continue for a period of Thirty-Six (36) consecutive months from the start of services, as defined in Exhibit B – Monthly Hosting Fee,. Following the initial term, this Agreement may be extended with the approval of the San Mateo County Board of Supervisors on a year-to-year basis as outlined by this Agreement provided the County exercises the option and pays the then-current Monthly Hosting Fee as defined in Exhibit B – Monthly Hosting Fee.

This Agreement may be terminated by Contractor or by the Controller of San Mateo County, or his/her designee, at any time without a requirement of good cause upon six months written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Data will be provided electronically in Contractor's standard format. Upon termination, the Contractor may make and retain a copy of such materials. Contractor shall be entitled to receive payment for work/services provided through the date of termination of the Agreement. Such payment shall be a portion of the full payment which is determined by comparing the work/services completed to the work/services required by this Agreement.

5. **Availability of Funds.**

County represents and warrants to that it shall endeavor to make available sufficient funds to pay Contractor all Start-Up and Hosting Fees specified in the Exhibit "B". Further, County covenants that it will do all things lawfully within its power to obtain, maintain and properly request and pursue funds from which payments hereunder may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved. If, despite County's efforts, sufficient funds are not appropriated and budgeted in any fiscal period for payments due under the Agreement, then County will immediately notify Contractor of such occurrence and Contractor will notify County that Contractor's obligation to provide County with services, and County's obligation to obtain services from Contractor, will expire effective on the last day of the fiscal period for which appropriations were received.

6. **Relationship of Parties.**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. **Hold Harmless.**

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

IN NO EVENT SHALL CONTRACTOR BE LIABLE TO COUNTY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING UNDER THIS AGREEMENT. In no event shall Contractor be liable to County for other damages arising under this Agreement unless (1) such damages result from intentional misconduct or gross negligence on the part of Contractor's officers or employees and/or (2) such damages arise from violations by the Contractor of statutes or other laws (e.g., HIPAA).

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided any claims against Contractor are as a result of alleged negligence on the part of Contractor.

8. **Assignability and Subcontracting.**

Neither party may assign any of its rights or obligations under this Agreement, and any attempt at such assignment will be void without the prior written consent of the other party. However, the following will not be considered "assignment" for purposes of this Agreement: Contractor's assignment of this Agreement or of any of Contractor's rights under this Agreement to Contractor's successor by merger or consolidation or to any person or entity that acquires all or substantially all of its capital stock or assets; and Contractor's assignment of this Agreement to any person or entity to which Contractor transfers all of its rights in the Software.

9. **Insurance.**

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by County's Risk Manager, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the Information Services Department with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify that the insurer affording coverage shall endeavor to provide thirty (30) days written notice to the Controller of any pending change in the limits of liability or of any cancellation or modification of the policy.

A. **Worker's Compensation and Employer's Liability Insurance.** The Contractor shall have in effect, during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

B. **Liability Insurance.** The Contractor shall take out and maintain, during the life of this Agreement, such Bodily Injury Liability and Property Damage Liability Insurance as shall protect Contractor while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, by any sub-contractor or by anyone directly or indirectly employed by them. Such insurance shall be combined single limit bodily injury and property damage per claim and aggregate and shall be not less than the amount specified below.

Such insurance shall include:

- | | |
|--|--------------------|
| 1) Comprehensive General Liability | <u>\$1,000,000</u> |
| 2) Motor Vehicle Liability Insurance | <u>\$1,000,000</u> |

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

C. Professional liability insurance/errors and omission coverage in an amount no less than \$1,000,000.00 per claim and aggregate.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo, at its option may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. **Compliance with Laws; Payment of Permits/Licenses.**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

In the event of a conflict between the terms of this Agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. **Non-Discrimination.**

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or be subjected to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.

D. *Violation of non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to:

- 1) termination of this Agreement;
- 2) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
- 3) liquidated damages of \$2,500 per violation;
- 4) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under this Agreement or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits Contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated as if fully set forth herein.

G. *Compliance with Contractor Employee Jury Service Ordinance.* Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees' deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employee's regular pay the fees received for jury service.

12. Retention of Records, Right to Monitor and Audit.

(a) Contractor shall maintain all required records for three (3) years after the County makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.

(c) Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed. Said access is not intended for Data Processing Audits or Support for System Testing, which is covered in Appendix A. Should County or other regulatory agencies require additional Data Processing Audits or System Testing above those stated in Appendix A, County acknowledges additional fees may be required.

13. Merger Clause.

This Agreement, including the Exhibits and Attachments attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this Agreement's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties. In the event of a conflict between the terms, conditions, or specifications set forth herein and those in Exhibits "A" and "B" attached hereto, the terms, conditions, or specifications set forth herein shall prevail. This Agreement is for the services described in the attached Exhibits, and nothing in this Agreement is intended to change or eliminate any obligations by the County to pay for licensed applications under other, existing agreements.

14. Controlling Law.

The validity of this Agreement and of its terms and provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any legal action arising out of this Agreement shall be venued in either the San Mateo County Superior Court or the United States District Court for the Northern District of California.

15. Force Majeure.

Neither party shall be in default by reason of any failure in the performance of this Agreement if such failure arises out of causes beyond its reasonable control. Such causes may include, but are not limited to, acts of God, acts of the public enemy, acts of government in either its sovereign or contractual capacity, acts of the party whose performance is not sought to be excused, fires, flood, weather, epidemics, quarantine restrictions, freight embargoes, failure of transmission or power supply, or other causes beyond its sole control. The party so affected will resume performance as soon as practicable after the force majeure event terminates.

16. Notices.

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United States mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt for transmittal, charges prepaid, addressed to:

In the case of County, to:
San Mateo County
Controller's Office
Tom Huening, Controller
555 County Center, Fourth Floor
Redwood City, CA 94063
Facsimile: (650) 363-7888

In the case of Contractor, to:
SunGard Public Sector Inc.
890 Fortress Street
Chico, CA 95973
Facsimile: (530) 891-5011

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

A Political Subdivision of the
State of California

By: Mark Church
Mark Church, President, Board of Supervisors,
San Mateo County

Date: 3/31/09 Certificate of Delivery
(Government Code Section 25103)

I certify that a copy of the original document filed in
the Office of the Clerk of the Board of Supervisors of
San Mateo County has been delivered to the
President of the Board of Supervisors.

Marie J. Peterson
Deputy Clerk of the Board of Supervisors

ATTEST:

By: [Signature]
Clerk of Said Board

SUNGARD PUBLIC SECTOR INC.

By: [Signature]
Ronald E. Goodrow
Exec.VP, SunGard Public Sector Inc.
(Printed Name)

Date: February 23, 2009

EXHIBIT A - SERVICES

AGREEMENT BETWEEN COUNTY OF SAN MATEO AND SUNGARD PUBLIC SECTOR BI-TECH

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services:

Contractor will become the Application Service Provider (ASP) for the County's Integrated Financial and Administrative Solution (IFAS) application. ASP services will include the hardware and software necessary to support IFAS, upgrades and replacements as necessary, third party product licenses and maintenance, system and database administration services, and disaster recovery.

1. Definitions. When used in this Exhibit "A" the following terms shall mean:

- a. **"PT"** shall mean Pacific Standard Time and, when applicable, Pacific Daylight Time.
- b. **"System"** means the combination of computer hardware, operating systems, third party software, and network infrastructure located at SunGard for use by Customer. "System" does not include data communication lines, Customer-located infrastructure, or application software (including Software).
- c. **"Service Level Hours of Operation"** or "SLHO" shall mean 5 a.m. -5 p.m. (PT), Monday through Friday, with the exception of SunGard holidays.
- d. **"SunGard Holidays"** means
 - New Years Day 1 day (Jan. 1)
 - President's Day 1 day (official public holiday)
 - Memorial Day 1 day (official public holiday)
 - Independence Day 1 day (July 4 or official public holiday)
 - Labor Day 1 day (official public holiday)
 - Veterans Day 1 day (official public holiday)
 - Thanksgiving 2 days (official public holiday & following day)
 - Christmas 1 day (Dec. 25)
- e. **"System Uptime"** means time the System is available for use by Customer during Service Level Hours of Operation, excluding (a) Scheduled Downtime (b) failure of the VPN or leased data communication line connection(s), or (c) as a result of a cause beyond Contractor's control as further defined in Section 15 (Force Majeure) of the Agreement.
- f. **"System Downtime"** means time the System is unavailable for use by Customer during Service Level Hours of Operation, excluding (a) Scheduled Downtime (b) failure of the VPN or leased data communication line connection(s), or (c) as a result of a cause beyond

Contractor's control as further defined in Section 15 (Force Majeure) of the Agreement.

- g. **"Scheduled Downtime"** means time the System is unavailable by pre-arranged mutual agreement between the parties for back-up/restore, system maintenance, hardware upgrades, 3rd party product upgrades, Software upgrades, etc. Under normal circumstances, Scheduled Downtime will occur during hours other than Service Level Hours of Operation and with at least 24-hours advance notification.
- h. **"Production Account"** means a single and unique combination of database and Software, used by County for its production processing.
- i. **"Test Account"** means a single and unique combination of database and Software, used by County for non-production processing.
- j. **"Load Test"** means a testing period mutually scheduled between Contractor and County to take place over the period of one hour in which 80% of customer's total licensed concurrent users access and utilize the system to execute business processes and simulate expected average system load.

2. **Service to Customer.** Beginning upon live use of the IFAS application software on the System and after two load tests have been performed, the following service level applies to ASP Support. Software support calls are handled separately by Contractor's Software support helpdesk. All ASP service levels below are calculated on a monthly basis as described below.

Limitation: The parties agree that this SLA applies to System Update as described below.

Target for System Uptime is 99% attainment.

Measurement: Contractor will monitor and record System Uptime. Total minutes down will be compared to SLHO in a month to determine % of goal in the above summary chart. All percentage calculations shall be rounded to the lowest whole number.

If actual attainment is 99% or less, SunGard shall provide a description of the failure to reach the target and the remedial action that has been or will be taken.

After the first month of production, if actual attainment for monthly production System Uptime is less than 98%, a credit of 5% of the monthly payment due shall be posted to the next monthly payment. If actual attainment for System uptime is less than 90%, a credit of 10% of the monthly payment due shall be posted to the next monthly payment. If actual attainment for System uptime is less than 80%, a credit of 100% of the monthly payment due shall be posted to the next monthly payment.

3. **Corrections.** Issuing of credit pursuant to the preceding paragraph does not relieve SunGard of its obligations under the ASP Addendum to correct the problem which created the service to fail

below the agreed upon levels above. However, the Customer acknowledges that correction may occur in the following month, and, because of the time reasonably needed to perform any such correction, the month in which the correction occurs may also fall below the agreed upon service levels. Whether a credit shall be issued for any month in which the correction occurs if in a month following the initial problem which created the service to fall below the agreed upon levels above shall be determined by the County upon a good-faith and reasonable consultation with the Contractor, taking into account the efforts undertaken by the Contractor to solve the issue.

4. **Notice.** Contractor will report to County any breach of a service level as described above. If County believes there to have been a breach of a service level provided for herein which Contractor has not reported, County must notify Contractor in writing within seven (7) days of the event. For breaches of service level not so reported by the Contractor, the credits provided herein shall only apply if Contractor is so notified by the County. In the event County accepts the credits, then the credits referenced herein shall constitute liquidated damages for the associated breach of this Addendum regarding Contractor's failure to attain the service levels and shall constitute County's sole remedy in the event of a failure to meet the SLA measures herein.
5. **System Performance:** The County and Contractor will work together to isolate performance bottlenecks and to identify whether they are related to the data communications link, the computer server, or the County's local network. Contractor shall provide sufficient server capacity for the duration of this Agreement to meet the reasonable performance requirements of the number of concurrent system users provided for in this Agreement.

If the addition of users, unusually heavy use, or other factors require additional resources for support of the County (e.g., hardware, software, people, data communications link, etc.), Contractor and the County will confer on the matter until a mutually agreeable solution is identified. The County is aware that if additional resources are required for the support of the County, additional fees may apply.

6. **Scope of work:**

- 7.1. **ASP Support:** Contractor will provide non-exclusive hardware (UNIX hardware and Windows Server hardware) to operate IFAS. System backups will be performed on a full-backup basis weekly with partial backups daily. Contractor will schedule routine maintenance and repairs with the County in advance. The County should expect Contractor to schedule short periods of downtime quarterly. Under normal circumstances, scheduled downtime will be during the County's non-working hours, which are between 7 p.m. and 7 a.m., Monday through Friday and all day on Saturdays and Sundays.
- 7.2. **Limited Use:** The County may use Software operating on one Production Account and one Test Account limited to 110 concurrent users connecting through Citrix.

7.3. **Network Responsibilities:** Contractor's responsibilities for network communications terminates at the WAN connection on the router at Contractor's location and excludes the County's local computing infrastructure and client workstations at the County's location. It is assumed that the County will access the ASP hardware via a Virtual Private Network (VPN) connection. The ASP fees include the purchase of two Cisco PIX 506e (or agreed upon equipment) firewalls to facilitate the VPN, one of which will reside in Chico, California, and one which will reside at the County. Contractor assumes responsibility for the purchase, configuration, installation, maintenance, and management of the data communications equipment hosted at Contractor's facility and a router located at the County's facility and will hold title to the same.

7.4. **Interfaces or Custom Reports:** Interfaces, custom reports, special formats, and other programming or set-up requests are not included in this Agreement. Existing programs will be migrated to the ASP environment. A file transfer utility will be provided to facilitate flat file interfaces. Contractor will provide the County an opportunity to test these processes in the ASP environment prior to final migration.

7.5. **Support Hours and Charges:** Contractor's standard ASP support hours are 5:00 A.M. to 5:00 P.M. Pacific Standard Time, Monday through Friday, with the exception of Contractor holidays. Contractor responsibilities defined herein will be performed at Contractor's location. In the event that Contractor assists the County with activities outside the scope of responsibilities defined herein, the charge will be based on Contractor's rate then in effect.

In addition to Contractor's standard ASP support hours, this Agreement includes County access to a 24-hour emergency answering service. In the event that emergency systems-level assistance is required outside of Contractor's standard ASP support hours, the County may call the 24-hour answering service at (530) 230-5039. The answering service will direct the call to the appropriate ASP support staff for assistance. This answering service is only to be used for emergency systems-level assistance, and all other support should be directed to Contractor's Help Desk at 1-800-851-4800 or support@sungardbi-tech.com during Contractor's standard Help Desk support hours.

7.6. **SAS 70 Report:** Contractor shall provide customer with a copy of the SAS70 report annually.

7.7. **Escalation Procedure:** If for any reason the County needs to escalate any outstanding ASP issues to Contractor's management, the escalation sequence below shall be followed:

1st Contact: Bronwen Grady	530-879-2910	bronwen.grady@sungardps.com
2nd Contact: Jeff Abbott	530-879-2851	jeff.abbott@sungardps.com
3rd Contact: Linda Simmons	530-879-2102	linda.simmons@sungardps.com

- 7.8. **Creation/Setup of New Users:** Contractor will set-up and create new users at the UNIX level. To effect UNIX level changes, the County will submit a "Change of User" form provided by Contractor. Once received by Contractor, the change will be completed within two (2) business days. County is responsible for user configuration and user security configuration within the IFAS application.
- 7.9. **Data Processing Audits or Support for System Testing:** Four (4) hours per year are allocated for data processing audits at Contractor's facilities or for any system testing required by the County. Additional hours if needed will be offered at rates then in effect.
- 7.10. **On-going Maintenance:** Contractor will be responsible for maintenance on the computer server(s) at Contractor's facilities, the respective operation system(s), third party software, the data communications equipment at Contractor's facility, and the router at the County's facility. Contractor will update the computer server(s) and operating system software as necessary to remain current with new releases of the software. Operating System upgrades and upgrades to the computer server(s) shall only be performed after consultation with the County. Maintenance for Contractor-provided router residing at the County's facility is covered in the Agreement.
- 7.11. **County's Network, Personal Computers:** The County's network and client workstations, including configuration and setup, are not included in this ASP Agreement. PC based IFAS products will be deployed from an ASP web interface for end user access. County is responsible for local workstations, printers, and LAN connectivity to the ASP firewall.
- 7.12. **Accounts and Update Frequency:** Contractor will provide a production environment for the County ("Production Account"). In addition, Contractor will provide a test environment for the County ("Test Account"). Contractor will replicate the Production Account into the Test Account up to Four (4) times annually. This replication shall be performed only after consultation with the County. Additional accounts or more frequent replication will be offered at Contractor's then standard rates in effect.
- 7.13. **Creation/Setup of Remote Printers:** Contractor will make the necessary operating system changes to enable printing to remote I.P.-addressable printers. To effect these changes, the County will submit a "Change/Setup Network Printer" form provided by Contractor. Once received at Contractor's facility, the change will be completed within two (2) business days. Customer is responsible for printer configuration within the IFAS application. County is responsible for printer hardware and connectivity. Contractor understands that the County utilizes a print server configuration.

- 7.14. **Disaster Recovery:** In the event of a disaster which disables Contractor's Data Center, Contractor will make commercially reasonable efforts to recover the County's mission critical systems for continued processing at the recovery location. For the life of this Agreement, Contractor will maintain an agreement for disaster recovery services with SunGard Availability Services or another company that provides similar recovery services. Should Contractor's agreement for disaster recovery services change from those outlined below, SunGard shall notify the County.

In the event of a disaster, Contractor's disaster recovery service provider will provide the necessary hardware and facilities, either onsite at Contractor's location or at a recovery center located elsewhere. Contractor will notify county that a disaster has occurred and discuss recovery procedures as they are initiated. Contractor estimates that it may take four to six hours to restore production environments once hardware is made available to Contractor's system administrators. Recovery will be provided under one of two options at Contractor's discretion.

- Option 1: Contractor may request hardware be brought to Contractor's location
 - Contractor will acquire recovery tapes from off-site storage facilities.
 - Disaster recovery service provider will specify hardware configurations be brought Contractor's location in a self-contained mobile facility.
 - Upon arrival, the mobile facility will be connected to a pre-configured power and networking receptacle.
 - Contractor will restore system(s) onto mobile configurations.
 - Contractor will communicate with the County and assist with connectivity to disaster recovery hardware.
- Option 2: Contractor may travel to a recovery center.
 - Contractor will acquire recovery tapes from off-site storage facilities.
 - Contractor's staff will travel to recovery center to begin recovery procedures
 - Recovery tapes will travel with contractor staff; they will not be shipped to the recovery facility.
 - Contractor will restore system(s) onto disaster recovery hardware
 - Contractor will communicate with the County and assist with connectivity to disaster recovery hardware.

When the disaster ends, contractor will communicate with the County to implement plans to move back into Contractor's data center.

- 7.15. **Restoration of Lost Data:** Contractor will use reasonable care in handling tapes or other materials which encode or contain data belonging to the County. Contractor's only obligation for breach of this Section will be to use commercially reasonable efforts to replace or repair the tape or material lost or damaged, if such is replaceable or reparable, and to make commercially reasonable efforts to regenerate any lost data from backup copies maintained by Contractor or source data provided by the County.

7.16. **Physical Security Controls:** Physical security of Contractor's facilities shall include: card key readers to restrict and log access to Contractor's Data Centers and Contractor's facilities; security cameras strategically placed within the Data Centers; requirement that visitors and guests must sign in to be granted physical access to Data Centers and facilities; requirement that all visitors be escorted to their destinations; and use and monitoring of an alarm system.

7.17. **Specific Periodic Tasks Performed by Contractor:** In addition to the general items referenced above, the specific items listed below shall be performed periodically.

- **Daily**

- Monitor previous night's backups and continuous logs;
- Check scripts on UNIX box (i.e. Disk statistics);
- Provide performance management and tuning as necessary;
- Perform nightly partial backups; and
- Process any printer/user request forms.

- **Weekly**

- Perform weekly full backups including delivery to off-site storage location;
- Test failover to the ASP Data Center generator; and
- Provide weekly summary report.

- **Monthly**

- Re-evaluate database layout;
- Check and adjust space in file systems;
- Check and adjust space in swap files;
- Check system time for synchronization;
- Check network security for current status and possible redesign;
- Save router configuration to paper; and
- Perform data integrity checks.

- **Quarterly**

- Perform Operating System upgrades, third-party software upgrades and Software upgrades;
- Purge router statistics;
- Update Operation Policies;

- Clean up posted directory;
- Clean up unnecessary files on all file systems (i.e. logs, coredumps, export files);
- Test battery backup systems; and
- Update Test Account (if desired by the County).

- **As Necessary**

- Test restore capacity;
- Check on compatibility with current test environment;
- Extract tables or rebuild tables;
- Add UNIX users, printers, and services;
- Modify UNIX users, printers, and services;
- Track programmer modifications that may effect future Software updates;
- Benchmark system to determine where slowdown(s) may be occurring and tune as necessary;
- Build and maintain 7i Windows Server(s);
- Write UNIX scripts to help manage UNIX;
- Design, implement, and execute disaster recovery plans;
- Diagram and maintain layout of ASP Communication Network; and
- Build/maintain communication circuit.

7. County's Responsibilities: The County's specific responsibilities are as follows:

- 8.1. **Communications Equipment:** The County is solely responsible for the acquisition and maintenance of all terminals, personal computers, network equipment (except for Contractor's ASP router hosted at the County's facility), and printers that are necessary to operate the software products at County facility. The County is solely responsible for the costs associated with the data communication between Contractor's Data Center and County facility.
- 8.2. **Accuracy and Control of County Data:** The County is exclusively responsible for the accuracy and adequacy of all data input and the review of all output received from Contractor for accuracy before using it.
- 8.3. **Existing Environment:** The County is responsible for any issues arising from the existing LAN, existing data communications configuration, hardware, or software at the

County's site.

- 8.4. **Application Set-up:** The County assumes responsibility for the IFAS application software setup, testing, and operation, such as chart of account setup, posting strategies, common code setup, etc. User/site based administrative tasks are the responsibility of the County, including report generation/creation, local workstation configuration, defining user security, etc. Contractor does not configure, maintain, or operate the IFAS software on the County's behalf. The County will be responsible for all activities within the application: nucleus configuration, creation and maintenance of workflow models, CDD report development, general ledger definitions, etc. The Contractor is responsible for installation of IFAS. The County will be responsible for testing the software.
- 8.5. **Application Changes:** The County is responsible for authorizing the migration of changes to the hosted application between environments and is responsible for performing testing of changes to the hosted application prior to authorization for implementation into the production environment.
- 8.6. **Employee Access:** The County is responsible for terminating/modifying IFAS Application access for employees that are terminated or change job roles.
- 8.7. **Password Policy:** The County is responsible for password configuration, password expiration requirements, and account lockout policy for the UNIX environment.
- 8.8. **Authorized Contacts:** The County is responsible for contacting Contractor to add or delete users from the authorized contact list as needed when employees are hired or terminated.
- 8.9. **County's Hardware Infrastructure:** The County is responsible for notifying Contractor of newly installed hardware, including proxies, routers, firewalls, and other devices that could affect network performance.
- 8.10. **County's Network Infrastructure:** The County is responsible for notifying Contractor of changes to IP schemas.
- 8.11. **Batch Jobs:** The County is responsible for the scheduling of batch jobs and monitoring of the batch schedule.
- 8.12. **Problem Tickets:** The County is responsible for reviewing the resolution of closed problem tickets and re-opening problem tickets if the County believes the problem requires further attention.
- 8.13. **Application Support:** The County will continue maintain its Annual Software Support Agreement for application support.

Responsibility Summary Matrix		
Description	SunGard Responsibility	County Responsibility
ASP Server Hardware management	X	
ASP Server File system management	X	
ASP Server OS upgrades and maintenance	X	
ASP Database product upgrades and maintenance	X	
ASP 3 rd Party product upgrades and maintenance	X	
IFAS Application Update Installation		
Request to install application updates		X
Installation of application updates	X	
ASP Backup Management	X	
Data and or File restoration		
Request to restore data and or files		X
Restoration of data and or files	X	
Network		
ASP Network up to and including the router at SunGard's location	X	
Router at County's location	X	
County's network up to the router at County's location		X
County Workstations		X
System Performance	X	X
Add/Change users		
User add/change requests		X
User add/change implementation for OS and Citrix	X	
User add/change implementation for Software Applications		X
Add/Change Printers		
Printer add/change requests		X
Printer add/change implementation for OS and Citrix	X	
Printer add/change implementation for Software Applications		X
Disaster Recovery	X	
Password Management		X
Application Management		
Application Configuration		X
Application Security Management		X
Accuracy and Control of Data		X

The methods and techniques used to provide services to the County are within the Contractor's discretion. The amount of time, specific hours, and location of the performance of Contractor's services is also left to the Contractor's discretion provided that Contractor coordinates with the County as defined in this agreement.

EXHIBIT B – PAYMENTS AND RATES

2009

AGREEMENT BETWEEN COUNTY OF SAN MATEO AND SUNGARD PUBLIC SECTOR BI-TECH

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

Application Group: Start-Up Fees and Monthly Access Fees

	Applications	Start-Up Fee	Initial Year Monthly Hosting Fee
Existing Products (Currently Licensed)	General Ledger; Accounts Payable/Encumbrances; Accounts Receivable/Cash Receipts; Bank Reconciliation; Table Formatter System; Person/Entity Database; Ad Hoc Report Writer; Job Ledger; Budget Item Detail; Purchasing; TRIAD; Fixed Assets; Easy Laser Forms; Image Enabler; and Click, Drag and Drill; Insight	\$ 10,000.00	\$ 9,850.00
Concurrent Users			
110 Users			
Total:		\$ 10,000.00	\$ 9,850.00

* The Applications and the number of Concurrent Users listed above were used in the calculation for the Monthly Hosting Fees. Changes to either may impact the Monthly Hosting Fee.

Payment Terms:

Start-Up Fee: Due upon execution.

Monthly Hosting Fee: The initial monthly hosting fee will be prorated for the first month in which the Software is installed on the ASP Server and the Software can be accessed by County from the County's location via a Virtual Private Network (VPN) and Citrix connection. Subsequent Monthly Access Fees will be due on the first of the month thereafter. Monthly Access Fees will be invoiced in advance on a monthly basis for a term of Thirty-Six (36) months at the rates listed below.

Months 1 – 12 \$9,850.00 per month or \$118,200.00 per year;
Months 13 – 24 \$10,342.00 per month or \$124,104.00 per year;
Months 25 – 36 \$10,860.00 per month or \$130,320.00 per year;

Following the initial term, Services will be provided on a year-to-year basis provided (1) the County Board of Supervisors approves the extension and (2) the County exercises the two year option and pays the then current monthly fee as stated below.

Months 37-48 \$11,402 per month or \$136,831 per year
Months 49-60 \$11,973 per month or \$143,673 per year

In the event the County chooses to exercise the option, it shall do so in writing and by sending notice to Contractor six months prior to the expiration of the initial contract term.

Notes:

¹ Monthly Hosting Fees are for the products listed in the Application Group section above, any change to the listed products may result in a change to the monthly hosting fee. Monthly hosting fees are in addition to the Annual Maintenance Fees for which County will be billed separately.

² The County will submit payment within thirty (30) days of receipt of invoice or by the due date, whichever is later.

Contractor agrees that the requirements of this Agreement pertaining to the protection of proprietary rights and confidentiality shall survive termination of this Agreement.