



**AMENDMENT NO. ONE
TO CONTRACT MA-017-18010491
FOR PROJECT INFORMATION MANAGEMENT SYSTEM
BETWEEN
COUNTY OF ORANGE
AND
E-BUILDER, INC.**

This Amendment No. One to Contract MA-017-18010491 (hereinafter “Amendment No. One”) is made and entered into as of the date fully executed by and between the County of Orange (hereinafter “County”), a political subdivision of the State of California, and e-Builder, Inc. (hereinafter “Contractor”), with a place of business at 13450 W. Sunrise Blvd, Suite 600, Sunrise FL 33323, with County and Contractor sometimes individually referred to as “Party or collectively as “Parties”.

RECITALS

WHEREAS, County and Contractor executed Contract MA-017-18010491 (hereinafter “Contract”) for a Project Information Management System, effective November 2, 2017 through and including March 1, 2021 in an amount not to exceed \$1,764,907; and

WHEREAS, County desires to amend the Contract to renew the Contract for two (2) years, to replace provision T, “Change of Ownership”, to update provision number 51, “Notices”, and to replace Attachment B – “Cost/Compensation”; and

WHEREAS, the Contractor has agreed to continue to provide the Project Information Management System in accordance with the terms herein.

NOW THEREFORE, the Parties mutually agree as follows:

1. Contractor address has changed and any reference to the old address shall be updated as follows:
From: 1800 NW 69th Ave, Suite 201, Plantation FL, 33313
To: 13450 W. Sunrise Blvd, Suite 600, Sunrise FL, 33323
2. Contract shall be renewed for a two-year term, effective March 2, 2021 through and including March 1, 2023, in an amount not to exceed \$802,806. Provision number one (1) in the Additional Terms and Conditions section of the Contract entitled Term of Contract, shall be amended to read as follows:

“ 1. Term of Contract:

The Term of the Contract is for sixty-four (64) consecutive months from the Effective Date. The Contract may be renewed for a total of one (1) two-year period under the same terms and conditions and pricing structure by written consent of both parties. County does not have to give any reason should it elect not to renew the Contract. Any renewal may require approval of the County of Orange Board of Supervisors.”

3. Provision T, Change of Ownership, shall be deleted and replaced with the following:

“ T. Change of Ownership/Name, Litigation Status, Conflicts with County Interests:

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Contractor agrees that if there is a change or transfer in ownership of Contractor’s business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor’s duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor’s status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor’s performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor’s name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor’s employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor’s efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.”

4. Provision 51, Notices is amended to update the contact information listed “For County Contracts” and “For Contractor” and is replaced with the following:

“For County Contracts

Orange County Information Technology
 Attn: Tim Shears
 Contract Administrator
 1055 N. Main Street
 6th Floor
 Santa Ana, CA 92701
 Phone: 714-567-7488
 Email: Timothy.Shears@ocit.ocgov.com”

“For Contractor

e-Builder, Inc.
 13450 W. Sunrise Blvd.
 Suite 600
 Sunrise, FL 33323
 Attn: Jeanne Prayther
 Phone: 954-513-3105
 954-792-5945
 E-Mail: Jeanne_Prayther@trimble.com”

5. Attachment B, Cost/Compensation is replaced to 1) reflect a one-time service credit of \$10,000 and 2) to reflect a Recurring Fee cost allocation split of 75% to Orange County Public Works and a 25% cost allocation to Orange County Waste & Recycling and 3) to include updated invoicing instructions.

Attachment B, Cost/Compensation shall be deleted in its entirety and replaced with the revised Attachment B, attached hereto and incorporated herein by reference.

6. All other terms and conditions of this Contract, except as amended herein, shall remain unchanged and in full force and effect.

END OF RECITALS

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SIGNATURE PAGE

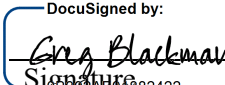
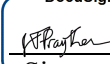
The Parties hereto have executed this Amendment on the dates shown opposite their respective signatures below.

CONTRACTOR: e-Builder, Inc.

If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth:

- 1) The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.
- 2) The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.

In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

Greg Blackman	SVP
Print Name	Title
<small>DocuSigned by:</small> 	9/30/2020
<small>Signature</small> <small>982AE97882422...</small>	Date
Jeanne Prayther	cfo
Print Name	Title
<small>DocuSigned by:</small> 	9/30/2020
<small>Signature</small> <small>F64B1...</small>	Date

COUNTY OF ORANGE, a political subdivision of the State of California

	Deputy Purchasing Agent
Print Name	Title
Signature	Date

Approved by the Board of Supervisors on: _____

Approved as to Form – Office of the County Counsel		
Name	Signature	Title
		Deputy County Council

Attachment B – Cost/Compensation

I. COMPENSATION

This is a Fixed Fee Schedule Payment Contract between County and Contractor for the PIMS System described in Attachment A, Scope of Work, to be provided to County of Orange.

Contractor agrees to accept the compensation as set forth in this Attachment B as full remuneration for (a) performing all Services and furnishing all staffing and materials required, (b) any reasonably unforeseen difficulties not caused by County which may arise or be encountered in the performance of the Services until acceptance, (c) risks not controlled by County connected with the Services, and (d) performance by Contractor of all its duties and obligations required herein. County shall have no obligation to pay any sum in excess of the total Contract amount specified herein unless authorized by amendment.

Contractor's Expense

Contractor will be responsible for all costs related to photocopying, telephone communications, fax communications, travel, parking, and any and all "out of pocket" expenses incurred by Contractor during the performance of the Services under this Contract, unless otherwise specified. Contractor shall be responsible for payment of all parking costs and expenses incurred at a County facility while performing work under this Contract, except to the extent County facility has free parking available to the public and Contractor makes appropriate use of this free parking. However, County will at no point provide free parking to Contractor in County Civic Center.

II. PRICING

Implementation Costs for Orange County Waste & Recycling and Orange County Public Works shall be:

TABLE I

One-time Fees - Milestone Payment Schedule				
#	Milestone Deliverable	Description & Deliverables	Invoice Amount	Invoice Date
1	Contract Execution	Execution of Contract by all parties	25% of One-Time fees - \$125,825	Completion of Milestone
2	Software Configuration & Testing	Complete Software Configuration	25% of One-Time fees - \$125,825	Completion of Milestone
3	Training	Complete User Training (Software Training, Manuals, and Documentation). Attachment A, Scope of Work, Section 3.V	15% of One-Time fees - \$75,495	Completion of Milestone
4	Go Live	Software System Ready to Go Live	15% of One-Time fees - \$75,495	Completion of Milestone

5	Integration	Complete CAPS + & CRM Integration	20% of One-Time fees - \$100,660	Completion of Milestone
Total One-Time Fees			\$503,300	
Above One-time fees are inclusive of all Contractor travel expenses, onsite Contractor support, integration services, and incidentals.				
All Milestones paid according to Section IV "Payment Terms" below.				

TABLE II

Recurring Fees

ITEM	DESCRIPTION	YEAR 1	YEAR 2	YEAR 3	OPTIONAL YEARS			
		(MONTHS 0 – 16)	(MONTHS 17 – 28)	(MONTHS 29 – 40)	YEAR 4 ⁴ (MONTHS 41 – 52)	YEAR 5 (MONTHS 53 – 64)	YEAR 6 ⁴ (MONTHS 65 – 76)	YEAR 7 (MONTHS 77 – 88)
1 ²	ANNUAL UNLIMITED SOFTWARE SUBSCRIPTION FEE	\$184,216 TIER 3	NOT TO EXCEED: \$313,560 TIER 5	NOT TO EXCEED: \$313,560 TIER 5	NOT TO EXCEED: \$322,966 TIER 5	NOT TO EXCEED: \$322,966 TIER 5	NOT TO EXCEED: \$332,655 TIER 5	NOT TO EXCEED: \$332,655 TIER 5
2	ANNUAL MAINTENANCE FEE	\$7,972	\$7,972	\$7,972	\$7,972	\$7,972	\$7,972	\$7,972
3	SINGLE SIGN-ON	\$7,995	\$7,995	\$7,995	\$7,995	\$7,995	\$7,995	\$7,995
4	FILE TRANSFER TOOL	\$2,995	\$2,995	\$2,995	\$2,995	\$2,995	\$2,995	\$2,995
5 ³	HOSTING	\$64,475	\$64,475	\$64,475	\$64,475	\$64,475	\$64,475	\$64,475
6	ONE-TIME SERVICE CREDIT				(\$10,000)			
	TOTAL ANNUAL RECURRING FEES	\$267,653¹	\$396,977	\$396,977	\$396,403	\$406,403	\$416,092	\$416,092
INVOICE BREAKDOWN PER AGENCY								
INVOICE AMOUNT FROM CONTRACTOR		TO: ORANGE COUNTY PUBLIC WORKS			\$294,802.25	\$304,802.25	\$312,069	\$312,069
		TO: ORANGE COUNTY WASTE & RECYCLING			\$101,600.75	\$101,600.75	\$104,023	\$104,023
ABOVE "OPTIONAL YEARS" RECURRING FEES TO BE BILLED SEMI-ANNUALLY								

NOTES

YEAR 1 (MONTHS 0 – 16) RECURRING FEE TO BE PAID AS FOLLOWS:	
1	A 15% OF \$267,653 (\$40,148) TO BE PAID AT CONTRACT EXECUTION
	B 15% OF \$267,653 (\$40,148) TO BE PAID AT 120 DAYS FROM CONTRACT EXECUTION
	C 70% OF \$267,653 (\$187,357) TO BE PAID AT 180 DAYS FROM CONTRACT EXECUTION
2	A ITEM # 1, ANNUAL UNLIMITED LICENSE SUBSCRIPTION FEE BASED ON TABLE III, ANNUAL ENTERPRISE LICENSE FEE MODEL, BELOW.
	B IN THE EVENT THAT COUNTY'S SPEND INCREASES BEYOND THE TABLE III THRESHOLD, THE PARTIES AGREE TO NEGOTIATE AN UPDATED TIER.

	C	AT THE END OF EACH CONTRACT YEAR (WITH CONTRACT YEAR 1 EQUALING SIXTEEN (16) MONTHS AND ALL OTHER CONTRACT YEARS EQUALING TWELVE (12) MONTHS), COUNTY SHALL RUN A REPORT THAT STATES THE AVERAGE CIP CAPITALIZATION AMOUNT SPENT BY COUNTY USING THE PIMS AND THE AVERAGE NUMBER OF USERS ACCESSING THE PIMS, OVER THE PRECEDING CONTRACT YEAR. IN ACCORDANCE WITH SECTION LL OF THE GENERAL TERMS AND CONDITIONS, THE REPORT IS SUBJECT TO REVIEW AND MUTUAL APPROVAL BY COUNTY AND CONTRACTOR AND WILL ESTABLISH COUNTY'S ANNUAL ENTERPRISE LICENSE TIER ACCORDING TO TABLE III BELOW FOR THE NEXT COUNTY CONTRACT YEAR.
3		ANNUAL HOSTING FEE SHALL BE AS FOLLOWS: FOR ENTERPRISE LICENSE FEE TIERS 0 – 2 THE ANNUAL HOSTING FEE SHALL BE 35% OF THE ANNUAL FEE. FOR TIERS 3 – 5, THE ANNUAL HOSTING FEE SHALL BE \$64,475.
4		INCLUDES A 3% INCREASE

TABLE III

ANNUAL ENTERPRISE LICENSE FEE MODEL			
TIER	CIP CAPITALIZATION AMOUNT	LICENSE FEE	HOSTING FEE
TIER 0 – UP TO 50 USERS	CIP CAPITALIZATION AMOUNT – NOT APPLICABLE	\$67,313.00	\$23,559
TIER 1 – UNLIMITED LICENSE MODEL	0 - \$20,000,000	\$72,840.00	\$25,494
TIER 2 – UNLIMITED LICENSE MODEL	\$20,000,000 - \$50,000,000	\$123,720.00	\$43,302
TIER 3 – UNLIMITED LICENSE MODEL	\$50,000,001 - \$300,000,000	\$184,216.00	\$64,475
TIER 4 – UNLIMITED LICENSE MODEL	\$300,000,001 - \$400,000,000	\$273,720.00	\$64,475
TIER 5 – UNLIMITED LICENSE MODEL	\$400,000,001 - \$500,000,000	\$313,560.00	\$64,475

TABLE IV

PROFESSIONAL SERVICES HOURLY RATES	
BUSINESS ANALYST	\$175.00 PER HOUR
PROJECT MANAGER	\$200.00 PER HOUR
SOFTWARE DEVELOPER	\$200.00 PER HOUR
PROGRAM DIRECTOR	\$200.00 PER HOUR

TABLE V

WORK ORDER(S)	
ORANGE COUNTY WASTE AND RECYCLING	UP TO \$100,000 FOR THE LIFE OF THE CONTRACT
ORANGE COUNTY PUBLIC WORKS	UP TO \$100,000 FOR THE LIFE OF THE CONTRACT

Table V represents a contingency amount that each department has allotted for changes made pursuant to Paragraph 73 in the Contract.

III. SERVICE CREDITS

Service Credits for missed performance have been designed to encourage the consistent and timely delivery of service and value to County. The Service Credits are not intended to compensate County for damages, but rather to reimburse County for the value of the diminished services actually delivered, and to provide incentive to Contractor to achieve the Contract's stated objectives and focus on County's critical needs.

The Service Credits tables included below outline the circumstances under which County will be entitled to Service Credits for Contractor’s failure to achieve the Service Level Requirements as specified in Attachment F – Performance, Service Level Guarantees, and Reporting.

Service Level Requirements, Performance Thresholds, and Service Credit Amounts

A Service Credit is defined as an amount equal to the pro-rata Recurring Subscription fees (Total Annual Unlimited Software Subscription Fee only) for one (1) day of Service (out of a possible 365 days a year).

In order to receive any service credit described below, County must notify Contractor in writing within thirty (30) calendar days from the time County becomes aware of eligibility to receive a Service Credit. Failure to comply with this requirement will forfeit County’s right to receive a Service Credit.

The aggregate maximum number of Service Credits to be issued by Contractor to County for any and all missed SLR’s in a single calendar month shall not exceed thirty (30) Service Credits. A Service Credit shall be issued on the following invoice following the missed SLR, unless the Service Credit is due in a month where no invoice is issued. In such case, a refund for the dollar value of the Service Credit will be mailed to County.

The following Tables for Service Credits are subject to the Force Majeure provisions found on the Contract and shall not apply if a Force Majeure event occurs.

Downtime Period is defined as all end users have lost connectivity and all or most of the system functionality is lost, the system is not operational, or if the ability of authorized users to search, retrieve, and display information is totally absent, and there is no Workaround.

Table 1 – PIMS Availability

Service Requirement	Level	Performance Threshold (quarterly)	Service Credit Amount
PIMS Availability		< 99.80% Availability	One Service Credit per downtime period

Table 2 – Prevention of Unauthorized Access to Solution

Measurement for preventing the unauthorized access to the PIMS is defined as unauthorized individuals or systems are prevented from 1) entering the PIMS designated for County to browse, store, publish or manipulate the content of system resources and b) gaining access to County data or material that has not been intentionally published or made accessible to such individual or systems.

Security requirements can be found in Attachment E, PIMS Delivery Hosted/Managed, Section 5.

Service Requirement	Level	Performance Threshold (annual)	Service Credit Amount
Security Breach (as defined in Section 49) Prevention of Unauthorized Access to Solution		Security Breach occurred (as defined in Section 49)	5 Service Credits per Security Breach

Table 3 – Disaster Recovery Services

Service Requirement	Level	Performance Threshold (annual)	Service Credit Amount
Time to recover from a critical system failure or catastrophic event		Time to recover is > 36 hours following a declared disaster recovery/DR event	5 Service Credits per occurrence

Table 4 – Infrastructure Availability

Service Requirement	Level	Performance Threshold	Service Credit Amount
Time to recover from a critical system failure or catastrophic event defined as Incident Priority Level 1 in Attachment F.		Time to recover is > 36 hours following a declared disaster recovery event	5 Service Credits per occurrence

Table 5 – PIMS Performance

Service Requirement	Level	Performance Threshold	Service Credit Amount
Concurrent Usage 100 concurrent users with less than five (5) second page response		< 90% Response Time	3 Service Credits per month
Measured by Contractor's then current vendor with reports found on Vendor's Trust Site.			

Table 4 – Incident Resolution

Service Requirement	Level	Performance Threshold	Service Credit Amount
Incident Resolution Priority number 1		Within 4 hours of Contractor's receipt of a service call and/or receipt	1 Service Credit per day

	of sufficient information and assistance needed to replicate the problem, as agreed upon by County.	
Incident Resolution Priority number 2	Within 8 hours of Contractor's receipt of a service call and/or receipt of sufficient information and assistance needed to replicate the problem, as agreed upon by County.	1 Service Credit per week

IV. PAYMENT TERMS

Contractor shall reference the Contract number on the invoice. Payment shall be net forty-five (45) days after receipt of an invoice. The invoice shall be: 1) in a format acceptable to County 2) verified for accuracy and approved by County and, 3) subject to routine processing requirements.

Billing shall cover Services and/or goods not previously invoiced.

a. Payment for One-time Fees:

Payment for One-time fees shall be in accordance with Table I (Milestone Payment Schedule) above.

b. Payment for Recurring fees:

Payments for Recurring fees shall be in accordance with Table II above. One half of annual recurring fees are to be paid in advance every six months starting in month number sixteen (16) and payment will be net forty-five (45) days after receipt of an acceptable invoice

V. PAYMENT/INVOICING INSTRUCTIONS

During the Implementation Phase of the Contract, Contractor shall provide an invoice on Contractor's letterhead for Services rendered after County has notified Contractor in writing that a component or Deliverable meets the Acceptance Criteria according to the procedures in Paragraph 41, Acceptance Testing. Each invoice shall have a unique number and shall include the information in the list below (#'s 1 – 9). Each invoice will correspond the unique implementation phase as described in Table I "Milestone Payment Schedule" above. There shall be up to a total of eight (8) invoices during the implementation phase.

Semi-annual invoices for Recurring Fees (Table II above), Contractor shall provide an invoice on Contractor's letterhead for Services rendered. Semi-annually, Contractor will submit two (2) invoices:

- 1) Orange County Public Works and,
- 2) Orange County Waste & Recycling.

Each invoice shall have a unique number and shall include the following information:

1. Contractor's name and address;
2. Contractor's remittance address (if different from #1 above);
3. Name of County agency or department;
4. County Contract number;

5. Service Date(s);
6. Service Description;
7. Cost;
8. Contractor's Federal I. D. number; and
9. Total.

Invoices and support documentation are to be forwarded to both of the following according to the amounts in Table II above:

Orange County Public Works

Email Invoice to:
AccountsPayables@ocpw.ocgov.com

AND

Mail invoice to:
OC Public Works/Procurement Services
ATTN: Accounts Payable
PO Box 4048
Santa Ana, CA 92702-4048

Orange County Waste & Recycling

Email Invoice to:
ocwrinvoice@ocwr.ocgov.com

AND

Mail invoice to:
OC Waste & Recycling
ATTN: Accounts Payable
601 North Ross Street, 5th Floor
Santa Ana, CA 92701

The responsibility for providing an acceptable invoice to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and shall be returned to Contractor for correction. County's Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to OCIT Accounts Payable for processing of payment.

END OF ATTACHMENT B