

CONTRACT MA 012-15011980
MAINTSTAR COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM
SOFTWARE LICENSING & SUPPORT

This Contract: MA-012-15011980, for MaintStar software, licensing and on-call support, referred to as (“Contract”) is made and entered into as of the date fully executed by and between the County of Orange, OC Community Resources/OC Parks, a political subdivision of the State of California, hereinafter referred to as (“County”) and MaintStar Inc, hereinafter referred to as “Contractor,” with County and Contractor sometimes referred to as “Party”, or collectively as “Parties.”

ATTACHMENTS

This contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this contract:

Attachment A - Scope of Work
Attachment B - Payment & Compensation
Attachment C- MaintStar Annual Support Services

RECITALS

WHEREAS, Contractor agrees to provide products, licenses and services as more specifically described in Attachment(s) A & C, which are attached hereto and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Payment & Compensation, attached hereto as Attachment-B and incorporated herein; and,

WHEREAS, the County of Orange Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

CONTRACT SPECIFIC TERMS AND CONDITIONS

1. **Scope of Services:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide MaintStar Software licensing and support under a fixed-price Contract, as set forth in the Scope of Work attached hereto and incorporated herein by this reference as Attachment A to this Contract.
2. **Contract Term:** The initial term of this Contract shall become effective upon execution of all necessary signatures and shall continue for one year, renewable annually for four (4) additional 1 year periods from that date, unless otherwise terminated by County. The County is not obligated to give a reason if it elects not to renew. Renewal amendments may require County Board of Supervisors approval.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County’s Board of

Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

4. **Precedence:** The contract documents consist of this Contract and Attachments. In the event of a conflict between or among the contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then Attachments.

5. **Contractor Work Hours and Safety Standards:** The contractor shall ensure compliance with all safety and hourly requirements for employees in accordance with federal, state and County safety regulations and laws.

6. **Contractor Personnel – Uniforms/Badges/Identification:** The contractor warrants that all persons employed to provide service under this contract have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this contract.

7. **Conditions Affecting Work:** The contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the contractor to do so will not relieve contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by the County are expressly stated in the contract.

8. **Project Administration Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager, as specified in Article 16, to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

The Contractor's Project Manager and key personnel shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who report directly to the Contractor's Project Manager.

9. **County's Project Manager:** The County shall appoint a Project Manager, as specified in Article 19. Notices, to act as liaison between the County and the Contractor during the term of this Contract. The County's Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager and key personnel. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager and key personnel. Said approval shall not be unreasonably withheld.

10. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Consultants; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

11. **Child Support Enforcement Requirements:** Contractor is required to comply with the child support enforcement requirements of the County. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices

ATTACHMENT B

of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

12. **Reports/Meetings:** in addition to the requirements set forth in the Scope of Work, Attachment A, upon County's request, the Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's Project Manager and the Contractor's Project Manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's Project Manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.

13. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

- i. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
- ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
- iii. Terminate the Contract immediately without penalty.

14. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Supervisor and the County's project manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent (DPA), as specified in Article 19. "Notices" by way of the following process:

- i. The Contractor shall submit to the agency/department DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
- ii. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
- iii. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract. Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County's Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of the County's final decision or one year following the accrual of the cause of action, whichever is later.

15. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

16. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's Project Manager and Contractor's Project Manager routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: OC Community Resources/OC Parks
Attention: Bill Kirk
13042 Old Myford Road
Irvine, CA 92602-2304
Telephone: 949-923-3736
Email: bill.kirk@ocparks.com

Cc: OC Community Resources/OC Parks
Attention: Jeremy Hampton
13042 Old Myford Road
Irvine, CA 92602-2304
Telephone: 949-585-6466
Email: jeremy.hampton@ocparks.com

County Purchasing: OC Community Resources/OC Parks
Attention: Jeff Miller
13042 Old Myford Road
Irvine, CA 92602-2304
Telephone: 949-923-3767
Email: jeffrey.miller@ocparks.com

Contractor: MaintStar Inc.
Attn: Gayle Banks
28 Hammond, Ste-D
Irvine, CA 92618-1662
Telephone: 949-458-7560
Email: info@maintstar.com

GENERAL TERMS AND CONDITIONS:

A. Governing Law and Venue: This Agreement (hereinafter "Contract") has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

ATTACHMENT B

B. Entire Contract: This Contract, including Attachments A & B, incorporated herein by this reference as if fully set forth, when accepted by "Contractor" either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County of Orange (hereinafter "County") unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or his designee, hereinafter "Purchasing Agent."

C. Amendments: No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

D. Taxes: Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.

E. Delivery: Time of delivery of goods is of the essence in this Contract. County reserves the right to refuse any goods and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions. Acceptance of any part of the order shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Overshipments and undershipments shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until goods have actually been received and accepted in writing by County.

F. Acceptance/Payment: See Attachment-B.

G. Warranty: Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "HH" below, and as more fully described in paragraph "HH", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

H. Patent/Copyright Materials/Proprietary Infringement: Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, property right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "HH" below, it shall indemnify, defend and hold COUNTY AND COUNTY INDEMNITIES harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.

I. Assignment or Sub-Contracting: The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-Contracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-Contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

J. Non-Discrimination: In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any sub-Contractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

K. Termination: Notwithstanding any other provision of this Contract, County may at any time and without cause terminate in whole or in part, upon not less than (30) thirty days written notice to Contractor. Such termination shall be effected by delivery to Contractor a Notice of Termination specifying effective date of termination, whether Contract shall be terminated in whole or in part and if applicable the portion of work to be terminated. Contractor shall immediately stop work in accordance with Notice of Termination and comply with any other direction as may be specified in Notice of Termination or provided subsequently by County. County shall pay Contractor for work completed and accepted by County prior to effective date of termination and such payment shall be Contractor's sole remedy.

In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of Contractor. Exercise by County of its right to terminate Contract shall relieve County of all further obligations.

Under no circumstances will Contractor be entitled to anticipatory or unearned profits, consequential damages or any other damages of any sort as a result of a termination in whole or in part under this provision. Contractor shall insert in all subcontracts that subcontractors shall stop work on the date of and if applicable the portion of work to be terminated in a Notice of Termination, and shall require sub-consultant's to insert the same condition in any lower tier subcontracts.

L. Consent to Breach Not Waiver: No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. Remedies Not Exclusive: The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.

N. Independent Contractor: Contractor shall be considered an independent Contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

O. Performance: Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

P. Insurance Provisions: Prior to the provision of services under this contract, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the

ATTACHMENT B

entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.

2) A primary non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this Contract shall give the County of Orange 30 days' notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

The Commercial General Liability policy shall contain a severability of interests clause, also known as a "separation of insureds" clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/County Procurement Office or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

Q. Bills and Liens: Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "HH" below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.

R. Changes: Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

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

ATTACHMENT B

T. Force Majeure: Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

U. Confidentiality: Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

V. Compliance with Laws: Contractor represents and warrants that the services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "P" above and "HH" below, Contractor agrees that it shall defend, indemnify and hold County and COUNTY INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

W. Freight (F.O.B. Destination): Contractor assumes full responsibility for all transportation scheduling, packaging, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.

X. Pricing: The Contract bid price shall include full compensation for providing all required goods, in accordance with required specifications, or services, as specified herein or when applicable, in the scope of services attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.

Y. Intentionally Left Blank.

Z. Terms and Conditions: Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.

AA. Headings: The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

BB. Severability: If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

CC. Calendar Days: Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

DD. Attorney Fees: In any action or proceeding to enforce or interpret any provisions of this Contract, or where any provisions hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

EE. Interpretation: This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties

and this Contract.

FF. Authority: The parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

GG. Employee Eligibility Verification: The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

HH. Indemnification Provisions: Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

II. Audits/Inspections: Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of contractor for the purpose of auditing or inspecting any aspect of performance under this contract. The inspection and/or audit will be confined to those matters connected with the performance of the contract including, but not limited to, the costs of administering the contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this contract.

Should the contractor cease to exist as a legal entity, the contractor's records pertaining to this agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project manager.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown below their respective signatures below.

MAINTSTAR INC

By Gayle BANKS
Print

By Dimitry PORITSKY
Print

Name Gayle Banks

Name [Signature]

Title CFO
Corporate Officer

Title President
Corporate Officer

Date 5/26/15

Date 5/26/15

* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any 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 corporation.

COUNTY OF ORANGE

A POLITICAL SUBDIVISION
OF THE STATE OF CALIFORNIA

By [Signature]

Print Name: Jeffrey Miller

Title: DEPUTY PURCHASING AGENT

Date: 6/23/15

County of Orange, California

APPROVED AS TO FORM

Office of the County Counsel
Orange County, California

By: [Signature]

Deputy
Date: 5/28/15

**ATTACHMENT A
SCOPE OF WORK
MA -012-15011980**

I. GENERAL DESCRIPTION:

OC Parks currently utilizes MaintStar's web-based maintenance software system to request, track, schedule, and process routine and preventative maintenance work orders at over thirty facilities throughout the County.

II. OBJECTIVES:

1. To maintain MaintStar annual support services and licenses as described in Attachment-C (Annual Support Services).
2. MaintStar Software Support for application usage questions after system training.
3. Provide MaintStar Software annual updates to the system with further added features, functionality, and support for new network, server and operating systems.

III. SCOPE OF WORK: MaintStar Inc. is to provide the following support services:

(a) Responses to the County's reports (via mail, telephone, electronic mail or fax) of difficulties or problems with the software products and assistance in diagnosis of faults. The County shall provide adequate information and documentation to enable MaintStar Inc. to recreate the problem. MaintStar Inc. may notify the County that the problem could not be recreated, located or identified, if such is the case. If applicable, MaintStar Inc. may notify County that the problem will not be resolved and the reason for this decision. If it is determined that there is no problem with the software products, MaintStar Inc. will so inform the County and in such case MaintStar Inc. reserves the right to charge the County a fee as per Attachment-B. Notwithstanding the provisions of this section, MaintStar Inc. makes no warranties that the Support Services provided hereunder will be successful in resolving any difficulties or problems or in diagnosing faults.

(b) MaintStar Inc. shall provide without additional charge, revised or updated releases of the software products originally licensed when the Licensor of the software products makes such revised or updated releases generally available. On provision of such releases by MaintStar Inc., all previous releases shall be replaced for all purposes by such new releases.

In the event of non-acceptance of any such new releases by the County within 30 days following the date of the release having been provided to County, MaintStar Inc. will be relieved of its obligations hereunder.

(c) New Versions and New Programs are included in the Support Services under this Agreement. These will be made available to the County subject to availability and for the then current price and licensing arrangements.

(d) MaintStar Inc. shall have no responsibility for hardware problems or software, which has been subject to improper use, accident, neglect or modification.

(e) On-site consultation, if requested by County and subject to availability of MaintStar Inc. technical staff, will be provided at MaintStar Inc. then current standard rates plus reasonable associated expenses.

(f) The County has delegated the staff below that will be the point of contact between the County and MaintStar Inc. MaintStar Inc. does not support County data damage, however, will provide support at the hourly rate specified on Attachment-B; unless the data damage was caused or directly related to the performance or products provided by MaintStar, in which case the damage will be rectified by MaintStar for no additional charge.

**ATTACHMENT A
SCOPE OF WORK
MA -012-15011980**

IV. COUNTY PROJECT COORDINATOR(S):

Primary Contact: **Name: Bill Kirk**
 Phone: 949-923-3736
 Email: Bill.Kirk@ocparks.com

Alternative Contact: **Name: Jeremy Hampton**
 Phone: 949-585-6466
 Email: Jeremy.Hampton@ocparks.com

ATTACHMENT B
PAYMENT & COMPENSATION
MA -012-15011980

1. COMPENSATION:

This is a fixed fee price Contract between the County and the Contractor for MaintStar licensing and support as provided in Attachment's A & C. The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The County shall have no obligation to pay any sum in excess of total Contract amount specified unless authorized by an amendment in accordance with paragraphs C and R of the County's General Terms and Conditions.

2. FIRM DISCOUNT AND PRICING STRUCTURE:

Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.

3. PAYMENT TERMS:

I. Annual license and support shall be paid annually and in advance as follows:

August 1, 2015 – July 31, 2016: \$49,783.00
August 1, 2016 – July 31, 2017: \$50,529.00
August 1, 2017 – July 31, 2018: \$51,287.00
August 1, 2018 – July 31, 2019: \$52,057.00
August 1, 2019 – July 31, 2020: \$52,837.00

Annual support includes free version upgrades. Support will normally be conducted via email, fax or telephone.

**II. On-Site Support/Consultation/Customization: \$150.00 per hour or portion thereof.
*Not to exceed \$3,000.00 annually (twenty-hours).**

An invoice for the fixed cost of on-call services shall be submitted to the address specified below upon the completion of the engagement and approval of the County Project Manager. Contractor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the Office of (Agency/Department) and subject to routine processing requirements of the County. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for services not provided or when services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

**ATTACHMENT B
PAYMENT & COMPENSATION
MA -012-15011980**

4. **INVOICING INSTRUCTIONS:** Invoices are to be submitted as described above. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The County's Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

The Contractor will provide an invoice on the Contractor's letterhead. Each invoice will have a unique number and will include the following information:

- A. Contractor's name and address
- B. Contractor's remittance address, if different from (A), above
- C. Name of County agency/department
- D. Delivery/service address
- E. Contract number **MA-012-15011980**
- F. Service Date
- G. Description of Services
- H. Total
- I. Taxpayer ID number

Invoices and support documentation are to be mailed to:

**OC Community Resources
Attn: Accounts Payable
1770 N. Broadway
Santa Ana, CA 92705-4407**

ATTACHMENT C
MAINTSTAR ANNUAL SUPPORT SERVICES
MA -012-15011980

ANNUAL SUPPORT SERVICES

MaintStar will provide the following support services to the Licensee:

- (a) Responses to the Licensee's reports (whether by mail, telephone, electronic mail or fax) of difficulties or problems with the software products and assistance in the diagnosis of faults. The Licensee must provide adequate information and documentation to enable MaintStar to recreate the problem. MaintStar may notify the Licensee that the problem could not be recreated, located or identified, if such is the case. If applicable, MaintStar may notify Licensee that the problem will not be resolved and the reason for this decision. If it is determined that there is no problem with the software products, MaintStar will so inform the Licensee and in such cases MaintStar reserves the right to charge Licensee a reasonable fee based upon time & materials. Licensee, notwithstanding the provisions of this section, MaintStar makes no warranties that the support services provided hereunder will be successful in resolving any difficulties or problems or in diagnosing faults.
- (b) MaintStar may provide, without additional charge, revised or updated releases of the software products originally licensed to the Licensee, when the MaintStar makes such revised or updated releases generally available. On provision of such releases by MaintStar, all previous releases shall be replaced for all purposes by such new releases. In the event of non-acceptance of any such new releases by the Licensee within a reasonable period of time following written notice of the release, MaintStar will be relieved of its obligations hereunder.
- (c) New Versions and New Programs, not currently licensed to Licensee that may be available are included in the support services under this Agreement. These will be made available to the Licensee subject to availability and for the then current price and licensing arrangements.
- (d) MaintStar shall have no responsibility for hardware problems or software-which has been subject to improper use, accident, neglect or modification.
- (e) On-site consultation, if requested by Licensee and subject to availability of MaintStar technical staff, will be provided at the MaintStar then current standard rates plus reasonable associated expenses.

ATTACHMENT C
MAINTSTAR ANNUAL SUPPORT SERVICES
MA -012-15011980

ATTACHMENT B

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(f) The Licensee will nominate one specified technical contact, within their organization that will be the point of contact between the Licensee and MaintStar. MaintStar does not support Licensee data damage, however MaintStar may provide, at a to-be-determined hourly rate, support to assist in correcting the Licensee's data problem(s).