

Megabyte Systems, Inc.

FIRST AMENDMENT TO AGREEMENT FOR SERVICES #245-S1711

THIS FIRST AMENDMENT to that Agreement for Services #245-S1711 made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Megabyte Systems, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 2630 Sunset Boulevard, Rocklin, California 95677 (hereinafter referred to as "Contractor");

RECITALS

WHEREAS, Contractor has been engaged by County to provide property tax services and support, in accordance with Agreement for Services #245-S1711 dated January 3, 2017, incorporated herein and made by reference a part hereof (hereinafter referred to as "Agreement");

WHEREAS, the parties hereto desire to amend the Agreement to update the scope of work by revising the additional MPTS Modules that are required, amending **ARTICLE 1, Work**;

WHEREAS, the parties hereto desire to amend the Agreement to revise the rates for services rendered, amending **ARTICLE 2, Price**, and adding **Amended Exhibit B, Payment for Services Rendered**;

WHEREAS, the parties hereto desire to revise County's invoice address and recipient, amending **ARTICLE 3, Payments**;

WHEREAS, the parties hereto desire to update notice recipients, amending **ARTICLE 18, Notices**;

WHEREAS, the parties hereto desire to amend the Agreement to add County's Contract Administrator, amending **ARTICLE 21, Contract Administrator**;

WHEREAS, the parties hereto desire to fully-replace or add specific Articles to include updated contract provisions;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter contained, County and Contractor mutually agree to amend the terms of the Agreement in this First Amendment to Agreement on the following terms and conditions:

I. **ARTICLE 1, Work**, of the Agreement is amended in its entirety to read as follows:

1. Work. Subject to the terms and conditions set forth in this agreement, Contractor shall provide the services described in Exhibit A, marked "Scope of Services," incorporated herein and made by reference a part hereof.

For the period beginning January 3, 2017, the effective date of the Agreement and continuing through June 30, 2021, Contractor shall provide maintenance and support services for the MPTS Property Tax System and all "Additional MPTS Modules" listed below and as shown on Exhibit A.

Assessor/Tax Collector Public Web Access
Assessor/Tax Collector Agency Web Access
Tax Collector- Web bill print for Prior/Current Year
Assessor - Online Business Property Filing (OBPF) Clerk of the Board/Assessor
Assessment Appeals Module (COB)
Tax Collector- Transient Occupancy Tax (TOT)

For the period beginning on July 1, 2021 and continuing through the remaining term of the Agreement, Contractor shall provide all maintenance and support services for the MPTS Property Tax System and "Additional MPTS Modules" listed below and as shown on Amended Exhibit B, marked "Payment for Services Rendered."

Assessor/Tax Collector Public Web Access Including Aircraft/Boat inquiry
Assessor/Tax Collector Agency Web Access
Tax Collector – Web bill print for Prior/Current Year
Tax Collector - Historical Expansion View/Bill Print
Assessor -Online Business Property Filing (OBPF)

II. **ARTICLE 2, Price**, of the Agreement is amended in its entirety to read as follows:

2. Price. In consideration of Contractor's fulfillment of the promised work, County shall pay Contractor the amount set forth in Exhibit B marked "Payment for Services Rendered," and Amended Exhibit B, both incorporated herein and made by reference a part hereof.

For the period beginning January 3, 2017, the effective date of the Agreement, and continuing through June 30, 2021, for the purposes hereof, the billing rates shall be in accordance with Exhibit B.

For the period beginning on July 1, 2021 and continuing through the remaining term of the Agreement, for the purposes hereof, the billing rates shall be in accordance with Amended Exhibit B.

County will request a quote from Contractor for additional services and fees not specifically listed in Exhibit B and Amended Exhibit B. Additional services shall not be ordered and additional fees shall not be charged to County without prior written approval from County's Contract Administrator.

Notwithstanding any other provision of this Agreement to the contrary, payments to Contractor for travel, lodging, per diem, and mileage expenses, if applicable, for Contractor's claims for reimbursement shall not exceed the rates to be paid to County employees under the current Board of Supervisor's Travel Policy in effect at the time the expenses are incurred. Any individual travel expense exceeding one hundred dollars (\$100) and any work requiring overnight stay must be approved in advance by the Contract Administrator or designee. Contractor is responsible for canceling hotel rooms before the cancellation period ends and should record the cancellation number in case of disputes. Contractor shall not be reimbursed for "no-show" hotel charges unless there are unavoidable reasons for not cancelling the room and the Contract Administrator or designee has determined that the reasons are valid.

- III. The County invoice address listed in **ARTICLE 3, Payments** is amended in its entirety to read as follows:

County of El Dorado
Information Technologies Department
360 Fair Lane
Placerville, California 95667
Attn.: Tonya Digiorno
Director

or to such other location as County directs.

- IV. **ARTICLE 18, Notices**, of the Agreement is amended in its entirety to read as follows:

18. Notices. All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado
Information Technologies
360 Fair Lane
Placerville, California 95667

Attn.: Tonya Digiorno
Director

With a copy to:

County of El Dorado
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Michel Weimer
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Contractor shall be addressed as follows:

Megabyte Systems, Inc.
2630 Sunset Boulevard
Rocklin, California 95677

Attn.: Nicholas M. Betts
Chief Executive Officer

or to such other location as Contractor directs.

V. The following Articles of the Agreement are fully-replaced in their entirety to read as follows:

7. Changes to Agreement. This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto. Amendments will specify any and all changes including adjustment(s) to price and delivery schedule (if any). In no case shall County pay for any extra work or material furnished except as previously agreed upon in said amendment. Contractor and the County shall determine whether any change or modification will cause a delay in Contractor completing all work and if so, the duration of such delay.

10. Indemnity. To the fullest extent permitted by law, Contractor shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Contractor or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

15. Confidentiality. Contractor shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Contractor, and all Contractor's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Information Technologies Department for the

purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

16. Independent Contractor. The parties intend that an independent contractor relationship will be created by this contract. Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Contractor. Those persons will be entirely and exclusively under the direction, supervision, and control of Contractor.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Contractor performs the work or services for accomplishing the results. Contractor understands and agrees that Contractor lacks the authority to bind County or incur any obligations on behalf of County.

Contractor, including any subcontractor or employees of Contractor, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Contractor shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Contractor. Contractor shall not be subject to the work schedules or vacation periods that apply to County employees.

Contractor shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Contractor provides for its employees.

Contractor acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

VI. The following articles are added to the Agreement in their entirety to read as follows:

21. Contract Administrator, The County Officer or employee with responsibility for administering this Agreement is Tonya Digiorno, Director, Information Technologies Department, or successor.

22. Force Majeure. Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

23. Waiver. No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

Except as herein amended, all other parts and sections of Agreement for Services #245-S1711, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Agreement for Services # 245-S1711 on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____

Dated: _____

Deputy Clerk

-- MEGABYTE SYSTEMS, INC. --

By: *Nicholas M. Betts*
Nicholas M. Betts (Oct 1, 2021 15:09 PDT)

Dated: 10/01/2021

Nicholas M. Betts
Chief Executive Officer and
Corporate Secretary
"Contractor"

Megabyte Systems, Inc.

AMENDED EXHIBIT B

PAYMENT FOR SERVICES RENDERED

The amounts below shall constitute total compensation for all services, costs and expenses related to support services described in Exhibit A, Scope of Services.

Term	Description	Amount
July 1, 2021- June 30, 2022	MPTS Property Tax System Maintenance/Support	\$25,018 .49 per month
July 1, 2021 - June 30, 2022	<u>MPTS Web Services</u> Assessor/Tax Collector Public Web Access Including Aircraft/Boat inquiry	\$ 5,553.8 8 annual charge
	Assessor/Tax Collector Agency Web Access	\$12,668 .63 annual charge
	Tax Collector – Web bill print for Prior/ Current Year	\$ 1,38 5.39 annual charge
	Tax Collector - Historical Expansion View/Bill Print	\$2,500.00 annual charge*
July 1, 2021 - June 30, 2022	Assessor – Online Business Property Filing (OBPF)	\$ 3,78 5.10 annual charge

The rates listed above are applicable for July 1, 2021 through June 30, 2022. Future costs are subject to Consumer Price Index (CPI) increases (Pacific Cities and U.S. Cities Average) on July 1 of any given year. Any rate increases authorized by County's Contract Administrator shall not increase the total not-to-exceed amount of the Agreement.

**Fees waived for the first twelve (12) months after County "Go Live" date of July 1, 2021 (applies to MPTS Web Services only)*

COMPENSATION FOR ADDITIONAL SERVICES

County will compensate Contractor for Additional Services and reimburse Contractor for expenses incurred in connection with the provision of such Additional Services as follows:

1. Emergency off-site support outside of the hours 8 AM to 5 PM or on weekends or County-recognized holidays, with a four (4) hour minimum: **\$150.00 per hour**
2. On-site support, with a four (4) hour minimum, including time in transit: **\$150.00 per hour**
3. Travel Expenses shall be billed in accordance with ARTICLE 2, Price

County will request a quote from Contractor for additional services and fees not listed above. Additional services shall not be ordered and additional fees shall not be charged to County without prior written approval from County's Contract Administrator.