

**ORIGINAL**

**AGREEMENT 245-S1711**

**MPTS PROPERTY TAX SYSTEM  
SOFTWARE MAINTENANCE**

THIS SUPPORT AGREEMENT, ("Agreement") is made and entered 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 California corporation, duly qualified to conduct business in the State of California, whose principal place of business is 2630 Sunset Blvd, Rocklin, CA 95677, (hereinafter referred to as "Contractor").

**RECITALS**

WHEREAS, Contractor has developed and owns all rights in and to the computer software and documentation referred to herein as the "Software"; and

WHEREAS, County has entered into related agreement #244-S1711 for Megabyte Property Tax System (MPTS) Software License; and

WHEREAS, County wishes to engage the services of Contractor to support and maintain Software, and Contractor agrees to serve County in accordance with the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual agreements contained herein, the parties agree as follows:

**AGREEMENT**

1. Work. Subject to the terms and conditions set forth in this agreement, Contractor shall provide the services described in Exhibit A, attached and by this reference incorporated herein.

2. Price. In consideration of Contractor's fulfillment of the promised work, County shall pay Contractor the amount set forth in Exhibit B, attached and by this reference incorporated herein. Support to County in excess of the terms of this agreement, as deemed necessary by County, will be billable to County at Contractor's standard hourly rate subject to advance written approval of County. If on-site support is required, travel, lodging, and per diem expenses incurred by Contractor and its employees shall be reimbursed in accordance with County Travel Policy.

3. Payments. County shall make payments of compensation hereunder monthly on submittal of an invoice. Payment shall be made within thirty (30) days following County's receipt and approval of an itemized invoice. Contract payments are due and payable to Megabyte Systems, Inc. 2630 Sunset Blvd, Suite 100, Rocklin, California 95677. Invoices shall be submitted to:

County of El Dorado  
Information Technologies Department  
ATTN: David Russell, Assistant Director  
360 Fair Lane  
Placerville CA, 95667

4. Term. This Agreement shall become effective when fully executed by the parties hereto and shall cover the period of July 1, 2018 through June 30, 2019 and shall automatically renew for successive one-year periods unless terminated in accordance with Article 17 hereof.

5. Fiscal Considerations. The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

6. Audit by California State Auditor. Contractor acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Contractor shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

7. Changes. Changes and modifications to this Agreement may only be made by prior written change order of County, accepted in writing by the Contractor,



specifying such change(s) including adjustment(s) to price and delivery schedule (if any), as are agreed to by the parties hereto. In no case shall County pay for any extra work or material furnished except as previously agreed upon in such a written change order. The 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.

8. County's Responsibility to Provide. County will provide, at its own expense, access to Megabyte via Megabyte's network or via the Internet as long as it is at acceptable speeds (County minimum of T1 or business DSL speed).

9. No Waiver by County. Inspection of the work by the County, or the statement by any officer, agent, or employee of the County, prior to written acceptance of the work or any part thereof, indicating that the work or any part thereof complies with the requirements of this Agreement, or the County's payment for the whole or any part of the work, or any combination of these acts, shall not relieve the Contractor of obligation to fulfill this Contract as prescribed. Waiver of any provision of this Agreement by the County in any single instance shall not prejudice County's right to enforcement of all provisions of this Agreement in any other instance.

10. Hold Harmless. Contractor agrees to defend, indemnify, save and hold harmless the County, its officers, agents, and employees, from and against any and all claims and losses whatsoever accruing or resulting to any and all persons, firms or corporations for damage, injury or death as a result of negligence by Contractor in Contractor's performance of this Agreement.

11. Patent or Copyright Infringement.

A. Contractor represents that the materials and products produced hereunder do not violate others intellectual property rights (which include patent, copyright, trademark, trade secret or other proprietary right). In the event a claim, cause of action, proceeding or other legal action should arise in which there are claims that the materials and/or products infringe or violate another's intellectual property rights, Contractor shall undertake to protect, defend, settle or resolve the proceeding at no cost, whatsoever, to County, including, but not by way of limitation, legal fees, disbursements, judgments, or the like. Contractor shall protect, defend and indemnify and hold County harmless, subject only to County giving Contractor prompt written notice of any such third party claim, cause of action or proceedings and rendering to Contractor any reasonable information, assistance or access to documents and materials required in the defense of any such cause of action.

B. Should the materials and/or products in Contractor's opinion, be likely or become the subject of a claim of infringement of a patent, copyright or trademark, Contractor may do any of the following: (1) obtain a legally binding right for County to use, at no cost to County, the material and/or product; (2) replace or modify the material and/or product so that it is non-infringing yet still complies with the RFP and the Contract specifications; (3) repurchase the material and/or product by refunding all

moneys paid by County to Contractor for the material and/or product less depreciation and reasonable costs for use and such other amounts as are mutually agreeable to County and Contractor.

12. Title to Work. Upon termination of this agreement for any reason title to, ownership of, and all applicable patents, copyrights and trade secrets in the MPTS software, shall remain with the contractor as owner/holder of such patents, copyrights, and trade secrets, who shall retain complete rights to market such product, and no such rights shall pass to County. However, County shall receive, at no additional cost, a perpetual license to use such products for its own use.

13. Source Code. Contractor shall place source code for the licensed software and any changes thereto, into a software escrow account. County shall have access to the source code in the event Contractor fails to fulfill its maintenance and support obligations, or in the event of bankruptcy, dissolution, or appointment of a receiver for Contractor. County shall be able to use the source code according to the terms of this agreement, and must also be permitted to modify the code for its own use consistent with this agreement.

14. Insurance. Contractor shall maintain, at Contractor's own expense during the term hereof, insurance with respect to Contractor's performance of this Agreement of the types and in the minimum amounts described generally as follows:

A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor as required by law in the State of California.

B. Commercial General Liability Insurance of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence (claim made).

C. Comprehensive Automobile Liability Insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with Contractor's business of not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence (claim made).

14.1. Proof of Insurance. Simultaneous with the execution of this Agreement, proof of the aforementioned insurance shall be furnished by the Contractor to the County by certificates of insurance. Such certificates shall specify that County must be given written notice 30 days prior to the cancellation or modification of any such insurance.

14.2. Insurance in Force and Effect During Contract Period. The insurance specified above shall be in a form and placed with an insurance company or companies satisfactory to County, and shall be kept in force and effect until completion to the satisfaction and acceptance by County of all work to be performed by the Contractor under this Agreement.

15. Confidentiality. Confidential information is defined as all information disclosed to Contractor which relates to the County's past, present, and future activities, as well as activities under this Contract. Contractor will hold all such information in trust and confidence. Upon cancellation or expiration of this Agreement, Contractor will return to County all written and descriptive matter which contains any such confidential information.

16. Independent Contractor. Contractor shall perform this contract as an independent contractor for all purposes. Contractor is not, and shall not be deemed, a County employee for any purpose, including worker's compensation. Contractor shall, at Contractor's own risk and expense, determine the method and manner by which the duties imposed on Contractor by this contract shall be performed; provided that County may monitor the work performed by Contractor; and provided further that Contractor shall observe and comply with all laws and rules applicable to County in performing the work. Contractor, not County, shall be responsible for Contractor's negligence and that of Contractor's agents and employees in performing the work. Contractor shall be entitled to none of the benefits accorded to a County employee. County shall not deduct or withhold any amounts whatsoever from the compensation paid to Contractor, including but not limited to amounts required to be withheld for state and federal taxes. Contractor alone shall be responsible for all such payments.

17. Termination. The County or Contractor may terminate this Agreement with sixty (60) days written notice.

18. Notices. Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County:  
County of El Dorado County  
Information Technologies Department  
ATTN: David Russell  
360 Fair Lane  
Placerville, CA 95667

To Contractor  
Megabyte Systems, Inc.  
ATTN: Sharon A Zachte, President  
2630 Sunset Blvd Suite 100  
Rocklin, CA 95765

Effective date of all notices shall permit a minimum of five (5) days for transit in the mails.



19. Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration. The arbitration shall be conducted by a neutral arbitrator and in accordance with California law, with the parties sharing equally the costs of arbitration. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

20. Entire Agreement. This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

**Requesting Contract Administrator Concurrence:**

By:   
David Russell  
Assistant Director  
Information Technologies

Dated: 12/21/16

**Chief Administrative Office Concurrence:**

By:   
Don Ashton, MPA  
Chief Administrative Officer  
*for*

Dated: 12/21/2016

//  
//  
//  
//  
//  
//  
//

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: 1/31/17

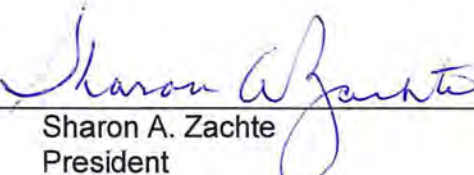
By:  Chair  
Shing Frantz Board of Supervisors  
"County"

ATTEST:  
James S. Mitrison  
Clerk of the Board of Supervisors


By:   
Deputy Clerk

Dated: 1/31/17

-- CONTRACTOR --

By:   
Sharon A. Zachte  
President  
Megabyte Systems, Inc.

Dated: 7/26/2016

By:   
Nicholas M. Betts  
Corporate Secretary

Dated: 12.06.16

**EXHIBIT A**  
**SCOPE OF SERVICES**

**MPTS Maintenance Support Services**

**Contractor** will provide the following maintenance support services:

- Hot line phone support for County's Assessor, Tax Collector and Auditor user staff, as required, concerning the operation of the property tax system – MPTS. Help Desk will make every effort to respond within one hour with information regarding expected response and resolution.
- Diagnosis of application problems and suggested solutions.
- Application software corrections as needed by system failure to meet system requirements. This does NOT include any fixes for problems arising through alteration of the database by means other than Contractor personnel.
- New State mandated change to the application of property and tax assessment statutes.
- Enhancements/Upgrades to the application software at the discretion of Contractor.
- Installation/Setup of application stored procedures/triggers/database-scheduled tasks when necessary.
- MPTS application training classes:
  - Web training classes.
  - Training materials will be posted on the Contractor website.
  - Some sessions may be offered in house for detailed hands-on training at no cost for the session (County will be responsible for travel expenses).
- Roll turnover & roll over support to accommodate County off-hour support if desired:
  - Contractor will optionally offer (based on County needs) roll turnover/rollover of scheduled jobs leaving reports out at the County (balancing/review is the responsibility of County).
  - Contractor will review for consistency and set up – completion of jobs i.e. ascertain correctness of control records, job setup, scheduling, conflicts.
  - Contractor will provide secondary backup copy of 601 rolls and tax rolls for 12-year history retention, to be held by Contractor, if requested by the County. Primary backup of the 601 roll and related system backups are County responsibilities.
  - Assistance with balancing property and tax assessment programs.
  - Assistance with producing fixes (i.e. mass roll changes) to correct erroneous assessment or tax roll results, whether due to County or Contractor actions. However, County is responsible for meeting statutory requirements and proper updating of the Megabyte Systems with all current data, such as tax rates. Assistance to fix problems caused by County failure to update base assessment data will be a billable item to the County.

**County** will provide, at its own expense, access to Contractor via Contractor network or via the Internet as long as it is at acceptable speeds (County minimum of T1 or business DSL speed).

**County** must grant Contractor full System Administrator (SA) rights.



## **SQL Server Database Support Services**

**Contractor** will provide the following SQL server database services:

- Necessary tuning/routine maintenance/notification of service pack upgrades needed. (These must be run by County personnel on the physical machine).
- General SQL maintenance.
- Monitoring of SQL logs for errors and corrective action.
- Daily batch job monitoring and fixes/notification of failures.
- Scheduling of overnight jobs.
- Installation upgrades to SQL versions when Contractor upgrades the application software to a new version (Note: this does not include any cost associated with the purchase of SQL Server System Software – this cost is the responsibility of the County. Contractor will install the new version and do any necessary property system upgrades). Contractor determines the need to upgrade to a newer version of SQL.
- Rebuild database(s) if necessary due solely to SQL Server generated problems. (Exclusion: If the cause is failure by the user to detect operating system errors & take corrective action or notify Contractor, then this activity will be billable to the County).
- SQL Support services are for the primary and inquiry (aka backup server) servers only.

**County** shall perform the following tasks:

- Ensure the SQL Executive and SQL Server are running and restart if necessary.
- NT Server printer setup and documentation.
- Monitor disk space on NT Server.
- Perform MPTS system backups.
- Address County Network problems.
- Address Software/Hardware conflict issues.
- Install SQL Server service packs when notified to do so by Contractor.
- Install MPTS service packs when notified to do so by Contractor.

### **Additional MPTS Modules to be supported**

*(Additional as specified in Exhibit B; Exhibit B fees will apply)*

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)

**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.

<b>Term</b>	<b>Description</b>	<b>Amount</b>
July 1, 2018 - June 30, 2019	MPTS Property Tax System Maintenance/Support	\$24,000.00 per month
July 1, 2018 - June 30, 2019	<u>MPTS Web Services</u> 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	\$ 5,040.00 annual charge*  \$12,599 .00 annual charge*  \$ 1,329.00 annual charge*
July 1, 2018 - June 30, 2019	Assessor – Online Business Property Filing (OBPF)	\$ 3,700.00 annual charge
July 1, 2018 - June 30, 2019	Clerk of the Board/Assessor Assessment Appeals Module (COB)	\$15,500.00 annual charge
July 1, 2018 - June 30, 2019	Tax Collector – Transient Occupancy Tax (TOT)	\$ 3,000.00 annual charge

*Costs quoted are applicable for July 1, 2018 through June 30, 2019.  
Future costs are subject to CPI increases (Pacific Cities and U.S. Cities Average) on  
July 1 of any given year.*

*\*Fees waived for the first 12 months after County “Go Live” date (applies to MPTS Web Services only)*

**COMPENSATION FOR ADDITIONAL SERVICES**

County shall 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 holidays, with a four-hour minimum: **\$150.00 per hour**
2. On-site support, with a four-hour minimum, including time in transit: **\$150.00 per hour**
3. Travel Expenses: At actual cost in accordance with County’s current travel expense policy.

Additional services shall be pursuant to written authorization by County.