RESOLUTION - ACTION REQUESTED 2014-310

MEETING: June 24, 2014

TO: The Board of Supervisors

FROM: Thomas Cooke, District Attorney

RE: Approve an Agreement and Contract with Karpel Computer Systems, Inc. and Authorize the Chair to Sign

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement and Contract with Karpel Computer Systems, Inc. DBA: Karpel Solutions to Provide a Full Featured Case Management System, Prosecutor by Karpel, for the District Attorney’s Office, and Authorize the Board of Supervisors Chair to Sign the Agreement and Contract; Approve Budget Action Transferring Funding From the Vertical Prosecution Grant Budget and the Victim Witness Grant Budget, To and Within the District Attorney Prosecution Budget for the Purchase of the Case Management System ($72,521).

The District Attorney’s Office has spent several months researching and testing case management systems currently used by agencies across the country. Prosecutor by Karpel is designed and developed for district attorney’s offices (including Merced County) using the latest technological advancements. Prosecution by Karpel is a hosted application, and therefore does not require the Mariposa County Information Technology to maintain a server resulting in significant savings to the County. Users access the system through a web browser from any location with internet access. All data is securely hosted, stored, and maintained by Karpel Computer Systems, Inc. DBA: Karpel Solutions using the highest security standards and practices.

Prosecutor by Karpel has the ability to pull data out of the system and place it into legal documents and reports. Auto generating legal documents and reports will save a significant amount of time for staff and the department. The installation of Prosecutor by Karpel will benefit the District Attorney’s Office by allowing us to maintain our current case load in a digital format and to store our closed cases digitally. The District Attorney’s Office has run out of room to store files on site and the man hours spent maintaining them and retrieving them for Court are extensive. Hence this system will help to resolve our storage problem and free up time for our legal staff to work on current files and pleadings. Eventually most closed hard files will be scanned into the case management system and stored digitally as well.

The District Attorney’s Office has worked with Rick Peresan, the Director of the County’s Information Technology during the entire process and has obtained his support for the implementation of this hosted system. His help and insight were invaluable in this process. We also met with Rick Peresan and County Counsel Steve Dahlem to review the proposed agreement
and contract to ensure these were not any contractual issues in dispute.

The installation of Prosecution by Karpel will also be beneficial to District Attorney’s Victim/Witness Program. The District Attorney’s Office and Victim/Witness are currently located in two separate buildings and maintain separate case files. This case management system will be accessible to both departments and will ensure that all of the information collected by the District Attorney’s Investigator, Legal Secretaries, Prosecuting Attorneys, and Victim/Witness Advocates will be assessable to all throughout the duration of the case. Prosecutors will have a laptop computer in the courtroom and will have the entire case file including the information regarding the victim’s input on the case available during all court proceedings. A further advantage of this digital system is that it allows our attorney’s access to any file on the system. If a case is not on calendar there will be no need to have the file brought to Court by staff. This case management system will also allow the department to email subpoenas directly to law enforcement agencies and automatically regenerate the subpoena list if there is a continuance of the hearing or trial. The system will also allow the department to generate letters to victims, witnesses and other agencies which are required in a regular basis such as notices, letters to victims and restitution letters, etc. thereby increasing the efficiency of the office.

This contract covers the one-time costs associated with transferring data currently stored in the existing case management system Damion to Prosecutor by Karpel, as well as training staff, and customizing reports that will assist in creating legal documents. The ongoing annual support and services are Five Thousand Eight Hundred Fifty Dollars ($5,800) are offset by funds already budgeted in the District Attorney’s Prosecution budget for its current annual cost associated with its current case management system.

Additionally if the Board approves this contract, the cost of creating and maintaining the hard files will be significantly reduced resulting in ongoing savings to the operating budget. Further the department will no longer need to find room to maintain and store the hard files resulting in additional savings in the budget. Also as closed cases are scanned into the case management system and stored digitally, more space will be available in the office for staff to use during trial preparation.

If the Board approves this agreement the new system will be up and running in January of 2015 and the current case management system Damion by Justice System’s annual contract should be terminated effective January 31, 2015.

Approve budget action transferring funds within the District Attorney Victim Witness budget unit to cover year end shortages of $691 in the Extra-Help line item for the remainder this Fiscal Year; and transfer existing appropriations ($20,000) from various line items within the budget unit to the District Attorney Budget to apply towards Karpel Solutions.

The District Attorney’s Victim Witness Services Supervisor position has been vacant since December 31, 2013, creating salary savings within the Victim Witness Assistance Grant Program, the department is requesting that this funding be transferred to the District Attorney Budget to offset the cost of the system.

The District Attorney’s Office has contacted the State of California Governor’s Office of
Emergency Services (CalOES), which administers the Victim Witness Assistance Grant Program, and they agree with the modifications to the budget unit and the purchase of Karpel as being requested. A Grant Award Modification has been submitted to CalOES and will brought to the Board for approval at a later date.

The District Attorney’s Prosecution budget and Victim Witness Services has incurred substantial salary savings this fiscal year and respectfully request the Board to apply those savings toward the purchase of the case management system, Karpel Solutions, with a one-time cost of Seventy-One Thousand Eight Hundred Thirty Dollars ($71,830). The Five Thousand Eight Hundred Fifty Dollars ($5,800) annual support and services fees are offset by funds already in the District Attorney’s Prosecution budget for its current annual cost associated with its current case management system.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Board approved the purchase of the District Attorney’s current case management system Damion by Justice Systems in 2004.

In the past the Board has approved other department requests to enhance their case management systems to improve the department’s efficiency.

Departments are required to obtain Board approval to adjust funding within a budget unit. The Board has previously approved transfers within a budget unit to cover unexpected shortfalls and to purchase new case management systems, using salary savings. All fixed asset purchases require Board approval.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Continue to direct funds towards the District Attorney’s Office existing case management system Damion. Upgrade from Damion to JWorks by Justice Systems (which is currently under construction with no “go-live” date) with an estimated cost of Eight Five Thousand ($85,000).

Staff may be less efficient and effective in preparing legal documents and reports. The operating budget would continue to increase on a yearly basis to pay for the costs of creating maintaining and storing hard files.

If the Board chooses not to approve the request the Victim Witness Assistance Grant Program will be in jeopardy of not receiving grant funds in the future as the funds must be fully expended. These funds are currently available to apply towards the payment of the Karpel.

FINANCIAL IMPACT:
One time fees include Karpel hosting the system, licenses, data configuration, data conversion, and onsite training totaling $71,830: $20,000 is allocated in the 2013-2014 Vertical Prosecution Grant Program budget unit; $31,830 from the District Attorney’s Prosecution budget unit (salary savings), and $20,000 to be allocated in the 2013-2014 Victim Witness Assistance Grant Program budget unit. Additionally, the Extra-Help line is being increased by $691 to account for additional Extra-Help hours needed in the Victim Witness Budget.
ATTACHMENTS:
Karpel Agreement (PDF)
Budget Action Form - Karpel (PDF)

CAO RECOMMENDATION
Requested Action Recommended

COMMENTS
The Budget Action is Marked Incorrectly for a 4/5Ths Vote. This Action Only Needs a 3/5Ths Vote.

[Signature]
Rick Benson, County Administrator

RESULT: ADOPTED [UNANIMOUS]
MOVER: John Carrier, District V Supervisor
SECONDER: Lee Stetson, District I Supervisor
AYES: Lee Stetson, Janet Bibby, Kevin Cann, John Carrier
EXCUSED: Merlin Jones
District Attorney's Office
Mariposa County, California

HOSTEDbyKarpel Agreement

For

PROSECUTOR by KARPEL

A Hosted Solution

Prepared by: Jane Quick, Sales Executive
Date prepared: May 1, 2014
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AGREEMENT FOR PROSECUTORbyKarpel HOSTING

This agreement between Karpel Computer Systems Inc., a Missouri corporation, doing business as Karpel Solutions (hereinafter referred to as "Karpel Solutions") and Mariposa County, a political subdivision of the State of California (hereinafter referred to as "Client") is for the purposes of reviewing this proposal and to enter into the contract below wherein Karpel Solutions agrees to provide internet based software hosting through HOSTEDbyKarpel of the copyrighted software program known as PROSECUTORbyKarpel® that has been licensed to Client.

1. DEFINITIONS

a. "Confidential Information" means information of either Karpel Solutions or Client which is disclosed under this Agreement in oral, written, graphic, machine recognizable, electronic, sample or any other visually perceptible form by one of us to the other, and which is considered to be proprietary or trade secret by the disclosing party. Confidential Information of Karpel Solutions expressly includes, without limitation, the Software and Documentation. The Confidential Information of Client includes, without limitation, Personally Identifiable Information and Client Content. Confidential Information shall not include information which the party receiving the information can document: (i) was in the possession of or known by it without an obligation of confidentiality prior to receipt of the information, (ii) is or becomes general public knowledge through no act or fault of the party receiving the information, (iii) is or becomes lawfully available to the receiving party from a third party without an obligation of confidentiality, or (iv) is independently developed by the receiving party without the use of any Confidential Information.

b. "Client Content" means all data, information, documents, and file Client uploads or inputs into PbK on the Service through the website, including, without limitation, Personally Identifiable Information.

c. "Enhancements" means any specific configurations or customizations to the Software, which Client may request and Karpel Solutions agrees in writing to provide.

d. "Documentation" means any operating instructions, specifications and other documentation related to the operation, description and function of PbK, the Service or Website provided by Karpel Solutions whether supplied in paper or electronic form.

e. "Intellectual Property" means any patents, patent applications, copyrights, mask works, trademarks, service marks, trade names, domain names, inventions, improvements (whether patentable or not), trade secrets, Confidential Information, moral rights, and any other intellectual property rights.

f. "Personally Identifiable Information" means any information that may be used to identify specific persons or individuals, which is collected by either Karpel Solutions or Client for use in conjunction with the use of PbK on HOSTEDbyKarpel. Personally Identifiable Information shall be considered Confidential Information.

g. "PbK" means the PROSECUTORbyKarpel criminal case management system and specifically the Client's licensed copy of PROSECUTORbyKarpel.
h. “Service” means the HOSTEDbyKarpel hosting platform provided by Karpel Solutions which allows internet based hosting of the Client’s licensed copy of PbK through the Website.

i. “Service Level Requirements” means the technical service levels Karpel Solutions shall meet for Services as set forth below in the Service Level Commitments for the delivery of the Services.

j. “Software” means the Client’s licensed copy of the PbK application, and includes any and all updates, enhancements, underlying technology or content, law enforcement transfer interfaces, other Enhancements and any Documentation as may be provided the Client by Karpel Solutions.

k. “Website” means the content and functionality currently located at the domain www.hostedbykarpel.com on the internet, or any successor or related domain that provides access to the Software and Service

2. FEES AND TERMS
   a. FEES. Client will pay Karpel Solutions $5 per month for each user that has access to the Software through the Service and Website. A total of 13 users of Client are authorized access to the Service under this Agreement. Additional users can be added at any time by Client at a rate of $5 per month. Client will be billed on an annual basis.

   In the event Client or Karpel terminates this agreement, Client understands and agrees to pay $1,000 to Karpel Solutions for work in connection with the return of Client Content and Confidential Information.

   b. TERM. The term of this Agreement shall be for (1) year and will begin upon Karpel Solutions’ receipt of Client’s full payment of the applicable fees for a year. Such term shall be perpetual and automatically renew for subsequent terms of equal length, unless either Karpel Solutions or Client gives notice to the other party thirty (30) days prior to the expiration of the then-current term of intent not to renew. Prior to the expiration of the term, Karpel Solutions will send Client a renewal invoice, which must be paid in full within thirty (30) days from the date of the invoice. Pricing of subsequent annual terms may be subject to change at the sole discretion of Karpel Solutions.

   c. INTEREST AND LATE FEES. Past due accounts will be charged interest on a monthly basis, calculated at one and one-half percent (1.5%) per month of the unpaid balance or the maximum rate allowable by law.

3. SERVICE LEVEL COMMITMENT
   a. UPTIME. Karpel Solutions is committed to providing the Software, Website and Service in a consistent and reliable manner. Karpel Solutions will provide the Software, Website and Service to Client with a stated minimum uptime of 99.5% to Client.

   b. SCHEDULED MAINTENANCE. Karpel Solutions periodically performs scheduled maintenance including but not limited to outline, preventative or emergency maintenance of the Software, Website, and/or Service. Client understands that schedule maintenance may
affect availability of the Service, Website, and/or Software. If schedule maintenance is to be performed Karpel Solutions will provide notice to Client three (3) days prior to the scheduled maintenance. Karpel Solutions will make every effort to schedule maintenance outside of normal business hours of the client between the hours of ten (10) p.m. and five (5) a.m. Central Standard Time.

c. DATA RETENTION AND BACKUPS. As a part of the Service and Website, Karpel Solutions will maintain under this Agreement consistent, regular and validated backups both onsite and offsite of the Client Content, Confidential Information and Software. Backups occur and will be maintained pursuant to Karpel Solutions internal backup policies. Upon written request, Karpel Solutions will make available to Client a copy of Karpel Solutions’ current backup policies and procedures.

d. AUDITS AND SECURITY. Karpel Solutions is committed to maintaining the security of Client Content, Confidential Information, and Software on Karpel Solutions’ Service and Website. Karpel Solutions will maintain the Software, Website and Service in a secure manner subject to the Customer Obligations outlined below. Karpel Solutions will perform annual security audits of the Website and Service to ensure the integrity and security of the Website and Service. Results of the Audits and Security Policy for Karpel Solutions will be made available to Client upon written request.

e. DATA TRANSMISSION. Karpel Solutions ensures that all data transmitted to and from the Service and Website is transmitted at a minimum level of 128-bit SSL encryption using digital certificates issued by an internationally-recognized domain registrar and certificate authority.

f. DATA LOCATION. Karpel Solutions will maintain the Service, Software, Client Content and Confidential Information of Client in a SAS 70/SSAE 16 certified data facility.

4. CUSTOMER OBLIGATIONS
   a. PASSWORD PROTECTION. Access to the Software through the Service and Website is password-protected. Karpel Solutions provides multiple authentication alternatives for access to the Website and Software. Karpel SOLUTIONS STRONGLY ENCOURAGES THE USE OF STRONG PASSWORD AUTHENTICATION. Karpel Solutions is not responsible for Client’s use of the Service, Website or Software. Only the number of users set forth above may access the Service and Website. Client must inform their users that they are subject to, and must comply with, all of the terms of this Agreement. Client is fully responsible for the activities of Client’s employees and authorized agents who access the Service and Website. Karpel Solutions is not liable for any unauthorized access to the Service and Website, including without limitation access caused by failure to protect the login and password information of users.

b. RESTRICTIONS ON USE. Client agrees to conduct all activities on the Service and Website in accordance with all applicable laws and regulations. Access to the Service, Website, Software and Documentation must be solely for Client’s own internal use. Client may not (and may not allow any third party to) (i) decompile, mirror, translate, disassemble or otherwise reverse engineer any part of the Software, source code, algorithms, or underlying ideas of the Software; (ii) provide, lease, lend, subcontract, sublicense, re-publish or use for
timesharing, service bureau or hosting purposes any or all of the Software or Documentation; or (iii) reproduce, modify, copy, distribute, publish, display or create derivative works of any or all of the Software or Documentation or (iv) alter, remove, or obscure any copyright, trademark or other proprietary notices or confidentiality legends on or in the Software or Documentation.

c. SUSPENSION. Karpel Solutions reserves the right to immediately suspend access to Software without notice and at any time that Karpel Solutions suspects or has reason to suspect a security, data breach or if suspension is necessary to protect its rights, Client’s rights or the rights of a third party. Karpel Solutions will immediately contact Client upon suspension of the Service and Website.

5. CONFIDENTIALITY

a. CONFIDENTIALITY. Confidential Information may not be, directly or indirectly, copied, reproduced, or distributed by the party receiving the Confidential Information except to the extent necessary for the receiving party to perform under the terms of this Agreement and only for the sole benefit of the party disclosing the Confidential Information. The party receiving Confidential Information may not, directly or indirectly, sell, license, lease, assign, transfer or disclose the Confidential Information of the disclosing party, except as allowed under the terms of this Agreement or upon written consent of the disclosing party.

b. PERSONALLY IDENTIFIABLE INFORMATION. The parties recognize that certain data Client or Karpel Solutions may use in conjunction with the Software may be confidential Personally Identifiable Information. Karpel Solutions shall use all best efforts to protect the confidentiality of Personally Identifiable Information. Karpel Solutions shall have no liability for disclosure of Personally Identifiable Information caused by Client’s own negligence or misconduct.

c. DISCLOSURE REQUIRED BY LAW. In the event that any Confidential Information is required to be disclosed pursuant to any law, code, regulation or court order from a court of competent jurisdiction, the receiving party shall give the disclosing party immediate written notice of such requirement and shall use its best efforts to seek or to cooperate with the disclosing party in seeking a protective order with respect to the Confidential Information requested.

d. INJUNCTIVE RELIEF. Any breach of the confidentiality provisions of this Section will cause irreparable harm to the other party. The parties agree that the non-breaching party may enforce the provisions of this Section by seeking an injunction, specific performance, criminal prosecution or other equitable relief without prejudice to any other rights and remedies the non-breaching party may have.

6. OWNERSHIP OF INTELLECTUAL PROPERTY

a. KARPEL SOLUTIONS OWNERSHIP. Karpel Solutions retains all right, title and interest in and to the Software, Documentation, Website, Service and related Intellectual Property. Any suggestions, solutions, improvements, corrections or other contributions Client provides regarding the Software, Documentation, Website or Services will become the property of Karpel Solutions and Client hereby assigns all such rights to Karpel Solutions without charge.
b. **CLIENT OWNERSHIP.** Client retains all rights, title and interest in and to the Client Content, and all related Intellectual Property. Client hereby grants to Karpel Solutions and Karpel Solutions hereby accepts a non-exclusive, non-transferable, worldwide, fully-paid license to use, copy, and modify the Client Content solely to the extent necessary and for the sole purposes of providing access to the Software, Documentation, Website, and Services or otherwise complying with its obligations under this Agreement.

7. **WARRANTY**

   a. **LIMITED WARRANTY.** Karpel Solutions warrants it will provide the Services and Website in a professional manner by qualified personnel. Karpel Solutions warrants it has the requisite power and authority to enter into and perform its obligations under this Agreement. Karpel Solutions warrants that the performance by Karpel Solutions of any services described in the Agreement shall be in compliance with all applicable laws, rules and regulations. Karpel Solutions warrants it will provide access to and use of the Software, Service and Website in material accordance with the Service Level Commitment outlined above. No representations or warranties as to the use, functionality or operation of the Website, Software, or Service are made by Karpel Solutions other than as expressly stated in this Agreement.

   b. **INTERNET.** Karpel Solutions makes the Website, Software and Services available to Client through the internet to the extent commercially reasonable, and subject to outages, communication and data flow failures, interruptions and delays inherent in Internet communications. Client recognizes that problems with the Internet, including equipment, software and network failures, impairments or congestion, or the configuration of Client’s computer systems, may prevent, interrupt or delay Client’s access to the Service, Website or Software. Karpel Solutions is not liable for any delays, interruptions, suspensions or unavailability of the Website or Software attributable to problems with the Internet or the configuration of Client’s computer systems or network.

   c. **SYSTEM REQUIREMENTS.** Karpel Solutions provides the Services and Website based upon the system requirements as specified by Karpel Solutions for Client. Karpel Solutions has no liability for any failure of the Services or the Software based upon Client’s failure to comply with the system requirements of Karpel Solutions.

   d. **WARRANTY LIMITATION.** The warranties set forth in this Agreement do not apply if non-compliance is caused by, or has resulted from (i) Client’s failure to use any new or corrected versions of the Software or Documentation made available by Karpel Solutions, (ii) use of the Software or Documentation by Client for any purpose other than that authorized in this Agreement, (iii) use of the Software or Documentation in combination with other software, data or products that are defective, incompatible with, or not authorized in writing by Karpel Solutions for use with the Software or Documentation, (iv) misuse of the Software or Documentation by, (v) any malfunction of Client’s software, hardware, computers, computer-related equipment or network connection, (vi) any modification of the Software not performed by or otherwise authorized by Karpel Solutions in writing, or (vii) an event of Force Majeure.

   e. **DISCLAIMER.** THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, EITHER EXPRESS AND IMPLIED, WHICH ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NONINFRINGEMENT,
TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING OUT OF A USE IN TRADE OR COURSE OF DEALING OR PERFORMANCE. KARPEL SOLUTIONS DOES NOT WARRANT (i) THAT ACCESS TO OR USE OF ALL OR ANY PART OF THE SERVICE, SOFTWARE, DOCUMENTATION OR WEB SITE WILL BE CONTINUOUS, ERROR-FREE OR UNINTERRUPTED, (ii) THAT THE RESULTS ARISING OUT OF CLIENT'S USE OF THE SOFTWARE, DOCUMENTATION OR WEB SITE WILL BE ACCURATE, COMPLETE OR ERROR-FREE, OR (iii) THAT THE SERVICE, SOFTWARE, DOCUMENTATION OR WEB SITE WILL MEET CLIENT'S NEEDS.

f. EXCLUSIVE REMEDIES. If the Website, or Services provided under this Agreement does not materially comply with the requirements stated in the Limited Warranty Section outlined above, Karpel Solutions sole obligation shall be to correct or modify the Website or Services, at no additional charge. If Karpel Solutions determines it is unable to correct what is non-conforming, Client’s sole remedy will be to receive a refund of the fees paid for the non-conforming or Services, even if such remedy fails of its essential purpose. You may also terminate this Agreement as set forth in the termination provision of this Agreement.

8. LIMITATION OF LIABILITY
KARPEL SOLUTIONS IS NOT RESPONSIBLE FOR ANY LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY BREACH OF THIS AGREEMENT, EVEN IF KARPEL SOLUTIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION, WHETHER ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), STATUTE OR OTHERWISE. UNLESS OTHERWISE SPECIFICALLY STATED, ALL REMEDIES AVAILABLE UNDER THIS AGREEMENT AND ALL REMEDIES PROVIDED BY LAW, WILL BE DEEMED CUMULATIVE AND NOT EXCLUSIVE. REGARDLESS OF THE FORM OF ANY CLAIM CLIENT MAY HAVE ARISING UNDER OR RELATING TO THIS AGREEMENT, KARPEL SOLUTIONS LIABILITY FOR ANY DAMAGES SHALL NOT EXCEED THE FEES CLIENT HAS PAID TO KARPEL SOLUTIONS PURSUANT TO THIS AGREEMENT IN THE PRIOR TWELVE (12) MONTHS.

9. INDEMNIFICATION
a. CLIENT'S INDEMNIFICATION. Client will indemnify, defend, and hold harmless Karpel Solutions from and against any and all liability, damage, loss or expense (including reasonable attorneys’ fees) arising out of (i) any claim, demand, action or proceeding, statutory or otherwise, based on allegations arising as a result of use of the Website, Software, Documentation or Services in a manner not expressly described or permitted by this Agreement, (ii) use of the Website, Software, Documentation or Services in any unlawful manner or for any unlawful purpose, (iii) Karpel Solutions’ use of Client Content that infringes any third party Intellectual Property, or (iv) Karpel Solutions’ use of Client Content as permitted by this Agreement that violates the privacy rights or the rights to Personally Identifiable Information of a third party.

b. KARPEL SOLUTIONS' INDEMNIFICATION. Karpel Solutions will at its own expense (including payment of attorneys' fees) defend Client in the event that any suit is brought against Client based on a claim that the Software directly infringes any valid U.S. Intellectual Property right and shall indemnify Client from any amounts assessed against Client in a resulting judgment or settlement of such claims. Karpel Solutions will not be liable for any cost or expense of
defense Client incurs in connection with any such suit or claim, without Karpel Solutions’ prior and specific authorization and consent.

Notwithstanding the foregoing, Karpel Solutions has no obligations under this Section in the event any infringement claim is solely or in part based upon or arising out of any modification or alteration to the Software not made by Karpel Solutions, (ii) any combination or use of the Software with products, hardware or services not supplied by Karpel Solutions or approved in writing by Karpel Solutions in advance of such combination, (iii) Client’s continuance of allegedly infringing activity after being notified of such activity, or after being informed of modifications that would have avoided the alleged infringement, (iv) Client’s failure to use corrections or enhancements made available by Karpel Solutions, (v) use of the Software not in accordance with the applicable Documentation or outside the scope of this Agreement, or (vi) the use of the Software in a manner for which it was neither designed nor contemplated.

Karpel Solutions’ aggregate liability and obligation under this Section will be will not exceed the fees Client has paid to Karpel Solutions under this Agreement in the previous twelve (12) months. The foregoing remedies constitute Client’s sole and exclusive remedies, and Karpel Solutions’ entire liability and obligation, with respect to any suit or claim for infringement or misappropriation of third party Intellectual Property or other right by the license and/or use of the Software.

c. **NOTIFICATION.** The indemnification obligations set forth above will apply only if and to the extent (i) the indemnified party gives prompt written notice to the indemnifying party of the assertion of any such claims, demands, action or proceeding, (ii) the indemnifying party has the right to select counsel and control the defense and all negotiations for settlement thereof and (iii) the indemnified party provides all reasonable information, assistance and cooperation required to defend such claim, demand, action or proceeding. The indemnifying party shall not settle or dispose of any such claim, demand, action or proceeding without written notification to the indemnified party provided the settlement or disposal materially adversely impacts the indemnified party.

**10. TERMINATION**

a. **TERMINATION.** Client may terminate this Agreement thirty (30) business days after it is has provided Karpel Solutions with written notice that it believes that Karpel Solutions has failed to perform under, or materially breaches, this Agreement and of the Client’s intent to terminate the Agreement. Thereafter, Karpel Solutions will have thirty (30) business days from the receipt of such notice to correct the stated problem. If at the end of such thirty (30) business day period, Karpel Solutions has not corrected the stated problem, then client may terminate this Agreement. Karpel Solutions may terminate this Agreement on thirty (30) days written notice. Either party may immediately terminate this Agreement in the event the other party (i) files for, or has filed against it, a bankruptcy petition, and such petition is not dismissed within sixty (60) days of the filing date; or (ii) ceases to conduct business in the normal course, (iii) makes an assignment for the benefit of its creditors, (iv) is liquidated or otherwise dissolved, (v) becomes insolvent or unable to pay its debts in the normal course, or (vi) has a receiver, trustee or custodian appointed for it.
b. RIGHTS AFTER EXPIRATION OR TERMINATION. Upon expiration or termination of this Agreement, Karpel Solutions will immediately terminate Client’s access to and use of the Website, Documentation, and Services. Upon expiration or termination of this Agreement, each party shall immediately cease to make use of any Confidential Information received from the other party. Within thirty (30) days of written request following termination or expiration of this Agreement, Karpel Solutions shall coordinate with Client a mutual agreeable manner for the return of Client Content and Confidential Information obtained or shared during the course of the Agreement. Client understands that upon any termination or expiration of this Agreement, Client must return to Karpel Solutions (or destroy and certify such destruction in writing) any Documentation or other materials provided by Karpel Solutions, whether in written or electronic form, regarding the Website, Software or Services provided under this Agreement. Termination is not an exclusive remedy.

11. MARKETING
Client agrees that Karpel Solutions may identify Client as a customer of Karpel Solutions in Karpel Solutions’ written promotional and marketing materials, as well as in any oral or visual presentations regarding the business of Karpel Solutions. Karpel Solutions may use any non-Confidential Information, such as aggregate statistical information as part of Karpel Solutions overall statistics for marketing or promotional efforts.

12. GENERAL PROVISIONS
a. ASSIGNMENT. This Agreement will inure to the benefit of and be binding upon Karpel Solutions and Client and Karpel Solutions’ respective successors and assigns. Notwithstanding the foregoing, Client may not assign or otherwise transfer this Agreement or Client’s rights and obligations under this Agreement without the prior written consent of Karpel Solutions, and any purported assignment or other transfer without such consent will be void and of no force or effect. Karpel Solutions may assign and/or transfer this Agreement or Karpel Solutions’ rights and obligations under this Agreement at any time.

b. MODIFICATION AND WAIVER; SEVERABILITY. Any modifications of this Agreement must be in writing and signed by both parties. A waiver by either party of a term or condition will not be deemed a waiver of any other or subsequent term or condition. Should any court of competent jurisdiction determine that any term or provision of this Agreement is unenforceable, or otherwise invalid, the offending term or provision will be modified to the minimum extent necessary to render it enforceable. If such modification is not possible, the term or provision will be severed from this Agreement with the remaining terms to be enforced to the fullest extent possible under the law.

c. FORCE MAJEUERE. Except for a party’s payment obligations hereunder, neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach thereof are delay or prevented by reason of any act of God, government, fire, natural disaster, accident, terrorism, network or telecommunication system failure, sabotage or any other cause beyond the control of such party (“Force Majeure”), provided that such party promptly gives the other party written notice of such Force Majeure.

d. INDEPENDENT CONTRACTORS. The parties will be deemed to have the status of independent contractors, and nothing in this Agreement will be deemed to place the parties
in the relationship of employer-employee, principal-agent, or partners or joint ventures. Neither party has the authority to bind, commit or make any representations, claims or warranties on behalf of the other party without obtaining the other party's prior written approval.

e. NOTICES. Any notices provided under this Agreement will be in writing in the English language and will be deemed to have been properly given if delivered personally or if sent by (i) a recognized overnight courier, (ii) certified or registered mail, postage prepaid, return receipt requested, or (iii) facsimile, if confirmed by mail. Karpel Solutions' address for such notices is set forth below. Client's address for such notices will be the address on file with Karpel Solutions as provided by Client. Such address or contact information may be revised from time to time by provision of notice as described in this Section. All notices sent by mail will be deemed received on the tenth (10th) business day after deposit in the mail. All notices sent by overnight courier will be deemed given on the next business day after deposit with the overnight courier. All notices sent by facsimile will be deemed given on the next business day after successful transmission.

Karpel Solutions, 5714 S. Lindbergh Blvd, Suite 200 St. Louis, MO 63123
Phone: (314) 892-6300 Fax: (314) 892-8035 Email: karpel@karpel.com

f. GOVERNING LAW AND DISPUTE RESOLUTION. This Agreement is to be construed and governed by the laws of the United States and the State of California, without regard to conflict of law provisions. Any dispute arising out of or in connection with this Agreement, which cannot be settled amicably between the parties must be brought exclusively in the appropriate court located in California, and Client expressly waives any and all objections regarding jurisdiction and forum non conviens. If either Karpel Solutions or Client employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and costs.

13. ENTIRE AGREEMENT

By signing below, Client hereby agrees to the above Agreement. This document constitutes the entire agreement between Client and Karpel Solutions with respect to the subject matter discussed above. Any waiver of any provision of this Agreement will be effective only if in writing and signed by Karpel Solutions. This Agreement supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding this subject matter. This Agreement will inure to the benefit of Karpel Solutions successors, assigns and licensees.

MARIPOSA COUNTY

Name
Board Chair
Title
Date 7-9-14

KARPEL SOLUTIONS

Name
Title
Date 7/1/14

APPROVED AS TO FORM:

Page 10 of 10
DISTRICT ATTORNEY'S OFFICE
MARIPOSA COUNTY, CALIFORNIA

CONTRACT FOR

PROSECUTOR by KARPEL

PROSECUTORbyKarpe®
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8. MASTER TERMS AND CONDITIONS ..................................................................................... 14
This agreement between Karpel Computer Systems Inc., a Missouri corporation, doing business as Karpel Solutions (hereinafter referred to as “Karpel Solutions”) and Mariposa County, a political subdivision of the State of California (hereinafter referred to as “Client”) is for the purposes of reviewing this proposal and to enter into this contract including the Master Terms and Conditions set forth below wherein Karpel Solutions agrees to sell licenses for its copyrighted software program known as PROSECUTORbyKarpel® (hereinafter referred to as “PbK”).

1. CONFIDENTIALITY STATEMENT

This document is the intellectual property of Karpel Solutions. Client agrees that the information contained within this proposal is proprietary information and that it shall not disclose, reproduce in any format, or use any of the terms, data, or any other material contained herein outside of Mariposa County or for any other purposes other than to evaluate this contract. If the Client is required by statute or case law to disclose any information in this agreement then Client shall notify Karpel Solutions three (3) business days prior to the release. This agreement does not limit Client the right to use information contained within this contract if it is obtained from another source without restriction. Any subsequent revisions, addendums, or amendments to this document shall be covered under the terms of this confidentiality agreement by reference.
2. **SCOPE OF WORK**

The following Scope of Work represents the services required to reach the proposed solution and a successful project. Karpel Solutions will perform all work in accordance with the descriptions, scopes and specifications hereafter described.

<table>
<thead>
<tr>
<th>Deadline</th>
<th>Description</th>
<th>Days Out</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>September 14, 2014</strong></td>
<td>Final Contract &amp; Implementation Agreement signed. Project Pre-Implementation Meeting scheduled. Minimum Server and Workstation requirements are explained to agency project manager. Server Connection Credentials to the Agency Server are given to Karpel to begin the data extraction. The agency project manager will notify local IT support for remote access credentials and coordinate with local agency IT to provide Karpel with legacy data if a remote extraction is not possible.</td>
<td>120</td>
</tr>
<tr>
<td><strong>October 4, 2014</strong></td>
<td>Server &amp; PC assessment completed and any necessary hardware or software ordered to meet PBK Installation Prerequisites.</td>
<td>100</td>
</tr>
<tr>
<td><strong>October 14, 2014</strong></td>
<td><strong>2 day onsite pre-implementation meeting with project manager and System Administrators. PBK Overview WITH the 1st data conversion complete!</strong> Project Team is selected including Karpel Staff and Customer System Administrators. (One Customer System Administrator must be a Policy Setting Attorney). This meeting will begin with application overview, legacy data application analysis, enhancement definitions and interface definitions. PBK Pre-load configuration is explained and initial Document Templates are received. Workflow pre-configuration is conducted.</td>
<td>90</td>
</tr>
<tr>
<td><strong>October 24, 2014</strong></td>
<td>Teleconference status meeting with Karpel and agency project manager will occur to review progress on hardware/software assessments, finalize pre-implementation meeting timeline agreement.</td>
<td>80</td>
</tr>
<tr>
<td><strong>November 13, 2014</strong></td>
<td><strong>1st Data Conversion Webinar</strong> is reviewed on Karpel servers along with the PBK Pre-load worksheets. Agency Document Templates are received. Data validation spreadsheets will be explained and data validation will begin. System Administrator training begins. Workflow pre-configuration is conducted. System enhancements are completed and demonstrated.</td>
<td>60</td>
</tr>
<tr>
<td><strong>November 13, 2014</strong></td>
<td>Teleconference status meeting with Karpel and agency project manager will occur to review progress and answer additional questions regarding pre-load spreadsheet.</td>
<td>60</td>
</tr>
<tr>
<td><strong>November 13, 2014</strong></td>
<td>Server Connection Credentials to the PBK application server are given to Karpel. Installation of SQL and PBK on the server by Karpel will begin. Karpel Support installation and application testing on each workstation should begin at this time. Karpel Solutions or local IT support will schedule workstation application testing and follow Karpel testing procedures to thoroughly test browser functionality, document generation, Outlook Calendaring and email on each workstation.</td>
<td>60</td>
</tr>
<tr>
<td>Date</td>
<td>Description</td>
<td>Duration</td>
</tr>
<tr>
<td>--------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>November 28, 2014</td>
<td>Teleconference status meeting with Karpel and agency project manager will occur to discuss pre-load completion and workstation application installation and testing.</td>
<td>45</td>
</tr>
<tr>
<td>November 28, 2014</td>
<td>The agency project manager will provide Karpel with any additional Legacy Data, additional Legacy Documents and a fully complete PBK Pre-Load Spreadsheet and completed data validation spreadsheets from the first data conversion. The agency project manager will notify agency IT support to coordinate the legacy data upload for final conversion with Karpel.</td>
<td>45</td>
</tr>
<tr>
<td>December 13, 2014</td>
<td>Training Schedule is completed with assignment of all office staff to specific training sessions. The Policy Setting Attorney must attend the initial Configuration, Case Initiation and Event Entry sessions at a minimum. Training room and equipment are verified.</td>
<td>30</td>
</tr>
<tr>
<td>December 13, 2014</td>
<td><strong>2nd Data Conversion Review Webinar</strong> - Karpel will install the preliminary data conversion on the Agency's pre-production site for this Webinar including completed Document templates and Event Entry Configuration. Agency will begin validating the accuracy of Defendants, Co-Defendants, Cases, Court Dates, Events, Dispositions, and Financials. Application testing will begin. Agency project manager will report all inaccuracies to Karpel. All Custom Enhancements are tested and verified. (<em>at this point, data conversions will be repeated as many times as deemed as necessary by our data conversion experts to correct data conversion anomalies reported in the data validation spreadsheets.</em>)</td>
<td>30</td>
</tr>
<tr>
<td>December 22, 2014</td>
<td>Teleconference status meeting with Karpel and agency project manager to review current data validations and acceptance testing. Review of timeline to meet scheduled &quot;go live&quot; date.</td>
<td>21</td>
</tr>
<tr>
<td>December 29, 2014</td>
<td>Complete installation and testing of all workstations by Karpel Solutions or local IT support.</td>
<td>14</td>
</tr>
<tr>
<td>January 5, 2015</td>
<td>Final teleconference status meeting with Karpel and agency project manager to verify final data accuracy and training area is prepared for scheduled training.</td>
<td>7</td>
</tr>
<tr>
<td>January 9, 2015</td>
<td>Final Legacy Data received by Karpel.</td>
<td>3</td>
</tr>
<tr>
<td>January 12, 2015</td>
<td><strong>Final Data Conversion is loaded</strong>, Karpel trainers arrive at the Training Room. Final configuration of PBK is performed with system Administrators present. User training begins. Customer begins using PBK in a live state.</td>
<td>Go Live</td>
</tr>
</tbody>
</table>

This schedule will be modified as mutually agreed upon by Client and Karpel Solutions.

**DOCUMENT CONVERSION AND SCOPE OF WORK**

[Document conversion consists of Karpel Solutions converting existing Microsoft Word®, Microsoft Works® and Corel WordPerfect® documents provided by Client up to the time of training as outlined in the Project Timeline listed above into a format that can be utilized by PbK on a best effort basis. Karpel Solutions does not support nor will convert customized macros, auto-text files or other custom programming items not a part of the ordinary functionality of Microsoft Word®, Microsoft Works® and Corel WordPerfect®]
[Karpel Solutions will provide hosting of PbK subject to the terms and conditions set forth in the Agreement for PROSECUTORbyKarpel Hosting.]
3. **OTHER INFORMATION**

Any additional work requirements outside the scope of this proposal will be presented in the form of a change order and must be approved by client prior to start of such work. No additional charges will be incurred without prior written approval from client.

4. **GENERAL CLIENT RESPONSIBILITIES**

In order for the project to be completed on time and on budget, Client shall provide at a minimum:

1. Access to client facilities, computers, servers, network infrastructure and software as deemed necessary by the Karpel Solutions project manager.
2. Access to systems and equipment as required by Karpel Solutions including:
   a. Unlimited secure access to all PbK production servers, 24 hours a day, 7 days a week for overnight and weekend data conversions
   b. PbK application access using Karpel Solutions laptops and clients network for training and application testing
   c. Installation of the Karpel Solutions remote support tool on all desktops executing the PbK application.
3. Access to client data along existing servers and systems containing data if such data is to be converted and populated by Karpel Solutions into PbK.
4. Completion of the PROSECUTORbyKarpel Pre-Load Spreadsheet as directed in the above Scope of Work Timeline.
5. Data validation of converted cases from the legacy system as directed in the above Scope of Work Timeline.
6. Document Template validation of all converted templates as directed in the above Scope of Work Timeline.
7. Definition, client development and client testing of all external interfaces as directed in the above Scope of Work Timeline.
8. An authorized contact person to assist in the definition of any project unknowns and authorized to approve the completion of each task.

Karpel solutions will notify Client’s Project Manager and, if needed, the District Attorney of its failure to complete the required tasks set forth in the scope of work via email. Client will have 3 business days to resolve the designated failure(s). Client’s inability to resolve the stated issues will not delay the agreed upon go live date. Client failures will affect the quality and accuracy of PROSECUTORbyKarpel. Support will be limited to only areas where failures have not occurred. Failure of Client to provide the above secure access and assistance will render the Karpel Solutions support agreement null and void.
5. INVESTMENT SUMMARY

Karpel Solutions will perform according to all descriptions, scopes, and specifications herein described, in consideration for payment as set forth below,

<table>
<thead>
<tr>
<th>Software Products/Licensing</th>
<th>Qty.</th>
<th>Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROSECUTORbyKARPEL</td>
<td>13</td>
<td>$2,250</td>
<td>$29,250</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Total Software</strong> $29,250</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Installation Services</th>
<th>Qty.</th>
<th>Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>SQL Database configuration (production)</td>
<td>1</td>
<td>$1,000</td>
<td>$1,000</td>
</tr>
<tr>
<td>Client Support Tool/Scanning tool install and system compatibility check</td>
<td>13</td>
<td>$50</td>
<td>$650</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Total Installation Services</strong> $1,650</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Professional Services</th>
<th>Qty.</th>
<th>Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Management</td>
<td></td>
<td>no cost</td>
<td>$0</td>
</tr>
<tr>
<td>Onsite Pre-implementation Meetings</td>
<td>2</td>
<td>$1,200</td>
<td>$4,800</td>
</tr>
<tr>
<td>*Data Conversion (Damion)</td>
<td>1</td>
<td>$25,000</td>
<td>($15,000) $10,000</td>
</tr>
<tr>
<td>Document Conversion(up to 100 documents)</td>
<td>1</td>
<td>$2,500</td>
<td>($1,000) $1,500</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Total Professional Services</strong> $16,300</td>
</tr>
</tbody>
</table>

*This is a fixed bid for data conversion

<table>
<thead>
<tr>
<th>Onsite Training Services</th>
<th>Qty.</th>
<th>Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Go-Live Training days</td>
<td>5</td>
<td>$1,200</td>
<td>$12,000</td>
</tr>
<tr>
<td>(includes system admin training and onsite support)</td>
<td></td>
<td></td>
<td><strong>Total Onsite Training Services</strong> $12,000</td>
</tr>
</tbody>
</table>

We recommend 2 training resources for offices of 10 or more

<table>
<thead>
<tr>
<th>Annual Support and Services</th>
<th>Qty.</th>
<th>Price</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>PROSECUTORbyKARPEL</td>
<td>13</td>
<td>$450</td>
<td>$5,850</td>
</tr>
<tr>
<td>Hosted Services ($5/per user/month)</td>
<td>13</td>
<td>$60</td>
<td>$780</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Total Annual Support Services</strong> $6,630</td>
</tr>
</tbody>
</table>

**Estimated Expenses - not to exceed**

Travel expenses include airfare, lodging and ground transportation

<p>| | | | |</p>
<table>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>$6,000</td>
</tr>
</tbody>
</table>
Total Project Cost (excluding any applicable taxes) $71,830

<table>
<thead>
<tr>
<th>Other Services/Cost</th>
<th>Qty.</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>*Adobe Acrobat Professional</td>
<td>1</td>
<td>$380 (current government rate)</td>
</tr>
<tr>
<td>Hosted by Karpel Hosted eDiscovery</td>
<td></td>
<td>$1 per submission</td>
</tr>
</tbody>
</table>

*Adobe Acrobat Professional is required for our integrated document redaction/bates numbering and is not provided by Karpel Solutions.

It is recommended that users who work with and provide discovery have this software. The cost is based on average gov rate for

Version 11, however version 9 and 10 are compatible and can be purchased for as low $199 from a reseller.

This fee does not include additional hardware, Microsoft licenses, or networking services that may be necessary to properly and legally operate PbK. Said expenses are the Client's sole responsibility.

Server installation includes application SQL database and configuration of SQL Server for PbK® and shall be performed by Karpel Solutions due to the complexity of the configuration.

Travel expenses include airfare, lodging and ground transportation.

As with any project, all prices are subject to change as new information arises or as workload increases. Karpel Solutions will seek approval from Client if more work will be necessary to make the changes along the way, as described above.

Payment Terms

Payment schedule to be 50% of Software User Licenses due upon signed contract agreement and the remaining cost due upon completion of implementation and training.
6. ANNUAL SUPPORT

6.1.1 TECHNICAL SUPPORT FEES

Client understands that technical support fees will be required annually, in order to receive software updates and technical support. The initial support period shall begin from the date of software installation as part of the initial licensing purchase. The Client may elect to purchase subsequent annual support, on a yearly basis at a fixed cost, and billed annually as referenced in Section 5 above. The option to purchase annual support is solely at the Client’s discretion. The Client’s license to use PbK is not dependent upon the Client purchasing annual support; however, if the Client discontinues annual support it will not be provided with updated versions of the software, unless it is purchased. Provided Client’s computers, network and systems meet recommended specifications set for by Karpel Solutions and the Client is current with annual support payments then Karpel Solutions shall provide updated versions of their system and/or software as they become available during the terms of the contract.

6.1.2 SUPPORT PROVIDED

Karpel Solutions will provide support (e.g. software updates, general program enhancements and technical support) for all software provided, including ongoing unlimited telephone technical support problem determination, and resolution.

6.1.3 HOURS OF OPERATION

Karpel Solutions will provide technical support Monday through Friday, at a minimum of twelve (12) hours a day. Technical support services shall be available between the hours of 7:00 a.m. through 10:00 p.m. Central time, via a toll free telephone number provided.

6.1.4 INCLUDED SUPPORT

Support services include the detection and correction of software errors and the implementation of all PbK program changes, updates and upgrades. Karpel Solutions shall respond to the inquiries regarding the use and functionality of the solution as issues are encountered by Authorized Users.

6.1.5 RESPONSE TIMES

Karpel Solutions shall be responsive and timely to technical support calls/inquiries made by the Client. The Client will first make support inquiries through their qualified system administrators to assure the policies and business practices of the Client are enforced prior to contacting Karpel Solutions. The timeliness of the response is dependent upon the severity of the issue/support problem, as defined below:
The severity of the issue/support problem shall determine the average problem resolution response time in any calendar month of the contract as follows:

**Severity Level 1** shall be defined as urgent situations, when the Client’s production system is down and the Client is unable to use PbK, Karpel Solutions’ technical support staff shall accept the Client’s call for assistance at the time the Client places the initial call; however if such staff is not immediately available, Karpel Solutions shall return the customer’s call within one (1) business hour. Karpel Solutions shall resolve Severity Level 1 problems as quickly as possible, which on average should not exceed two (2) business days, unless otherwise authorized in writing by the Client.

**Severity Level 2** shall be defined as critical software system component(s) that has significant outages and/or failure precluding its successful operation, and possibly endangering the customer’s environment. PbK may operate but is severely restricted. Karpel Solutions’ technical support staff shall accept the customer’s call for assistance at the time the customer places the initial call; however if such staff is not immediately available, Karpel Solutions shall return the Client’s call within four (4) business hours. Karpel Solutions shall resolve Severity Level 2 problems as quickly as possible, which on average should not exceed three (3) business days, unless otherwise authorized in writing by the customer.

**Severity Level 3** shall be defined as a minor problem that exists with PbK but the majority of the functions are still usable and some circumvention may be required to provide service. Karpel Solutions’ technical support staff shall accept the Client’s call for assistance at the time the customer places the initial call; however if such staff is not immediately available, Karpel Solutions shall return the Client’s call on average no later than the next business day. Karpel Solutions shall resolve Severity Level 3 problems as quickly as possible, which should not exceed the next available release of software, unless otherwise authorized in writing by the Client.

**General Assistance:** For general software support/helpdesk calls not covered by the above severity level descriptions, Karpel Solutions’ technical support staff shall accept the Client’s call for assistance at the time the Client places the initial call; however if such staff is not immediately available, Karpel Solutions shall return the Client’s call on average no later than the next business day.
7. LICENSE TERMS AND USE

This software, PbK, is a proprietary product of Karpel Solutions. It is licensed (not sold) and is licensed to Client for its use only by the terms set forth below.

1. In consideration of payment of a sublicense fee, Karpel Solutions hereby grants Client a non-exclusive and non-transferable sublicense to use any associated manuals and/or documentation furnished.

2. Client cannot distribute, rent, sublicense or lease the software. A separate license of PbK is required for each user or employee. Each license of PbK may not be shared by more than one full time employee or user (40 hours per week), nor more than two (2) part-time employees or users, working no more than 40 hours per week together. The Client agrees that Karpel Solutions will suffer damages from the Client's breach of this term and further agrees that as such Karpel Solutions shall be entitled to the cost of the license, installation and training costs associated for each violation, including Karpel Solutions' reasonable attorneys' fees and costs.

3. License does not transfer any rights to software source codes, unless Karpel Solutions ceases to do business without transferring its duties under this agreement to another qualified software business. Karpel Solutions will, at client's expense, enter into escrow agreement for the storage of the source codes.

3. PbK and its documentation are protected by copyright and trade secret laws. Client may not use, copy, modify, or transfer the software or its documentation, in whole or in part, except as expressly provided for herein. Karpel Solutions retains all rights in any copy, derivative or modification to the software or its documentation no matter by whom made. PbK is licensed for a single installation of one full time employee. A separate license is required for each installation of PbK. Client shall not provide or disclose or otherwise make available PbK or any portion thereof in any form to any third party. Client agrees that unauthorized copying and distribution will cause great damage to Karpel Solutions and this damage is far greater than the value of the copies involved.

5. PbK was developed exclusively at private expense and is Karpel Solutions' trade secret. For all purposes of the Freedom of Information Act or any other similar statutory right of "open" or public records the Software shall be considered exempt from disclosure. PbK is "commercial computer software" subject to limited utilization "Restricted Rights." PbK, including all copies, is and shall remain proprietary to Karpel Solutions or its licensors.
IN WITNESS WHEREOF, the parties have caused this Agreement subject to the Master Terms and Conditions set forth below to be executed on the date first above written. This proposal is offered as an all-inclusive turnkey solution and, unless noted otherwise, pricing is based on acceptance of both services and licenses. Any changes to this solution may result in additional costs. If not accepted within thirty (30) days, Karpel Solutions reserves the right to withdraw this proposal. Should any adjustments to this proposal become necessary; Karpel Solutions will draft and present a “Change Order” to Client for its review and approval. This offer is entire agreement between the parties, and no oral agreements or other written documents, exclusive of the attached exhibits are part of the agreement. Any modifications of this agreement must be in writing, and prior to acceptance of this offer, Karpel Solutions reserves the right to make modifications to this offer. The signatories warrant they have the authority to bind their respective party.

Mariposa County
Name
Board Chair
Title
Date
7-9-14

Karpel Solutions
Name
CEO
Title
Date
7-11-14

APPROVED AS TO FORM:

STEVEN W. DAHLEM
COUNTY COUNSEL
8. MASTER TERMS AND CONDITIONS

KARPEL COMPUTER SYSTEMS, INC. (dba “Karavel Solutions”),
MASTER TERMS AND CONDITIONS

GENERAL TERMS

1. ACCEPTANCE TERM. The proposal attached to these Master Terms and Conditions is tendered for acceptance in its entirety within thirty (30) days from the date of the proposal, after which it is to be considered null and void.

2. PAYMENT TERMS. A statement for services rendered will be submitted by Karavel Solutions at the completion of the service. The invoice is payable upon receipt. Terms are Net thirty (30) days. Interest shall be applied at the rate of one and one half percent (1.5%) per month on any amounts not received by Karavel Solutions within the due date. Karavel Solutions reserves the right to discontinue performing services for client in the event of nonpayment of services by client, and client agrees to reimburse Karavel Solutions for reasonable collection expenses on delinquent accounts, including attorney’s fees and costs.

3. ASSIGNMENT. This Agreement will inure to the benefit of and be binding upon Karavel Solutions and Client and Karavel Solutions’ respective successors and assigns. Notwithstanding the foregoing, Client may not assign or otherwise transfer this Agreement or Client’s rights and obligations under this Agreement without the prior written consent of Karavel Solutions, and any purported assignment or other transfer without such consent will be void and of no force or effect. Karavel Solutions may assign and/or transfer this Agreement or Karavel Solutions’ rights and obligations under this Agreement at any time.

4. MODIFICATION AND WAIVER. Any modifications of this Agreement must be in writing and signed by both parties. Neither party will be deemed to have waived any of its rights under the Agreement by any statement or representation other than (i) by an Authorized Representative and (ii) in an explicit written waiver. No waiver of a breach of this agreement will constitute a waiver of any prior or subsequent breach of this Agreement.

5. FORCE MAJEURE. Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach thereof are delay or prevented by reason of any act of God, government, fire, natural disaster, accident, terrorism, network or telecommunication system failure, sabotage or any other cause beyond the control of such party (“Force Majeure”), provided that such party promptly gives the other party written notice of such Force Majeure.

6. INDEPENDENT CONTRACTORS. The parties will be deemed to have the status of independent contractors, and nothing in this Agreement will be deemed to place the parties in the relationship of employer-employee, principal-agent, or partners or joint ventures. Neither party has the authority to bind, commit or make any representations, claims or warranties on behalf of the other party without obtaining the other party’s prior written approval.
7. SOFTWARE ANOMALIES. New commercial software releases or upgrades, or any hardware and/or software owned by or licensed to Client, used in connection with Karpel Solutions services may have anomalies, performance or integration issues unknown to Karpel Solutions which can impact the timely, successful implementation of information systems. Karpel Solutions will inform the client promptly if this occurs and will attempt to analyze, correct and/or work around the anomalies or performance issues on a "best effort" basis. Karpel Solutions is not responsible for any delay or inability to complete its services if such anomalies or performance issues occur. Client is responsible for payment for all of Karpel Solutions' services at the rate stated in the proposal whether or not a successful solution is achieved.

8. SOFTWARE AUDIT. Client agrees to allow Karpel Solutions the right to audit Client's use of PbK and licenses of PbK at any time. Client will cooperate with the audit, including providing access to any books, computers, records or other information that relate to the use of PbK. Such audit will not unreasonably interfere with Client's activities. In the event that an audit reveals unauthorized use, reproduction, distribution, or other exploitation of PbK, Client will reimburse Karpel Solutions for the reasonable cost of the audit, in addition to such other rights and remedies that Karpel Solutions may have. Karpel Solutions will not conduct an audit more than once per year.

9. CLIENT ENVIRONMENT. Client is responsible for the application, operation and management of its information technology environment, including but not limited to: (a) purchasing, licensing and maintaining hardware and software; (b) following appropriate operating procedures; (c) following appropriate protective measures to safeguard the software and data from unauthorized duplication, modification, destruction or disclosure; (d) following adequate backup contingency plans; and (e) employing qualified personnel to obtain the desired results. Karpel is not responsible for the loss of data in PbK or security breaches that result in the unauthorized dissemination of data contained in PbK that is the result of Client not following appropriate operating procedures, security and protective measures and/or following adequate backup contingency plans.

10. MATERIALS. Client will pay Karpel Solutions for materials purchased for the client's use. Materials may include computer hardware, software, hosting, facility leases, other services, telecommunications charges, freight, shipping, mailing, document reproduction and any other such costs incurred in performance of services for client. Upon mutual agreement, client will reimburse Karpel Solutions for all out-of-town travel expenses, such as automobile/airline travel, hotel, meals, and cab fare. Billing for services rendered on-site on an as needed basis will include portal-to-portal time.

11. TERMINATION. Client may terminate the Annual Support portion of this Agreement thirty (30) business days after it is has provided Karpel Solutions with written notice that it believes that Karpel Solutions has failed to perform under, or materially breaches, the Annual Support portion of this Agreement and of the Client's intent to terminate the Annual Support portion of this Agreement. Such written notice is to be sent Certified US Mail to Karpel Solutions at 5714 South Lindbergh Blvd., Suite 200, St. Louis, MO 63123. Thereafter, Karpel Solutions will have thirty (30) business days from the receipt of such notice to correct the stated problem. If at the end of such thirty (30) business day period, Karpel Solutions has not corrected the stated problem, then client may terminate the
Annual Support portion of this Agreement. Karpel Solutions may terminate the Annual Support portion of this Agreement on thirty (30) days written notice.

12. COPYRIGHT. Karpel Solutions reserves the right to seek damages if Client is responsible for a subsequent violation of Karpel Solutions’ copyright, and Client assumes responsibility for the acts and omissions of its agents acting in the course of their duties or otherwise with respect to the protection of Karpel Solutions’ copyright.

LIMITED WARRANTIES, LIMITATION OF LIABILITY, INDEMNIFICATION

1. LIMITED WARRANTY. Karpel Solutions warrants it will perform all services in a professional manner by qualified personnel. Karpel Solutions warrants it has the requisite power and authority to enter into and perform its obligations under this Agreement. Karpel Solutions warrants that the performance by Karpel Solutions of any services described in the Agreement shall be in compliance with all applicable laws, rules and regulations. No representations or warranties as to the use, functionality or operation of PbK are made by Karpel Solutions other than as expressly stated in this Agreement.

2. INTERNET AND NETWORK. Karpel Solutions makes PbK available to Client through the Internet and/or Client’s own network and systems, to the extent commercially reasonable, and subject to outages, communication and data flow failures, interruptions and delays inherent in the Internet and network communications on the Client’s own network and systems. Client recognizes that problems with the Internet, including equipment, software and network failures, impairments or congestion, or the configuration of Client’s own computer systems and network, may prevent, interrupt or delay Client’s access to PbK. Karpel Solutions is not liable for any delays, interruptions, suspensions or unavailability of PbK attributable to problems with the Internet or the configuration of Client’s computer systems or network.

3. PASSWORD PROTECTION. Access to PbK is password-protected. Karpel Solutions provides multiple authentication alternatives for access to PbK. KARPEL SOLUTIONS STRONGLY ENCOURAGES THE USE OF STRONG PASSWORD AUTHENTICATION. Karpel Solutions is not responsible for Client’s use of the PbK. Only the number of users set forth above may access the Service and Website. Client must inform their users that they are subject to, and must comply with, all of the terms of this Agreement. Client is fully responsible for the activities of Client’s employees and authorized agents who access to PbK. Karpel Solutions is not liable for any unauthorized access to PbK and data or information contained therein, including without limitation access caused by failure to protect the login and password information of users.

4. SYSTEM REQUIREMENTS. Karpel Solutions provides PbK based upon the system requirements as specified by Karpel Solutions for Client. Karpel Solutions has no liability for any failure of PbK based upon Client’s failure to comply with the system requirements of Karpel Solutions.

5. THIRD PARTY SOFTWARE. Karpel Solutions makes no express or implied warranties as to the quality of third party software or as to Karpel Solutions’ ability to support such software on an on-going basis.
6. LIMITED ENGAGEMENT. Due to the limited nature of Karpel Solutions’ engagement by client, Karpel Solutions makes no express or implied warranties as to the quality of, or the ability of software developed by Karpel Solutions to operate with, any hardware, network, software, systems and/or external data flows already in place at client’s facilities or as may be added by the client.

7. DISCLAIMER. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE MADE IN LIEU OF ALL OTHER WARRANTIES, EITHER EXPRESS AND IMPLIED, WHICH ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF NONINFRINGEMENT, TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES ARISING OUT OF A USE IN TRADE OR COURSE OF DEALING OR PERFORMANCE. KARPEL SOLUTIONS DOES NOT WARRANT (i) THAT ACCESS TO OR USE OF ALL OR ANY PART OF PBK WILL BE CONTINUOUS, ERROR-FREE OR UNINTERRUPTED, (ii) THAT THE RESULTS ARISING OUT OF CLIENT’S USE OF PBK WILL BE ACCURATE, COMPLETE OR ERROR-FREE, OR (iii) THAT THE SERVICE, SOFTWARE, DOCUMENTATION OR WEBSITE WILL MEET CLIENT’S NEEDS.

KARPEL SOLUTIONS EMPLOYEES

Karpel Solutions has spent substantial sums of money and invested large amounts of time in recruiting, supervising and training Karpel Solutions employees. Client further agrees that it has a unique opportunity to evaluate Karpel Solutions employees’ performance, and has the potential to hire Karpel Solutions employees, and further agrees that such hiring away would substantially disrupt the essence of Karpel Solutions’ business and ability to provide its services for others, and as such Karpel Solutions cannot agree to such a hiring. The Client acknowledges that Karpel Solutions employees work for Karpel Solutions under a non-competition agreement; therefore, Client agrees it shall not solicit for employment or contract as an independent contractor, or otherwise hire or engage a Karpel Solutions employee during the term of this Agreement or for a period of 2 years after the completion/termination of the project, whichever is longer.

CONFIDENTIALITY

1. CONFIDENTIALITY. Neither party shall disclose or use any confidential or proprietary information of the other party. The foregoing obligations shall not apply to information which: (i) is or becomes known publicly through no fault of the receiving party; (ii) is learned by the receiving party from a third party entitled to disclose it; or (iii) is already known to the receiving party.

2. PERSONALLY IDENTIFIABLE INFORMATION. The parties recognize that certain data Client or Karpel Solutions may use in conjunction with the PbK may be confidential personally identifiable information of third parties. Karpel Solutions shall use all best efforts to protect the confidentiality of personally identifiable information of third parties. Karpel Solutions shall have no liability for disclosure of personally identifiable information caused by Client’s own negligence or misconduct.

3. DISCLOSURE REQUIRED BY LAW. In the event that any confidential or proprietary information is required to be disclosed pursuant to any law, code, regulation or court order from a court of competent jurisdiction, the receiving party shall give the disclosing party immediate written notice
of such requirement and shall use its best efforts to seek or to cooperate with the disclosing party in seeking a protective order with respect to the confidential information requested.

4. SIMILAR PROGRAMS AND MATERIALS. Provided Karpel Solutions does not violate the provisions of this section regarding confidentiality, the Agreement shall not preclude Karpel Solutions from developing for itself, or for others, programs or materials which are similar to those produced as a result of services provided to Client.

5. INJUNCTIVE RELIEF. Any breach of the confidentiality provisions of this Section will cause irreparable harm to the other party. The parties agree that the non-breaching party may enforce the provisions of this Section by seeking an injunction, specific performance, criminal prosecution or other equitable relief without prejudice to any other rights and remedies the non-breaching party may have.

MARKETING

1. Client agrees that Karpel Solutions may identify Client as a customer of Karpel Solutions in Karpel Solutions' written promotional and marketing materials, as well as in any oral or visual presentations regarding the business of Karpel Solutions.

2. Provided Karpel Solutions does not violate the provisions of the foregoing section regarding confidentiality, Karpel Solutions shall have the right to demonstrate for other prospective clients any application developed by Karpel Solutions under this Agreement and shall have the right to include information about any such application in marketing materials and presentations.

MISCELLANEOUS

1. ELECTRONIC DOCUMENTS. To the extent possible, and under the terms required by Client, Client and Karpel Solutions may communicate by electronic means, including but not limited to facsimile documents. Both parties agree that: a signature or an identification code ("USERID") contained in an electronic document is legally sufficient to verify the sender's identity and the document's authenticity; an electronic document that contains a signature or USERID is a signed writing; and that an electronic document, or any computer printout of it, is an original when maintained in the normal course of business.

2. SEVERABILITY. If any portion of this Agreement is held to be void, invalid or otherwise unenforceable, in whole or in part, then the remaining portions of the Agreement shall remain in effect. This is the complete and exclusive statement of the Agreement between the parties which supersedes all proposals, oral or written, relating to the subject matter of this Agreement.

3. ENTIRE AGREEMENT. This Agreement constitutes the sole agreement between client and Karpel Solutions with respect to the subject matter hereof. It may not be modified or assigned except by written agreement of Client and Karpel Solutions.
4. NOTICES. Any notices provided under this Agreement will be in writing in the English language and will be deemed to have been properly given if delivered personally or if sent by (i) a recognized overnight courier, (ii) certified or registered mail, postage prepaid, return receipt requested, or (iii) facsimile, if confirmed by mail. Karpel Solutions' address for such notices is set forth below. Client’s address for such notices will be the address on file with Karpel Solutions as provided by Client. Such address or contact information may be revised from time to time by provision of notice as described in this Section. All notices sent by mail will be deemed received on the tenth (10th) business day after deposit in the mail. All notices sent by overnight courier will be deemed given on the next business day after deposit with the overnight courier. All notices sent by facsimile will be deemed given on the next business day after successful transmission.

Karpel Solutions
5714 S. Lindbergh Blvd, Suite 200
St. Louis, MO 63123
(314) 892-6300
karpel@karpel.com

5. GOVERNING LAW. The parties agree that California law applies to all matters of interpretation of this agreement. The parties further agree that the prevailing party shall be entitled to a judgment for its reasonable attorneys' fees and costs.