

DRAFT Agreement for IBM Maximo Asset Management System with Mobility Website Hosting and Related Services

This agreement (“Agreement”) is by and between **Sonoma County Water Agency, Russian River County Sanitation District, and Sonoma Valley County Sanitation District**, collectively referred to as (“Sonoma Water”) and **Intelligent Technology Solutions, LLC**, a Georgia corporation (“Service Provider”). The Effective Date of this Agreement is the date the Agreement is last signed by the parties to the Agreement, unless otherwise specified in Paragraph 5.1.

RECITALS

- A. Service Provider certifies that it is a Georgia corporation duly authorized to do business in the State of California, registered with the Secretary of State of California, and represents that it is a duly qualified firm, experienced in providing remote website hosting of IBM Maximo (Maximo) asset management software and related databases for the management of Sonoma Water assets and related services.
- B. Sonoma Water is responsible for providing a safe and reliable water supply for approximately 600,000 people in Sonoma and northern Marin counties.
- C. Sonoma Water also operates eight sanitation zones and districts and one hydroelectric power plant, operates and maintains service vehicles and heavy equipment, and maintains 75 miles of constructed flood control channels.
- D. Sonoma County Water Agency also operates and manages Russian River County Sanitation District and Sonoma Valley County Sanitation District (“Districts”) under contract with Districts.
- E. Since 1997 Sonoma Water has used Maximo to manage assets and provide document control functions related to asset management. The web-based version of this software allows the software and related databases to be stored and managed remotely by a third party over a secure internet connection.
- F. Sonoma Water uses Maximo to track asset maintenance and costs within Sonoma Water's water transmission, wastewater, fleet, facilities, and hydroelectric enterprises.
- G. Under this Agreement, Service Provider will assist Sonoma Water in renewing Maximo licensing and provide mobility hosting as well as service and support for Sonoma Water's Maximo system.

In consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

A G R E E M E N T

1. RECITALS

1.1. The above recitals are true and correct.

2. LIST OF EXHIBITS

2.1. The following exhibits are attached hereto and incorporated herein:

- a. Exhibit A: Scope of Work
- b. Exhibit B: Schedule of Costs
- c. Exhibit C: Response Times and Severity Level Criteria
- d. Exhibit D: Insurance Requirements

3. SCOPE OF SERVICES

3.1. *Service Provider's Specified Services:* Service Provider shall perform the services described in Exhibit A (Scope of Work), within the times or by the dates provided for in Exhibit A and pursuant to Article 9 (Prosecution of Work). In the event of a conflict between the body of this Agreement and Exhibit A, the provisions in the body of this Agreement shall control.

3.2. *Cooperation with Sonoma Water:* Service Provider shall cooperate with Sonoma Water in the performance of all work hereunder. Service Provider shall coordinate the work with Sonoma Water's Project Manager. Contact information and mailing addresses:

Sonoma Water	Service Provider
Project Manager: Jens Salzgeber 404 Aviation Boulevard Santa Rosa, CA 95403-9019 Phone: (707) 524-1172 Email: jens.salzgeber@scwa.ca.gov	Contact: Richard Poorman 4116 Twin Leaf Court Marietta, GA 30062 Phone: (678) 490-3800 x-101 Email: RPoorman@WeBuildITS.com
Remit invoices to:	Remit payments to:
Accounts Payable Same address as above or Email: ap_agreements@scwa.ca.gov	Intelligent Technology Solutions, LLC P.O. Box 681714 Marietta, GA 30068

3.3. *Performance Standard and Standard of Care:* Service Provider hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with the standards of a reasonable professional having specialized knowledge and expertise in the services provided under this Agreement and in accordance with all applicable federal, state and local laws, it being understood that acceptance of Service Provider's work by Sonoma Water shall not operate as a waiver or release. Sonoma Water has relied upon the professional ability and training of Service Provider as a material inducement to enter into this

Agreement. If Sonoma Water determines that any of Service Provider’s work is not in accordance with such level of competency and standard of care, Sonoma Water, in its sole discretion, shall have the right to do any or all of the following: (a) require Service Provider to meet with Sonoma Water to review the quality of the work and resolve matters of concern; (b) require Service Provider to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 6 (Termination); or (d) pursue any and all other remedies at law or in equity.

3.4. *Assigned Personnel:*

- a. Service Provider shall assign only competent personnel to perform work hereunder. In the event that at any time Sonoma Water, in its sole discretion, desires the removal of any person or persons assigned by Service Provider to perform work hereunder, Service Provider shall remove such person or persons immediately upon receiving written notice from Sonoma Water.
- b. Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by Sonoma Water to be key personnel whose services were a material inducement to Sonoma Water to enter into this Agreement, and without whose services Sonoma Water would not have entered into this Agreement. Service Provider shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of Sonoma Water.
- c. In the event that any of Service Provider’s personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness, or other factors outside of Service Provider’s control, Service Provider shall be responsible for timely provision of adequately qualified replacements.

4. PAYMENT

4.1. *Total Costs:*

- a. Total costs under this Agreement shall not exceed \$450,000.
- b. Total costs shall not be exceeded, regardless of whether it takes Service Provider more time to complete or costs more than anticipated.

4.2. *Flat Rate Services:*

- a. Total costs for Flat Rate Services shall not exceed \$245,000.

<i>Flat Rate Service (Effective Date – July 31, 2021)</i>	<i>Billing Cycle</i>	<i>Amount</i>
Hosting	Annual	\$30,762.41
Maximo Support Based on 120 Hours	Annual	\$18,720.00
IBM License Renewal	Annual	\$28,921.00

<i>Flat Rate Service (August 1, 2021 – July 31, 2022)</i>	<i>Billing Cycle</i>	<i>Amount</i>
Hosting	Annual	\$32,300.53
Maximo Support Based on 120 Hours	Annual	\$18,720.00
IBM License Renewal	Annual	\$30,367.05
<i>Flat Rate Service (August 1, 2022 – July 31, 2023)</i>	<i>Billing Cycle</i>	<i>Amount</i>
Hosting	Annual	\$33,915.66
Maximo Support Based on 120 Hours	Annual	\$18,720.00
IBM License Renewal	Annual	\$31,885.40

- i. Service Provider shall not be entitled to any additional payment for any expenses incurred in completion of the Flat Rate Services.

- 4.3. *Hourly Rate Services:* Total costs for Hourly Rate Services shall not exceed \$205,000.
- 4.4. *Method of Payment:* Service Provider shall be paid in accordance with the following terms:
 - a. Flat Rate Services: Service Provider shall be paid the amounts listed in the table in 4.2a, above.
 - b. Hourly Rate Services: Service Provider shall be paid for Hourly Rate Services and expenses in accordance with Exhibit B (Schedule of Costs). Billed hourly rates shall include all costs for overhead and any other charges, other than expenses specifically identified in Exhibit B. Expenses not expressly authorized by the Agreement shall not be reimbursed.
- 4.5. *Invoices:* Service Provider shall submit its bills in arrears on a monthly basis, based on work completed for the period, in a form approved by Sonoma Water. The bills shall show or include:
 - a. Service Provider name
 - b. Name of Agreement
 - c. Sonoma Water’s Project-Activity Code T0138C018, V0063C018, R0066C018, and Y0038C018
 - d. Task performed with an itemized description of services rendered by date
 - e. Summary of work performed by subconsultants, as described in Paragraph 14.4
 - f. Time in quarter hours devoted to the task
 - g. Hourly rate or rates of the persons performing the task List of reimbursable materials and expenses
 - h. Copies of receipts for reimbursable materials and expenses
- 4.6. *Monthly Reports with Invoices:* Payment of invoices is subject to receipt of the monthly reports required under Task 2 of Exhibit A.

- 4.7. *Timing of Payments:* Unless otherwise noted in this Agreement, payments shall be made within the normal course of Sonoma Water business after presentation of an invoice in a form approved by Sonoma Water for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by Sonoma Water.
- 4.8. *Taxes Withheld by Sonoma Water:*
- a. Pursuant to California Revenue and Taxation Code (R&TC) section 18662, Sonoma Water shall withhold seven percent of the income paid to Service Provider for services performed within the State of California under this Agreement, for payment and reporting to the California Franchise Tax Board, if Service Provider does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.
 - b. If Service Provider does not qualify, as described in Paragraph 4.8.a, Sonoma Water requires that a completed and signed Form 587 be provided by Service Provider in order for payments to be made. If Service Provider is qualified, as described in Paragraph 4.8.a, then Sonoma Water requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, Service Provider agrees to promptly notify Sonoma Water of any changes in the facts. Forms should be sent to Sonoma Water pursuant to Article 15 (Method and Place of Giving Notice, Submitting Bills, and Making Payments) of this Agreement. To reduce the amount withheld, Service Provider has the option to provide Sonoma Water with either a full or partial waiver from the State of California.

5. TERM OF AGREEMENT AND COMMENCEMENT OF WORK

- 5.1. *Term of Agreement:*
- a. This Agreement shall expire on August 15, 2023, unless terminated earlier in accordance with the provisions of Article 6 (Termination).
 - b. Sonoma Water shall have two options to extend this Agreement for a period of one year each by providing written notice to Service Provider thirty days in advance of the expiration date noted in this Article and of the first extension option.
- 5.2. *Commencement of Work:* Service Provider is authorized to proceed immediately with the performance of this Agreement upon the Effective Date of this Agreement.

6. **TERMINATION**

- 6.1. *Authority to Terminate:* Sonoma Water's right to terminate may be exercised by Sonoma County Water Agency's General Manager.
- 6.2. *Termination Without Cause:* Notwithstanding any other provision of this Agreement, at any time and without cause, Sonoma Water shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to Service Provider.
- 6.3. *Termination for Cause:* Notwithstanding any other provision of this Agreement, should Service Provider fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, Sonoma Water may immediately terminate this Agreement by giving Service Provider written notice of such termination, stating the reason for termination.
- 6.4. *Delivery of Work Product and Final Payment Upon Termination:* In the event of termination, Service Provider, within 14 days following the date of termination, shall deliver to Sonoma Water all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Service Provider or Service Provider's subcontractors, consultants, and other agents in connection with this Agreement subject to Paragraph 12.10 and shall submit to Sonoma Water an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.
- 6.5. *Payment Upon Termination:* Upon termination of this Agreement by Sonoma Water, Service Provider shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Service Provider bear to the total services otherwise required to be performed for such total payment; provided, however, that if services are to be paid on a per-hour or per-day basis, then Service Provider shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to termination multiplied by the applicable hourly or daily rate; and further provided, however, that if Sonoma Water terminates the Agreement for cause pursuant to Paragraph 6.3, Sonoma Water shall deduct from such amounts the amount of damage, if any, sustained by Sonoma Water by virtue of the breach of the Agreement by Service Provider.

7. **INDEMNIFICATION**

- 7.1. Service Provider agrees to accept all responsibility for loss or damage to any person or entity, including Sonoma County Water Agency, and to indemnify, hold harmless, and release Sonoma County Water Agency, its officers, agents, and

employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Service Provider, that arise out of, pertain to, or relate to Service Provider's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Service Provider agrees to provide a complete defense for any claim or action brought against Sonoma County Water Agency based upon a claim relating to Service Provider's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Service Provider's obligations under this Article 7 apply whether or not there is concurrent or contributory negligence on the part of Sonoma County Water Agency, but, to the extent required by law, excluding liability due to conduct of Sonoma County Water Agency. Sonoma County Water Agency shall have the right to select its legal counsel at Service Provider's expense, subject to Service Provider's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Service Provider or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

8. INSURANCE

8.1. With respect to performance of work under this Agreement, Service Provider shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit D (Insurance Requirements).

9. PROSECUTION OF WORK

9.1. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Service Provider's performance of this Agreement shall be extended by a number of days equal to the number of days Service Provider has been delayed.

10. EXTRA OR CHANGED WORK

10.1. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Changes to lengthen time schedules or make minor modifications to the scope of work, which do not increase the amount paid under the Agreement, may be executed by Sonoma County Water Agency's General Manager in a form approved by County Counsel. The parties expressly recognize that Sonoma Water personnel are without authorization to order all other extra or changed work or waive Agreement requirements. Failure of Service Provider to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such

unauthorized work and thereafter Service Provider shall be entitled to no compensation whatsoever for the performance of such work. Service Provider further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of Sonoma Water.

11. CONTENT ONLINE ACCESSIBILITY

- 11.1. *Accessibility:* Sonoma Water policy requires that all documents that may be published to the Web meet accessibility standards to the greatest extent possible, and utilizing available existing technologies.
- 11.2. *Standards:* All consultants responsible for preparing content intended for use or publication on a Sonoma Water managed or Sonoma Water funded web site must comply with applicable federal accessibility standards established by 36 C.F.R. section 1194, pursuant to section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. section 794(d)), and Sonoma Water's Web Site Accessibility Policy located at <http://sonomacounty.ca.gov/Services/Web-Standards-and-Guidelines/>.
- 11.3. *Certification:* With each final receivable intended for public distribution (report, presentations posted to the Internet, public outreach materials), Service Provider shall include a descriptive summary describing how all deliverable documents were assessed for accessibility (e.g., Microsoft Word accessibility check; Adobe Acrobat accessibility check, or other commonly accepted compliance check).
- 11.4. *Alternate Format:* When it is strictly impossible due to the unavailability of technologies required to produce an accessible document, Service Provider shall identify the anticipated accessibility deficiency prior to commencement of any work to produce such deliverables. Service Provider agrees to cooperate with Sonoma Water staff in the development of alternate document formats to maximize the facilitative features of the impacted document(s); e.g., embedding the document with alt-tags that describe complex data/tables.
- 11.5. *Noncompliant Materials; Obligation to Cure:* Remediation of any materials that do not comply with Sonoma Water's Web Site Accessibility Policy shall be the responsibility of Service Provider. If Sonoma Water, in its sole and absolute discretion, determines that any deliverable intended for use or publication on any Sonoma Water managed or Sonoma Water funded Web site does not comply with Sonoma Water Accessibility Standards, Sonoma Water will promptly inform Service Provider in writing. Upon such notice, Service Provider shall, without charge to Sonoma Water, repair or replace the non-compliant materials within such period of time as specified by Sonoma Water in writing. If the required repair or replacement is not completed within the time specified, Sonoma Water shall have the right to do any or all of the following, without

prejudice to Sonoma Water's right to pursue any and all other remedies at law or in equity:

- a. Cancel any delivery or task order
- b. Terminate this Agreement pursuant to the provisions of Article 6 (Termination); and/or
- c. In the case of custom Electronic and Information Technology (EIT) developed by Service Provider for Sonoma Water, Sonoma Water may have any necessary changes or repairs performed by itself or by another contractor. In such event, Service Provider shall be liable for all expenses incurred by Sonoma Water in connection with such changes or repairs.

11.6. *Sonoma Water's Rights Reserved:* Notwithstanding the foregoing, Sonoma Water may accept deliverables that are not strictly compliant with Sonoma Water Accessibility Standards if Sonoma Water, in its sole and absolute discretion, determines that acceptance of such products or services is in Sonoma Water's best interest.

12. REPRESENTATIONS OF SERVICE PROVIDER

- 12.1. *Status of Service Provider:* The parties intend that Service Provider, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Service Provider is not to be considered an agent or employee of Sonoma Water and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits Sonoma Water provides its employees. In the event Sonoma Water exercises its right to terminate this Agreement pursuant to Article 6 (Termination), Service Provider expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.
- 12.2. *No Suspension or Debarment:* Service Provider warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Service Provider also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration.
- 12.3. *Representation, Warranty and Responsibility as to Data Security:*
 - a. *Data Security:* Service Provider shall preserve, and shall ensure that its subconsultants or vendors preserve, the confidentiality, integrity, and availability of Sonoma Water data with administrative, technical and physical measures that conform to generally recognized industry standards and best practices that the selected firm then applies to its own processing environment. Maintenance of a secure processing environment includes, but is not limited to, the timely application of patches, fixes and updates to

operating systems and applications as provided by Service Provider and/or its subconsultants or vendors. Service Provider agrees to, and shall ensure that its subconsultants or vendors, comply with Sonoma Water's current and future information security policies, standards, procedures, and guidelines.

- b. Encryption Requirements: Service Provider shall encrypt, and shall ensure that its subconsultants or vendors encrypt, confidential information whether the data is in transit, or at rest, including but not limited to Personally Identifiable Information (PII) or Protected Health Information (e.g. PHI, ePHI).
- c. Security Breach: Service Provider shall comply, and shall ensure that its subconsultants or vendors comply, with all applicable laws that require the notification of individuals in the event of unauthorized release of personally identifiable information(PII) or protected health information(e.g. PHI,ePHI) or other event requiring notification. In the event of a breach, or other event requiring notification under applicable law, Service Provider shall:
 - i. Notify Sonoma Water by telephone and e-mail within twenty-four (24) hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of information of which Service Provider or its agents become aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations.
 - ii. Assume responsibility for informing all such individuals in accordance with applicable federal or state laws or regulations.
 - iii. Pursuant to Article 7 (Indemnification) of this Agreement, provide indemnity and other protection as specified therein.
- d. Request to Audit: Service Provider will accommodate and upon reasonable notice by Sonoma Water, work with Sonoma Water and/or its subcontractors to submit to a random information security audit. This is to ensure that Service Provider's information security practices or standards comply with Sonoma Water's information security policies, standards, procedures, and guidelines. Service Provider shall ensure that its subconsultants or vendors comply with this requirement.
- e. Cyber Risk Insurance Requirements: Service Provider shall include, and shall ensure that its subconsultants or vendors include, cyber risk insurance requirements in compliance with County of Sonoma Risk Management standards.

- 12.4. *Taxes:* Service Provider agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Service Provider agrees to indemnify and hold Sonoma Water harmless from any liability which it may incur to the United States or to the State of California or to any other public entity as a consequence of Service Provider's failure to pay, when due, all such taxes and obligations. In case Sonoma Water is audited for compliance regarding any

withholding or other applicable taxes, Service Provider agrees to furnish Sonoma Water with proof of payment of taxes on these earnings.

- 12.5. *Records Maintenance:* Service Provider shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to Sonoma Water for inspection at any reasonable time. Service Provider shall maintain such records for a period of four (4) years following completion of work hereunder.
- 12.6. *Conflict of Interest:* Service Provider covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Service Provider further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if required by law or requested to do so by Sonoma Water, Service Provider shall submit a completed Fair Political Practices Commission Statement of Economic Interests (Form 700) with Sonoma Water within 30 calendar days after the Effective Date of this Agreement and each year thereafter during the term of this Agreement, or as required by state law.
- 12.7. *Statutory Compliance/Living Wage Ordinance:* Service Provider agrees to comply, and to ensure compliance by its subconsultants or subcontractors, with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Service Provider expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.
- 12.8. *Nondiscrimination:* Service Provider shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.
- 12.9. *Assignment of Rights:* Service Provider assigns to Sonoma Water all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Service Provider in connection with this Agreement. Service Provider agrees to take such actions as are necessary to protect the

rights assigned to Sonoma Water in this Agreement, and to refrain from taking any action which would impair those rights. Service Provider's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as Sonoma Water may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of Sonoma Water. Service Provider shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of Sonoma Water.

- 12.10. *Ownership and Disclosure of Work Product:* All reports, original drawings, graphics, plans, studies, and other data or documents ("documents"), in whatever form or format, assembled or prepared by Service Provider or Service Provider's subcontractors, consultants, and other agents in connection with this Agreement shall be the property of Sonoma Water. Sonoma Water shall be entitled to immediate possession of such documents upon completion of the work pursuant to this Agreement. Upon expiration or termination of this Agreement, Service Provider shall promptly deliver to Sonoma Water all such documents, which have not already been provided to Sonoma Water in such form or format as Sonoma Water deems appropriate. Such documents shall be and will remain the property of Sonoma Water without restriction or limitation. Service Provider may retain copies of the above described documents but agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Sonoma Water.
- 12.11. *Nondisclosure of Confidential Information:* While doing the work required by this Agreement, Service Provider may have access to technical information and materials pertaining to Sonoma Water's IT Network Design, including but not limited to information regarding Sonoma Water's IP addressing, file structures, user groups, and security information, ("Confidential Information"). The Confidential Information may include confidential or proprietary information or trade secrets exempt from disclosure under provisions of the California Public Records Act. In consideration of disclosure by Sonoma Water of Confidential Information to Service Provider, Service Provider and its agents shall hold any material or information designated by Sonoma Water as Confidential in strict confidence and shall not disclose it or otherwise make it available, in any form or matter whatsoever, to any person or entity without the prior written consent of Sonoma Water, except as may be ordered by a court of law. Immediately upon receipt of any request or demand for disclosure of any Confidential Information within the scope of this Agreement, Service Provider shall give Sonoma Water written notice and a copy of the request and the time period, if any, within which Service Provider is required to respond to the request. Upon termination of this Agreement, Service Provider shall return Confidential Information in its possession, including copies, to Sonoma Water. Service Provider's obligation to maintain material and information designated as Confidential in strict confidence

shall survive completion of work under this Agreement and termination of this Agreement and, as provided for in Paragraph 12.10, Service Provider agrees not to disclose or discuss any information gathered, discovered, or generated in any way through this Agreement without the express written permission of Sonoma Water.

13. DEMAND FOR ASSURANCE

13.1. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article 13 limits Sonoma Water's right to terminate this Agreement pursuant to Article 6 (Termination).

14. ASSIGNMENT AND DELEGATION

14.1. *Consent:* Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

14.2. *Subcontracts:* Notwithstanding the foregoing, Service Provider may enter into subcontracts with the subconsultants specifically identified herein. If no subconsultants are listed, then no subconsultants will be utilized in the performance of the work specified in this Agreement. Approved subconsultants are as follows:

<i>Name</i>	<i>Type of Services</i>	<i>Prevailing Wages Apply? Y/N</i>
Projetech, Inc.	Maximo Platform	N

14.3. *Change of Subcontractors or Subconsultants:* If, after execution of the Agreement, parties agree that subconsultants not listed in Paragraph 14.2 will be utilized, Service Provider may enter into subcontracts with subconsultants to perform other specific duties pursuant to the provisions of this Paragraph 0. The

following provisions apply to any subcontract entered into by Service Provider other than those listed in Paragraph 14.2:

- a. Prior to entering into any contract with subconsultant, Service Provider shall obtain Sonoma Water approval of subconsultant.
- b. All agreements with subconsultants shall (a) contain indemnity requirements in favor of Sonoma Water in substantially the same form as that contained in Article 7 (Indemnification), (b) contain language that the subconsultant may be terminated with or without cause upon reasonable written notice, and (c) prohibit the assignment or delegation of work under the agreement to any third party.

14.4. *Summary of Subconsultants' Work:* Service Provider shall provide Sonoma Water with a summary of work performed by subconsultants with each invoice submitted under Paragraph 4.5. Such summary shall identify the individuals performing work on behalf of subconsultants and the total amount paid to subconsultant, broken down by the tasks listed in the Scope of Work.

15. METHOD AND PLACE OF GIVING NOTICE, SUBMITTING BILLS, AND MAKING PAYMENTS

15.1. *Method of Delivery:* All notices, bills, and payments shall be made in writing and shall be given by personal delivery, U.S. Mail, courier service, or electronic means. Notices, bills, and payments shall be addressed as specified in Paragraph 3.2.

15.2. *Receipt:* When a notice, bill, or payment is given by a generally recognized overnight courier service, the notice, bill, or payment shall be deemed received on the next business day. When a copy of a notice, bill, or payment is sent by electronic means, the notice, bill, or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill, or payment is deposited in the U.S. mail and postmarked on the date of the electronic transmission (for a payment, on or before the due date), (2) the sender has a written confirmation of the electronic transmission, and (3) the electronic transmission is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Article 15.

16. MISCELLANEOUS PROVISIONS

16.1. *No Bottled Water:* In accordance with Sonoma Water Board of Directors Resolution No. 09-0920, dated September 29, 2009, no Sonoma Water funding shall be used to purchase single-serving, disposable water bottles for use in Sonoma Water facilities or at Sonoma Water-sponsored events. This restriction shall not apply when potable water is not available.

- 16.2. *No Waiver of Breach:* The waiver by Sonoma Water of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 16.3. *Construction:* To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Service Provider and Sonoma Water acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Service Provider and Sonoma Water acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 16.4. *Consent:* Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 16.5. *No Third-Party Beneficiaries:* Except as provided in Article 7 (Indemnification), nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
- 16.6. *Applicable Law and Forum:* This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or in the forum nearest to the City of Santa Rosa, in the County of Sonoma.
- 16.7. *Captions:* The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 16.8. *Merger:* This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure section 1856. Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

16.9. *Survival of Terms:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

16.10. *Time of Essence:* Time is and shall be of the essence of this Agreement and every provision hereof.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed by the parties to the Agreement.

Reviewed as to funds:

TW 19/20-091

By: _____
Sonoma County Water Agency
Division Manager - Administrative
Services

Approved as to form:

By: _____
Verne Ball, Deputy County Counsel

Insurance Documentation is on file with
Sonoma Water

Date/TW Initials: 10/20/20 JES

**Sonoma County Water Agency, Russian
River County Sanitation District, and
Sonoma Valley County Sanitation District**

**Intelligent Technology Solutions, LLC, a
Georgia corporation**

By: _____
Grant Davis
General Manager
Authorized per Board of Directors
Action on December 15, 2020

By: _____

(Please print name here)

Title: _____

Date: _____

Date: _____

Exhibit A

Scope of Work

1. TASKS

1.1. Task 1: Flat Rate Services

a. Operations

- i. Procure necessary services and equipment to host the Maximo and mobility software systems in production and test/development environments.
- ii. Conduct appropriate software and support renewals (e.g. with IBM).
- iii. Provide application and database availability on remote servers located within Service Provider's procured data center(s), to include the appropriate versions of:
 - a) IBM Maximo
 - b) IBM Websphere
 - c) SQL Server
 - d) BIRT/Eclipse Reports
 - e) Mobility software
- iv. Provide Sonoma Water access to hosted applications and data.
- v. Provide WAN perimeter security using appropriate technology and Intrusion Prevention Systems.

b. Support

- i. Log a service request into the Service Provider's ticket tracking system.
- ii. Acknowledge via email the receipt of the incident or change request from Sonoma Water.
- iii. Respond to the email request within the parameters and according to the severity of the incident or change indicated by Sonoma Water, as defined in Exhibit C (Response Times and Severity Level Criteria).
- iv. Provide Sonoma Water with updates from the incident or change request.
- v. Provide Sonoma Water with details about the resolution of the incident or change in accordance with the time frames listed in Exhibit C (Response Times and Severity Level Criteria).
- vi. If an outage is required:
 - a) Notify when a resolution or request plan is identified.
 - b) Provide a schedule to Sonoma Water with a proposed start and completion date and time. If additional support services hours are needed to facilitate the request, notify Sonoma Water in advance in writing for approval.

- c) Request sign off acceptance of the resolution from Sonoma Water, once issue has been resolved. Close request when acceptance has been received from Sonoma Water.
- c. Emergency Maintenance
 - i. In the event of a catastrophic incident that causes total system failure, initiate the following procedures:
 - a) Log a service request into the Service Provider's ticket tracking system.
 - b) Alert Sonoma Water of the incident.
 - c) Estimate resolution time.
 - d) Start troubleshooting procedures.
 - e) Identify cause of incident.
 - f) Update Sonoma Water regarding the cause, solution, and estimated time of recovery.
 - g) Implement solution.
 - h) Prepare incident report and Root Cause Analysis.
 - i) Close request.
- d. Scheduled Maintenance
 - i. Perform scheduled maintenance on Sonoma Water servers as follows:
 - a) Database backup: Weekly; perform on weekends. Differential backups that capture only the data that has changed since the last full backup will occur thereafter.
 - b) Backup retention: Two weeks of data
 - c) Scans: Daily Antivirus updates and nightly virus scans
 - d) Windows Updates: Monthly
 - e) Perform scheduled application patching as requested in writing by Sonoma Water
 - f) Virtual machines: Full monthly backup
- e. Meeting Participation
 - i. As requested by Sonoma Water, conduct meetings (via phone, webinar, or other) to evaluate and prioritize projects.
 - ii. Provide summary of meetings to Sonoma Water via email including the following information:
 - a) Time and date of meeting
 - b) Project summaries and status
 - c) Priority
 - d) Personnel assigned to project
 - iii. Capture meeting summary information as needed and as part of status reporting.
- f. Transfer of services at beginning and end of Agreement term, as necessary.
 - i. Work with firm as directed by Sonoma Water to transfer data during a scheduled time.
 - ii. Transfer a copy of deliverables including, but not limited to:

- a) Notes of system configurations
- b) Notes of upgrades
- c) Copies of reports
- d) Any other deliverables, as requested by Sonoma Water

Deliverable	Due Date
Summary of meetings	Monthly with status report

1.2. Task 2: Monthly Reports

- a. Prepare monthly reports. Submit to Sonoma Water in accordance with the date listed for this deliverable.
- b. Include the following in each monthly report:
 - i. A detailed list of work performed
 - ii. Dates and subject of meetings conducted, meeting attendees, and summary of meeting results
 - iii. Other information as appropriate or as requested by Sonoma Water

Deliverable	Due Date
Monthly Report	Monthly with invoices

1.3. Task 3: Hourly Rate Services

- a. Perform Hourly Rate Services as requested in writing by Sonoma Water. Services may include, but are not limited to, software training as follows:
 - i. Coordinate training location (webinar or in person)
 - ii. Prepare written materials, such as standard or customized guides
 - iii. Submit summary of each training

Deliverable	Due Date
Training materials	Upon request by Sonoma Water
Customized BIRT reports	Upon request by Sonoma Water
Log of configuration changes	Quarterly in October, January, April, and July
Meeting Minutes	Within one business day of meeting
Integration of add-on	Upon request by Sonoma Water

2. DELIVERABLES

- 2.1. Submit one electronic copy in PDF format (emailed, on USB flash drive, or via internet) of each final deliverable to Sonoma Water.
- 2.2. Comply with requirements of Article 11 (Content Online Accessibility).

Exhibit B

Schedule of Costs

PERSONNEL	
Title	Rate
Process Definition, Technical Design; Principal Consultant	\$177.00 per hour
Functional Configuration, Technical Adaptation; Solution Consultant	\$156.98 per hour
Reporting; Analyst	\$138.00 per hour
EXPENSES	
Item	Cost
Subconsultant: Projetechn, Inc.	\$195 per hour
Copies	\$0.10 per page
Postage	at cost
Overnight mail	at cost
Mileage for personal car	Current IRS rate
Travel Expenses:* Rental car (midsize) Hotel Airfare (coach class) Meals *Travel Expenses to be pre-approved by Sonoma Water.	Daily rate, at cost At cost not to exceed \$200 per night At cost not to exceed \$440 per round trip At cost not to exceed \$90 per day, alcohol excluded

Exhibit C

Response Times and Severity Level Criteria

Expected Response Times

Severity Level of Ticket	Response Interval for Initial Ticket	First Technical Response	Update Response Interval	Estimated Resolution Time
1	Within 2 Business Hours by Email Immediate Acknowledgement by Phone Goal: Immediate whenever possible	4 Business Hours from Response Goal: As soon as Possible	1 hour	Within 6 hours
2	Within 4 business hours Immediate Acknowledgement by Phone Goal: Immediate	8 Business Hours from Response Goal: As soon as Possible	1 hour	Within 1 business day
3	Within 8 Business Hours Immediate Acknowledgement by Phone Goal: Within 2 Business Hours	24 Business Hours from Response Goal: As soon as Possible	48 hours	Within 7 business days
4	Within 24 business hours	72 Business Hours from Response	48 hours	Within 14 business days

	Immediate Acknowledgement by Phone Goal: Within 2 Business Hours	Goal: Same Day for Impacted Item		
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Severity Levels and Associated Criteria (Indicators)

Severity and Impact	Indicators
1 - Critical	<ul style="list-style-type: none"> • High visibility • Large number of orders or customers affected • Affects online commitment • Major impact on revenue • Major component not available for use • Major loss of functionality • Problem cannot be bypassed • No viable or productive work around available
2 - Serious	<ul style="list-style-type: none"> • Moderate visibility • Moderate to large number of users or devices affected • Potentially affects online commitment • Serious slow response times • Serious loss of functionality • Moderate impact on revenue • Limited use of product or component • Component continues to fail - intermittently down for short periods, but repetitive • Few or small files lost • Major access down but a partial backup exists
3 - Moderate	<ul style="list-style-type: none"> • Low to medium visibility • Low order or customer or device impact • Low impact on revenue

Severity and Impact	Indicators
	<ul style="list-style-type: none"><li data-bbox="613 245 1146 277">• Limited use of product or component<li data-bbox="613 285 1031 318">• Minimal loss of functionality
4 - Minimal	<ul style="list-style-type: none"><li data-bbox="613 332 905 365">• Low or no visibility<li data-bbox="613 373 1024 406">• Single client device affected<li data-bbox="613 414 968 446">• Few functions impaired<li data-bbox="613 454 1115 487">• Preventative maintenance request

Exhibit D

Insurance Requirements

With respect to performance of work under this Agreement, Service Provider shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

Sonoma Water reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Service Provider from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. INSURANCE

- 1.1. Workers Compensation and Employers Liability Insurance
 - a. Required if Service Provider has employees as defined by the Labor Code of the State of California.
 - b. If Service Provider currently has no employees as defined by the Labor Code of the State of California, Service Provider agrees to obtain the above-specified Workers Compensation and Employers' Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.
- 1.2. General Liability Insurance
 - a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
 - b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance. If Service Provider maintains higher limits than the specified minimum limits, Sonoma Water requires and shall be entitled to coverage for the higher limits maintained by Service Provider.
 - c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by Sonoma Water. Service Provider is responsible for any deductible or self-insured retention and shall fund it upon Sonoma Water's written request, regardless of whether Service Provider has a claim against the insurance or is named as a party in any action involving Sonoma Water.

- d. Sonoma County Sonoma Water, its officers, agents, and employees, shall be endorsed as additional insureds for liability arising out of operations by or on behalf of Service Provider in the performance of this Agreement.
- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the “f” definition of insured contract in Insurance Services Office form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and Service Provider and include a “separation of insureds” or “severability” clause which treats each insured separately.
- h. Required Evidence of Insurance:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status, and
 - ii. Certificate of Insurance.

1.3. Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Service Provider currently owns no autos, Service Provider agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

1.4. Standards for Insurance Companies

- a. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

1.5. Documentation

- a. The Certificate of Insurance must include the following reference:
TW 19/20-091.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Service Provider agrees to maintain current Evidence of Insurance on file with Sonoma Water for the entire term of this Agreement and any additional periods if specified in Sections 1.1, 1.2, or 1.3, above.
- c. The name and address for mailing Additional Insured endorsements and Certificates of Insurance is: Sonoma County Water Agency, Russian River

County Sanitation District, and Sonoma Valley County Sanitation District, 404 Aviation Boulevard, Santa Rosa, CA 95403-9019.

- d. Required Evidence of Insurance shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Service Provider shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

1.6. Policy Obligations

- a. Service Provider's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

1.7. Material Breach

- a. If Service Provider fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. Sonoma Water, at its sole option, may terminate this Agreement and obtain damages from Service Provider resulting from said breach. Alternatively, Sonoma Water may purchase the required insurance, and without further notice to Service Provider, Sonoma Water may deduct from sums due to Service Provider any premium costs advanced by Sonoma Water for such insurance. These remedies shall be in addition to any other remedies available to Sonoma Water.