

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT (Amendment) made and entered into as of this 11 day of June 2020, amends the Agreement heretofore entered into between the CITY OF FRESNO, a municipal corporation (City), and Accela, Inc., (Consultant).

RECITALS

WHEREAS, City and Consultant entered into an Agreement, dated June 3, 2016, for services related to professional services for Accela System Support (Agreement); and

WHEREAS, City and Consultant desire to enter into this First Amendment to modify the Agreement to extend the contract term length to June 30, 2023 and to increase the total 3-year Licensing Agreement by \$771,920.55 (**Exhibit B**).

AGREEMENT

NOW, THEREFORE, the parties agree that the Agreement be amended as follows:

1. The Consultant's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be increased a total fee not to exceed \$771,920.55, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit B** of the amendment.

2. The Term shall be extended until June 30, 2023.

3. The services of Consultant as defined in **Exhibit A** – Existing License and Maintenance Agreement of the original agreement shall be amended to include Additional Scope of Services in **Exhibit B**.

4. In the event of any conflict between the body of this Amendment and the Agreement, the terms and conditions of the body of this Amendment shall control and take precedence over the terms and conditions expressed within the Agreement. Furthermore, any terms or conditions contained within the Agreement which purport to modify the allocation of risk between the parties, provided for within the body of this Amendment, shall be null and void.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY OF FRESNO,
A California municipal corporation

ACCELA, INC., A California corporation

By: _____
Wilma Quan,
City Manager

By: _____

Name: _____

Title: _____
(If corporation or LLC., Board Chair,
Pres. or Vice Pres.)

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Brandon M. Collet 6/17/2020
Senior Deputy City Attorney Date

By: Bobby Wilson
Name: Bobby Wilson
DocuSigned by:
E24A892E4A1E434

Title: CFO
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

REVIEWED BY: _____
Summer Cecil

By: _____
Deputy Date

Addresses:
CITY:
City of Fresno
Attention: Summer Cecil
Project Manager
2600 Fresno Street, Suite 3065
Fresno, CA 93721
Phone: (559) 621-8166
Email: Summer.Cecil@fresno.gov

CONSULTANT:
Accela, Inc.
Attention: Audrey Zuro
Project Manager
2633 Camino Ramon, Suite Bishop Ranch
3
San Ramon, CA 94583
Phone: (925) 659-3200
FAX: (925) 407-2722

- Attachments:
1. Exhibit A – Existing License and Maintenance Agreement
 2. Exhibit B – 3-Year Licensing Renewal Proposal

Exhibit A: Existing License and Maintenance Agreement

Exhibit D

LICENSE AGREEMENT

Consultant Service Agreement between City of Fresno ("City")
and Accela ("Consultant")

1. <u>Parties</u>	ACCELA Accela, Inc. 2633 Camino Ramon, Suite 120 Bishop Ranch 3 San Ramon, California 94583 Attention: Contracts Administration T: 925.659.3200 F: 925.407.2722 e-Mail: contractsadmin@accela.com	CUSTOMER City of Fresno 2600 Fresno Street Fresno, CA 93721 Attention: Bonique Emerson T: (559) 621-8024 F: (559) 498-1026 e-Mail: Bonique.Emerson@fresno.gov
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This License Agreement ("LA") is intended for the exclusive benefit of the Parties; nothing herein will be construed to create any benefits, rights, or responsibilities in any other parties.

2. Term and Termination.

2.1 Term. Provided that Customer signs and returns this LA to Accela **no later than June 27, 2016**, this LA is effective as of the date of Customer's signature ("Effective Date") and will continue until terminated as provided herein.

2.2 Termination. Either party may terminate if the other party materially breaches this LA and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within thirty (30) calendar days. Upon any termination or expiration of this LA, all rights granted to Customer are cancelled and revert to Accela.

3. Intellectual Property License.

3.1 License. The software products ("Software") listed in Exhibit A are protected under the laws of the United States and the individual states and by international treaty provisions. Accela retains full ownership in the Accela Software and grants to Customer a limited, nonexclusive, nontransferable license to use the Software, subject to the following terms and conditions:

3.1.1 The Software is provided for use only by Customer employees, and by Customer's contractors, agents and officials when and to extent utilized for the direct benefit of Customer.

3.1.2 The Software will be delivered or made available to Customer for electronic download from Accela's File Transfer Protocol ("FTP") site.

3.1.3 The Software may be installed on one or more computers but may not be used by more than the number of users for which the Customer has named user licenses. The Software is deemed to be in use when it is loaded into memory in a computer, regardless of

whether a user is actively working with the Software. Accela may audit Customer's use of the Software to ensure that Customer has paid for an appropriate number of licenses. Should the results of any such audit indicate that Customer's use of the Software exceeds its licensed allowance, Customer agrees to pay all costs of its overuse, retroactive to the date of non-compliance, as determined using Accela's pricing at the date of non-compliance; any such assessed costs will be due and payable by Customer upon assessment. Customer agrees that Accela's assessment of overuse costs pursuant to this Subsection is not a waiver by Accela of any other remedies available to Accela in law and equity for Customer's unlicensed use of the Software.

- 3.1.4 Customer may make backup copies of the Software only to protect against destruction of the Software. Customer may copy Accela's documentation only for internal use by Customer's employees.
- 3.1.5 Customer may not make any form of derivative work from the Software, although Customer is permitted to develop additional or alternative functionality for the Software using tools and/or techniques licensed to Customer by Accela.
- 3.1.6 Customer may not obscure, alter, or remove any confidentiality or proprietary rights notices.
- 3.1.7 Customer is liable to Accela for any losses incurred as the result of unauthorized reproduction or distribution of the Software which occur while the Software is in Customer's possession or control.
- 3.1.8 Customer may use the Software only to process transactions relating to properties within both its own geographical and political boundaries and may not sell, rent, assign, sublicense, lend, or share any of its rights under this LA.
- 3.1.9 Customer is entitled to receive the Software compiled (object) code and is licensed to use any data code produced through implementation and/or normal operation of the Software; Customer is not entitled to receive source code for the Software except pursuant to an Intellectual Property Escrow Agreement, which may be executed separately by the Parties. Customer may not decompile or reverse-engineer the Software.
- 3.1.10 All rights not expressly granted to Customer are retained by Accela.
- 3.1.11 If a third-party product is sold by Accela pursuant to this agreement, it shall be licensed pursuant to the terms and conditions of the manufacturer of the product and the terms and conditions of this license shall not be applicable.

3.2 License Warranties and Indemnity.

- 3.2.1 **Warranty:** Accela warrants that it has full power and authority to grant this license and that, as of the effective date of this LA, the Software does not infringe on any existing intellectual property rights of any third party. If a third party claims that the Software does infringe,

Accela shall secure for Customer the right to continue using the Software or modify the Software so that it does not infringe.

Indemnity: To the furthest extent allowed by law, Accela shall indemnify, hold harmless and defend Customer and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by Customer, Accela or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), to the extent arising or alleged to have arisen directly or indirectly out of: (1) Software infringement; and (2) performance of this Contract. Accela's obligations under the preceding sentence shall apply regardless of whether Customer or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of Customer or any of its officers, officials, employees, agents, or volunteers.

If Accela should subcontract all or any portion of the work to be performed under this Contract, Accela shall require each subcontractor to indemnify, hold harmless and defend Customer and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph. This section shall survive termination or expiration of this Contract. Accela will have the sole right to conduct the defense of any legal action and all negotiations for its settlement or compromise.

- 3.2.2 Accela has no warranty or indemnity obligation for any claim based upon a modified version of the Software or the combination or operation of the Software with any product, data, or apparatus not provided by Accela. Accela provides no warranty whatsoever for any third-party hardware or software products.
- 3.2.3 Except as expressly set forth herein, Accela disclaims any and all express and implied warranties, including but not necessarily limited to warranties of merchantability and fitness for a particular purpose.

3.3 Compensation.

- 3.3.1 License Fees. In exchange for the Software described hereinabove, Customer will pay to Accela the amounts indicated in Exhibit A.
- 3.3.2 Payment Terms. Amounts are quoted in United States dollars and do not include applicable taxes, if any. Customer will be responsible for payment of all federal, state or provincial, and local taxes and duties, except those based on Accela's income. If Customer is exempt from certain taxes, Customer will provide Accela with an appropriate certificate of exemption. Customer will be invoiced for all amounts upon occurrence of the billing events described in Exhibit A.

The payment terms of all invoices are net thirty (30) calendar days from the dates of the invoices. Accela may, at its sole discretion, suspend its obligations hereunder without penalty until payments for all past-due billings have been paid in full by Customer.

4. Confidentiality.

4.1 Definitions. "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. Either Accela or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section:

- a) information which is in Recipient's possession prior to disclosure by Disclosing Party;
- b) information which is available to Recipient from a third party without violation of this LA or Disclosing Party's intellectual property rights;
- c) information disclosed pursuant to Subsection 4.4 below;
- d) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party;
- e) information which is subpoenaed by governmental or judicial authority; and
- f) information subject to disclosure pursuant to a state's public records laws.

4.2 Confidentiality Term. The obligations described in this Section commence on the Effective Date and will continue until two (2) years following any termination or expiration of this LA ("Confidentiality Term").

4.3 Confidentiality Obligations. During the Confidentiality Term, Recipient will protect the confidentiality of Confidential Information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect

Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents under its control and direction in the normal course of its business and only on a need-to-know basis. In responding to a request for Confidential Information, Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner not inconsistent with applicable laws, to protect the Confidential Information to the fullest extent possible.

- 4.4 Publicity. During the term of this LA, including the term of any amendment hereto, Accela may publicly disclose its ongoing business relationship with Customer. Such disclosures may indicate Customer's identity and the Accela product(s) and services provided or contracted to be provided to Customer. These disclosures may include press releases or other communications to media, display on Accela web sites, or use in other marketing activities, but will not include non-public information or indicate Customer's express endorsement of Accela's products or services without Customer's prior written authorization.

5. Other Terms and Conditions

- 5.1 Dispute Resolution. This LA is governed by the laws of the State of California. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by binding arbitration in the County of Fresno under the provisions of the California Arbitration Act (CCP §§1280 et seq.) before an arbitrator. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator mutually agreed to by the Parties and shall include a written record of the arbitration hearing. The place of arbitration will be Fresno County, California. Either party may apply to the arbitrator for injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this LA, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitrator's determination of the merits of the controversy. Each party will initially bear its own expenses and an equal share of the costs of the arbitration, but the prevailing party may be awarded its expenses, reasonable attorneys' fees, and costs. The failure of either party to object to a breach of this LA will not prevent that party from thereafter objecting to that breach or any other breach of this LA. Either Party may file an action in a court of competent jurisdiction, in accordance with the agreement as to jurisdiction provided herein, to seek legal remedy on the grounds that the arbitrator's decision was based on mistake of law, or made with bias.

- 5.2 Removal and Destruction of Software. Within ten (10) business days following termination of this LA by either Party, Customer will remove all copies of the Software from those computer systems which it owns or controls and will destroy all media which contain copies of the Software or portions thereof. Customer will certify said removal and destruction to Accela within fifteen (15) business days following termination of this LA.
- 5.3 Assignment. Accela may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets.
- 5.4 Survival The following provisions will survive the termination or expiration of this LA: Section 3.3 and all subsections thereof, as to Customer's obligation to pay any fees accrued or due at the time of termination or expiration; Section 4 and all subsections thereof; and Section 5, and all subsections thereof.
- 5.5 Alternate Terms Disclaimed. The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.
- 5.6 Severability and Amendment If any particular provision of this LA is determined to be invalid or unenforceable, that determination will not affect the other provisions of this LA, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of this LA will be effective unless it is described in writing and signed by the Parties.
- 5.7 Precedence of Contract Documents. In the event of conflict between this LA and the Consultant Services Agreement, the Consultant Services Agreement shall control and take precedence over terms expressed herein.

Attachment: Exhibit I

Exhibit E
Citywide Land Management System
MAINTENANCE AGREEMENT

- | | | |
|-------------------|--|---|
| 1. <u>Parties</u> | ACCELA
Accela, Inc.
2633 Camino Ramon, Suite
Bishop Ranch 3
San Ramon, California
Attention: Contracts
T: 925.659.3200
F: 925.407.2722
e-Mail:
contractsadmin@accela.co | CUSTOMER

City of Fresno
2600 Fresno Street

Attention: Bonique Emerson
T: (559) 621-8024
F: (559) 498-1026
e-Mail:
Bonique.Emerson@fresno.gov |
|-------------------|--|---|

This Maintenance Agreement ("MA") is intended for the exclusive benefit of the Parties; nothing herein will be construed to create any benefits, rights, or responsibilities in any other parties.

2. Term and Termination.

Term. Provided that Customer signs and returns this MA to Accela **no later than June 27, 2016**, this MA is effective as of the date of Customer's signature and will continue for a period of 4 years, through June 30, 2020. Customer may elect to continue its maintenance coverage for additional annual terms by paying to Accela the fees associated with such terms when these are due; said fees will not increase by more than three percent (3%) from the maintenance fees for the preceding term for the first, three annual renewals. Should Customer fail to renew its maintenance coverage or pay the applicable fees, Accela reserves the right to withhold all support. If Customer resumes maintenance coverage after one or more periods without such coverage, Customer will pay an amount equivalent to 110% of all maintenance fees attributable to the period(s) without coverage, as such fees are calculated based upon pricing in effect at the time of resumption of maintenance coverage.

- 2.1 Termination. Either party may terminate if the other party materially breaches this MA and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within a reasonable time, not to exceed thirty (30) calendar days, unless otherwise agreed by the Parties. Upon any termination or expiration of this MA, all rights granted to Customer are cancelled and revert to Accela. The City may terminate this agreement with sixty calendar days' notice upon the other party.

3. Scope of Maintenance.

3.1 Maintenance Services.

- 3.1.1 Telephone Support. Accela will provide Customer with a telephone number to contact Accela Customer Support, Accela's live technical support facility, which is available from 4:00 a.m. until 6:00 p.m. Pacific time Monday through Friday, excluding Accela's observed holidays.

- 3.1.2 E-Mail Support. Accela will provide Customer with one or more electronic mail addresses to which Customer may submit routine or non-critical support requests, which Accela will address during its regular business hours.
- 3.1.3 Online Support. Accela will provide Customer with access to archived software updates and other technical information in Accela's online support databases, which are continuously available.
- 3.1.4 Remote Support. When required to properly resolve a maintenance request, Accela will provide remote assistance to Customer via a web conferencing environment or another mutually- acceptable remote communications method.
- 3.1.5 On-Site Support. If Customer does not wish for Accela to resolve its maintenance requests remotely, Accela will provide on-site assistance to Customer at Accela's then-current time-and- materials rates. In addition to these charges, Customer will compensate Accela for associated airfare, lodging, rental transportation, meals, and other incidental expenses as such expenses accrue.
- 3.1.6 Software Updates. Accela will provide revisions of and enhancements to maintained software products to Customer as such updates are generally-released by Accela. Software updates will be delivered or made available to Customer for electronic download from Accela's File Transfer Protocol ("FTP") site.

3.2 Maintenance Limitations.

- 3.2.1 Limitations Generally. The following are not covered by this MA, but may be separately available at rates and on terms which may vary from those described herein:
 - a) Services required due to misuse of the Accela-maintained software products;
 - b) Services required due to software corrections, customizations, or modifications not developed or authorized by Accela;
 - c) Services required by Customer to be performed by Accela outside of Accela's usual working hours;
 - d) Services required due to external factors including, but not necessarily limited to, Customer's use of software or hardware not authorized by Accela;
 - e) Services required due to the operation of interfaces between the Accela-maintained software products and other software products or systems, even where such interfaces were provided or implemented by Accela;
 - f) Services required to resolve or work-around conditions which cannot be reproduced in Accela's support environment;
 - g) Services which relate to tasks other than maintenance of Customer's existing implementation and configuration of the Accela-maintained software products including, but not

necessarily limited to, enhancing or adapting such products for specific operating environments;

- h) Services requested by Customer to implement software updates provided by Accela pursuant to this MA; and
- i) New or additional applications, modules, or functionality released by Accela during the term of this MA.

3.2.2 Legacy Releases. Accela will provide maintenance support for the current release of each of its maintained software applications and for the release immediately preceding such current release. All other releases are deemed to be "Legacy Releases". Accela will respond to maintenance requests concerning Legacy Releases only using currently-available information. Services requiring additional research, engineering-level support, or coding or programming by Accela will not be provided pursuant to this MA, but may be separately available at rates and on terms which may vary from those described herein.

3.3 Warranty. Accela will commence and complete the maintenance obligations described in this MA in a good and workmanlike manner, consistent with the practices and standards of care generally-accepted within and expected of Accela's industry, to ensure that the operation of the maintained software products does not materially differ from documented specifications. Accela may make repeated efforts within a reasonable time period to resolve maintenance requests. When a maintenance request cannot be resolved. To the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, customer's remedy will be damages in an amount equal to one and a half time (1.5X) the total of maintenance fees paid to Accela for the defective or non-conforming software products for the twelve (12) calendar months immediately preceding Customer's maintenance request.

3.4 Compensation.

3.4.1 Maintenance Fees. In exchange for the Maintenance Services described hereinabove, Customer will pay to Accela the amounts indicated in Exhibit 1.

3.4.2 Payment Terms. Amounts are quoted in United States dollars and do not include applicable taxes, if any. Customer will be responsible for payment of all federal, state or provincial, and local taxes and duties, except those based on Accela's income. If Customer is exempt from certain taxes, Customer will provide Accela with an appropriate certificate of exemption. Customer will be invoiced for all amounts upon occurrence of the billing events described in Exhibit 1. The payment terms of all invoices are net thirty calendar days from the dates of the invoices. Accela may, at its sole discretion, suspend its obligations hereunder without penalty until payments for all past-due billings have been paid in full by Customer.

4. Confidentiality.

4.1 Definitions. "Disclosing Party" and "Recipient" refer respectively to the party which discloses information and the party to which information is disclosed in a given exchange. Either Accela or Customer may be deemed Disclosing Party or Recipient depending on the circumstances of a particular communication or transfer of information. "Confidential Information" means all disclosed information relating in whole or in part to non-public data, proprietary data compilations, computer source codes, compiled or object codes, scripted programming statements, byte codes, or data codes, entity-relation or workflow diagrams, financial records or information, client records or information, organizational or personnel information, business plans, or works-in-progress, even where such works, when completed, would not necessarily comprise Confidential Information. The foregoing listing is not intended by the Parties to be comprehensive, and any information which Disclosing Party marks or otherwise designates as "Confidential" or "Proprietary" will be deemed and treated as Confidential Information. Information which qualifies as "Confidential Information" may be presented to Recipient in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as Confidential Information. Notwithstanding, the following specific classes of information are not "Confidential Information" within the meaning of this Section:

- a) information which is in Recipient's possession prior to disclosure by Disclosing Party;
- b) information which is available to Recipient from a third party without violation of this MA or Disclosing Party's intellectual property rights;
- c) information disclosed pursuant to Subsection 4.4 below;
- d) information which is in the public domain at the time of disclosure by Disclosing Party, or which enters the public domain from a source other than Recipient after disclosure by Disclosing Party;
- e) information which is subpoenaed by governmental or judicial authority; and
- f) information subject to disclosure pursuant to a state's public records laws.

4.2 Confidentiality Term. The obligations described in this Section commence on the Effective Date and will continue until two (2) years following any termination or expiration of this MA ("Confidentiality Term").

Confidentiality Obligations. During the Confidentiality Term, Recipient will protect the confidentiality of Confidential Information using the same degree of care that it uses to protect its own information of similar importance, but will in any case use no less than a reasonable degree of care to protect Confidential Information. Recipient will not directly or indirectly disclose Confidential Information or any part thereof to any third party without Disclosing Party's advance express written authorization to do so. Recipient may disclose Confidential Information only to its employees or agents under its control and direction in the normal course of its business and only on a need-to-know basis. In responding to a request for Confidential Information,

Recipient will cooperate with Disclosing Party, in a timely fashion and in a manner not inconsistent with applicable laws, to protect the Confidential Information to the fullest extent possible.

- 4.3 Publicity. During the term of this MA, including the term of any amendment hereto, Accela may publicly disclose its ongoing business relationship with Customer. Such disclosures may indicate Customer's identity and the Accela product(s) and services provided or contracted to be provided to Customer. These disclosures may include press releases or other communications to media, display on Accela web sites, or use in other marketing activities, but will not include non-public information or indicate Customer's express endorsement of Accela's products or services without Customer's prior written authorization.

5. Other Terms and Conditions.

- 5.1 Customer Obligations. As required, Customer will provide Accela with appropriate access to Customer's facilities, data systems, and other resources. If security restrictions impair such access, Customer acknowledges that some maintenance services hereunder may not be provided to Customer. It is Customer's sole responsibility to maintain current backup copies of its data and of its implementation of Accela's software products. If Customer's failure to create proper backups substantially increases the difficulties of any remedial actions by Accela hereunder, Accela reserves the right to charge Customer for any extra work reasonably-attributable to such increased difficulty, as calculated at Accela's then-current time-and-materials rates.
- 5.2 Proprietary Rights. The remedial methods, software updates, and product information provided to Customer pursuant to this MA are protected under the laws of the United States and the individual states and by international treaty provisions. Accela retains full ownership in such items and grants to Customer a limited, nonexclusive, nontransferable license to use the items, subject to the terms and conditions of this MA and other agreements between Accela and Customer.
- 5.3 Limitation of Liability. Accela provides no warranty whatsoever for any third-party hardware or software products. If a third-party product is supplied by Accela, no support for any third party product is provided, unless an addendum is attached hereto, identifying the product and specifying the terms and conditions of any support. Third-party applications which utilize or rely upon the application services may be adversely affected by remedial or other actions performed pursuant to this MA; Accela bears no liability for and has no obligation to remedy such effects. Except as set forth herein, Accela provides all Maintenance Services "as is" without express or implied warranty of any kind regarding the character, function, capabilities, or appropriateness of such services or deliverables. To the extent not offset by its insurance coverage and to the maximum extent permitted by applicable laws, in no event will Accela's cumulative liability for any general, incidental, special, compensatory, or punitive damages whatsoever suffered by Customer or any other person or entity exceed a sum that is one and half time (1.5X) the fees

paid to Accela by Customer during the twelve (12) calendar months immediately preceding the circumstances which give rise to such claim(s) of liability, even if Accela or its agents have been advised of the possibility of such damages.

- 5.4 Force Majeure. If either party is delayed in its performance of any obligation under this MA due to causes or effects beyond its control, that party will give timely notice to the other party and will act in good faith to resume performance as soon as practicable.
- 5.5 Dispute Resolution. This MA is governed by the laws of the State of California. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by binding arbitration in the County of Fresno under the provisions of the California Arbitration Act (CCP §§1280 et seq.) before an arbitrator. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys' fees. Any such arbitration shall be conducted by an arbitrator mutually agreed to by the Parties and shall include a written record of the arbitration hearing. The place of arbitration will be Fresno County, California. Either party may apply to the arbitrator for injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this MA, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the arbitrator's determination of the merits of the controversy. Each party will initially bear its own expenses and an equal share of the costs of the arbitration, but the prevailing party may be awarded its expenses, reasonable attorneys' fees, and costs. The failure of either party to object to a breach of this MA will not prevent that party from thereafter objecting to that breach or any other breach of this MA. Either Party may file an action in a court of competent jurisdiction, in accordance with the agreement as to jurisdiction provided herein, to seek legal remedy on the grounds that the arbitrator's decision was based on mistake of law, or made with bias.
- 5.6 Assignment. Accela may assign its rights and obligations hereunder for purposes of financing or pursuant to corporate transactions involving the sale of all or substantially all of its stock or assets. Accela may subcontract with qualified third parties to provide portions of the Maintenance Services described hereinabove.
- 5.7 Survival. The following provisions will survive the termination or expiration of this MA: Section 2.1, as to Customer's obligation to pay any fees associated with a lapse in maintenance coverage upon resumption of such coverage; Section 3.3, as to limitation of remedy; Section 3.4 and all subsections thereof, as to Customer's obligation to pay any fees accrued or due at the time of termination or expiration; Section 4 and all subsections thereof; and Section 5 and all subsections thereof with the exceptions of Subsections 5.1 and 5.4.

- 5.8 Alternate Terms Disclaimed. The parties expressly disclaim any alternate terms and conditions accompanying drafts and/or purchase orders issued by Customer.
- 5.9 Severability and Amendment. If any particular provision of this MA is determined to be invalid or unenforceable, that determination will not affect the other provisions of this MA, which will be construed in all respects as if the invalid or unenforceable provision were omitted. No extension, modification, or amendment of this MA will be effective unless it is described in writing and signed by the Parties.
- 5.10 Precedence of Contract Documents. In the event of conflict between this MA and the Consultant Services Agreement, the Consultant Services Agreement shall control and take precedence over terms expressed herein.

Attachment: Exhibit 1

Exhibit B: 3-Year Licensing Renewal



2633 Camino Ramon, Suite 500
San Ramon, CA 94583

Proposed by: Becky O'Brien
Contact Phone: (925) 359-3334
Contact Email: robrien@acela.com
Quote ID: Q-18492
Valid Through: 07/01/2020
Currency: USD

RENEWAL ORDER FORM

Address Information

Bill To:

City of Fresno
2600 Fresno Street
Fresno, California 93721
United States

Ship To:

City of Fresno
2600 Fresno Street
Fresno, California 93721
United States

Billing Contact: Bonique Emerson
Billing Phone: (559) 621-8024
Billing Email: Bonique.emerson@fresno.gov

Services

Services	Start Date	End Date	Term (Mths)	Unit Price	Quantity	Total Price
Accela Citizen Access Population Fee Annual Maintenance and Support	07/01/2020	06/30/2021	12	\$0.02	509,924.00	\$8,246.67
Accela Citizen Access Module Fee Annual Maintenance and Support	07/01/2020	06/30/2021	12	\$2,227.49	1.00	\$2,227.49
Accela Citizen Access Server Software Annual Maintenance and Support	07/01/2020	06/30/2021	12	\$2,227.49	1.00	\$2,227.49
Accela Land Management Annual Maintenance and Support	07/01/2020	06/30/2021	12	\$509.76	290.00	\$147,831.82
Accela GIS Annual Maintenance and Support	07/01/2020	06/30/2021	12	\$141.12	205.00	\$28,929.34
Accela Mobile Annual Maintenance and Support	07/01/2020	06/30/2021	12	\$524.15	115.00	\$60,276.93
					Total	\$249,739.74

Services Year 2	Start Date	End Date	Term (months)	Unit Price	Quantity	Total Price
Accela Citizen Access Population Fee Annual Maintenance and Support	07/01/2021	06/30/2022	12	\$0.02	509,924.00	\$8,494.07
Accela Citizen Access Module Fee Annual Maintenance and Support	07/01/2021	06/30/2022	12	\$2,294.31	1.00	\$2,294.31
Accela Citizen Access Server Software Annual Maintenance and Support	07/01/2021	06/30/2022	12	\$2,294.31	1.00	\$2,294.31
Accela Land Management Annual Maintenance and Support	07/01/2021	06/30/2022	12	\$525.06	290.00	\$152,266.77
Accela GIS Annual Maintenance and Support	07/01/2021	06/30/2022	12	\$145.35	205.00	\$29,797.22
Accela Mobile Annual Maintenance and Support	07/01/2021	06/30/2022	12	\$539.87	115.00	\$62,085.24
Total						\$257,231.92

Services Year 3	Start Date	End Date	Term (months)	Unit Price	Quantity	Total Price
Accela Citizen Access Population Fee Annual Maintenance and Support	07/01/2022	06/30/2023	12	\$0.02	509,924.00	\$8,748.89
Accela Citizen Access Module Fee Annual Maintenance and Support	07/01/2022	06/30/2023	12	\$2,363.14	1.00	\$2,363.14
Accela Citizen Access Server Software Annual Maintenance and Support	07/01/2022	06/30/2023	12	\$2,363.14	1.00	\$2,363.14
Accela Land Management Annual Maintenance and Support	07/01/2022	06/30/2023	12	\$540.81	290.00	\$156,834.78
Accela GIS Annual Maintenance and Support	07/01/2022	06/30/2023	12	\$149.71	205.00	\$30,691.14
Accela Mobile Annual Maintenance and Support	07/01/2022	06/30/2023	12	\$556.07	115.00	\$63,947.80
Total						\$264,948.89

Renewal Terms / Information

General Information	
Governing Agreement(s)	This Order Form will be governed by the applicable terms and conditions. If those terms and conditions are non-existent, have expired or have otherwise been terminated, the following terms will govern as applicable, based on the Customer's purchase: www.accela.com/terms .

Order Terms	
Order Start Date	Unless otherwise specified in the Special Order Terms: <ul style="list-style-type: none"> • Software Licenses & Subscriptions start on the date of delivery by Accela; • Hosting and Support start on Accela's delivery of the software hosted and/or supported;
Order Duration	Unless otherwise specified in the Special Order Terms: <ul style="list-style-type: none"> • Subscriptions continue from the Order Start Date through the number of months listed in this Order Form (or if not listed, twelve (12) months). Thereafter Subscriptions automatically renew annually as calculated from Order Start Date of Customer's first Subscription purchase. • Any Software Licenses or Hardware are one-time, non-refundable purchases. • Hosting and Support continue from the Order Start Date through the number of months listed in this Order Form (or if not listed, twelve (12) months). • Professional Services continue for the duration as outlined in the applicable Statement of Work, Exhibit or the Governing Agreement, as applicable.
Special Order Terms	This Order Form replaces all previous order forms for the terms listed above and will govern the Software, Maintenance, and/or Services items listed on Page 2 of this Order Form. <ul style="list-style-type: none"> • In the event of an inconsistency between this Order Form, any governing agreement, purchase order, or invoice, the Order Form shall govern as it pertains to this transaction. • For Software Licenses, Accela may terminate this Order Form in the event the Software is phased out across Accela's customer base. In such event, Accela will provide Customer sufficient advance notice and the parties will mutually agree to a migration plan for converting Customer to another Accela generally-available offering with comparable functionality.

Payment Terms		
Currency	USD	
Invoice Date	Unless otherwise stated in the Special Payment Terms, Invoice for the Grand Total \$ above will be issued on the Order Start Date.	
Payment Due Date	Unless otherwise stated in the Special Payment Terms or the Governing Agreement(s), all payments are due on the Invoice Date and payable net 30 days .	
Special Payment Terms	None unless otherwise specified in this section.	
Purchase Order	If Customer requires PO number on invoices, it must be provided to the right and Customer must provide copy of the PO prior to invoice issuance. If no PO number provided prior to invoice issuance date, invoices issued on this Order Form will be valid without a PO reference. <table border="1" style="float: right; margin-left: 20px;"> <tr> <td style="width: 50px; height: 20px;">PO#</td> </tr> </table>	PO#
PO#		

Accela	Customer
By: _____ <i>(Signature)</i>	By: _____ <i>(Signature)</i>
_____ <i>(Print Name)</i>	_____ <i>(Print Name)</i>
Its: _____ <i>(Title)</i>	Its: _____ <i>(Title)</i>
Dated: _____ <i>(Month, Day, Year)</i>	Dated: _____ <i>(Month, Day, Year)</i>