

CONSULTANT: Cayenta, a division of N. Harris Computer Corporation
CONTACT PERSON: Vice President, Professional Services
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Burnaby, BC V5J 5K7
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COUNTY DEPT: Information Technology
DEPT. CONTACT PERSON: Matt Crisler
TELEPHONE/FAX NUMBER: (425) 388-3162
PROJECT: Cayenta Upgrade
AMOUNT: \$907,454.00
FUND SOURCE: 31 51144164907
CONTRACT DURATION: October 1, 2021 through August 31, 2023,
unless extended or renewed pursuant to
Section 2 hereof

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT (the “Agreement”) is made by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the “County”) and Cayenta, a division of N. Harris Computer Corporation, an Ontario, Canada corporation (the “Contractor”). In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. Purpose of Agreement; Scope of Services. The purpose of this Agreement is to provide the County with professional services to upgrade and configure Cayenta software (the “Services” or “Professional Services”) as detailed in the statement of work attached as Schedule A or any subsequent statement of work (each, a “Statement of Work”). The scope of the Services is as defined in Schedule A attached hereto and by this reference made a part hereof. This Agreement is the product of County Sole Source Award No. SS-002-21.

The Services shall be performed in accordance with the requirements of this Agreement and with generally accepted practices prevailing in the western Washington region in the occupation or industry in which the Contractor practices or operates at the time the Services are performed. The Contractor shall perform the work in a timely manner and in accordance with the terms of this Agreement. Any materials or equipment used by the Contractor in connection with

performing the Services shall be of good quality. The Contractor represents that it is fully qualified to perform the Services to be performed under this Agreement in a competent and professional manner.

The Contractor will prepare and present status reports and other information regarding performance of the Services pursuant to this Agreement as the County may request.

2. Term of Agreement; Time of Performance. This Agreement shall be effective October 1, 2021 and shall terminate on August 31, 2023 (“Initial Term”), PROVIDED, HOWEVER, that the term of this Agreement may be extended or renewed for up to two (2) additional two (2) year terms (each a “Renewal Term”), at the sole discretion of the County, by written notice from the County to the Contractor. The Initial Term and the Renewal Terms shall collectively be referred to as the “Term”). The Contractor shall commence the Services upon the Effective Date, PROVIDED, HOWEVER, that the County’s obligations after December 31, 2021 are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with the County Charter and applicable law. For clarity and notwithstanding non-appropriation of necessary funds, the County remains responsible for payment of all fees associated with the Professional Services provided by Contractor up to and including termination of this Agreement.

3. Compensation.

a. Services. The County will pay the Contractor the fees for Services as set forth in the Compensation Schedule contained in Appendix A to the Statement of Work (the “Fees”) and in accordance with the payment schedule set forth in Appendix A to the Statement of Work (“Appendix A”), which is attached hereto and by this reference made a part of this Agreement.

b. Overhead and Expenses. The Contractor’s compensation for Services includes overhead but does not include specific reimbursable expenses, which will be allowed only as and to the extent set forth in Appendix A.

c. Invoices. Upon completion of each milestone, the Contractor shall submit a properly executed invoice to the County indicating that all of the Services associated with a particular milestone have been performed and the amount of the flat fee due from the County. The invoice shall include an itemization of any reimbursable expenses incurred by the Contractor in performing the Services, together with reasonable documentation substantiating such expenses, all in accordance with this Section 3 and Appendix A. Subject to Section 12 of this Agreement, the County will pay the invoice within thirty (30) calendar days of receipt.

d. Payment. The County’s preferred method of payment under this contract is electronic using the County’s “e-Payable” system with Bank of America. The Contractor is highly encouraged to take advantage of the electronic payment method.

In order to utilize the electronic payment method, the Contractor shall email SnocoEpaybles@snoco.org and indicate it was awarded a contract with Snohomish County and will be receiving payment through the County’s e-Payable process. The Contractor needs to

provide contact information (name, phone number and email address). The Contractor will be contacted by a person in the Finance Accounts Payable group and assisted with the enrollment process. This should be done as soon as feasible after County award of a contract or purchase order, but not exceeding ten (10) business days.

Department approved invoices received in Finance will be processed for payment within seven calendar days for e-Payable contractors. Invoices are processed for payment by Finance two times a week for contractors who have selected the e-Payable payment option.

In the alternative, if the Contractor does not enroll in the electronic (“e-Payable”) payment method described above, contract payments will be processed by Finance with the issuance of paper checks or, if available, an alternative electronic method. Alternative payment methods, other than e-Payables, will be processed not more than 30 days from receipt of department approved invoices to Finance.

THE COUNTY MAY MAKE PAYMENTS FOR PURCHASES UNDER THIS CONTRACT USING THE COUNTY’S VISA PURCHASING CARD (PCARD).

Upon acceptance of payment, the Contractor waives any claims for the goods or services covered by the Invoice. No advance payment shall be made for the goods or services furnished by Contractor pursuant to this Contract.

e. Payment Method. In addition to Payment section above, the County may make payments for purchases under this contract using the County’s VISA purchasing card (PCARD).

Are you willing to accept PCARD payments without any fees or surcharges?

Yes No

f. Contract Maximum. Total charges under this Agreement, all fees and expenses included, shall not exceed \$797,430.00 for services and \$110,024.00 for software licensing during the initial term of this Agreement (excluding extensions or renewals, if any).

g. Late Payment. In the event The County fails to pay all or any portion of an invoice on or before ninety (90) days after the date it becomes due, in addition to all other remedies Contractor has under this Agreement or otherwise, Contractor shall have the option to suspend or terminate all Services under this Agreement. Suspension or termination of any such Services shall not relieve the County of its obligation to pay its outstanding invoices, including any applicable late charges.

4. Independent Contractor. The Contractor agrees that Contractor will perform the Services under this Agreement as an independent contractor and not as an agent, employee, or servant of the County. This Agreement neither constitutes nor creates an employer-employee relationship. The parties agree that the Contractor is not entitled to any benefits or rights enjoyed by employees of the County. The Contractor specifically has the right to direct and control Contractor’s own activities in providing the Services in accordance with the specifications set out in this Agreement. The County shall only have the right to ensure performance. Nothing in this Agreement shall be construed to render the parties partners or joint venturers.

The Contractor shall furnish, employ and have exclusive control of all persons to be engaged in performing the Contractor’s obligations under this Agreement (the “Contractor

personnel”), and shall prescribe and control the means and methods of performing such obligations by providing adequate and proper supervision. Such Contractor personnel shall for all purposes be solely the employees or agents of the Contractor and shall not be deemed to be employees or agents of the County for any purposes whatsoever. With respect to Contractor personnel, the Contractor shall be solely responsible for compliance with all rules, laws and regulations relating to employment of labor, hours of labor, working conditions, payment of wages and payment of taxes, including applicable contributions from Contractor personnel when required by law.

Because it is an independent contractor, the Contractor shall be responsible for all obligations relating to federal income tax, self-employment or FICA taxes and contributions, and all other so-called employer taxes and contributions including, but not limited to, industrial insurance (workers’ compensation). The Contractor agrees to indemnify, defend and hold the County harmless from any and all claims, valid or otherwise, made to the County because of these obligations.

The Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes, fees, licenses, excises or payments required by any city, county, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the Contractor and as to all duties, activities and requirements by the Contractor in performance of the work under this Agreement. The Contractor shall assume exclusive liability therefor, and shall meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith. For clarity, the Fees are exclusive of taxes. County agrees to pay all applicable sales and use taxes, unless it provides Contractor with a tax exemption certificate acceptable to the applicable taxing authorities.

5. Ownership. County agrees that Contractor may install, access and run certain scripts and other software tools on County’s hardware as required by Contractor to perform the Services (the “Contractor Tools”). County acknowledges and agrees that Contractor is and shall remain the sole owner of all such Contractor Tools, including all copyright, patents, trademarks, trade secrets and other intellectual property rights therein, and, unless the parties otherwise agree in writing, County is granted no license to access or use the Contractor Tools. County may retain a PDF copy of any reports or other deliverables provided by Contractor to the County as part of the Services, however, Contractor is and shall remain the owner of all copyright, patents, trademarks, trade secrets and other intellectual property rights.

6. County’s Obligations. To enable Contractor to perform the Services, County agrees to provide the following to Contractor:

- (a) Demonstration that the County’s hardware and software is adequate for Contractor to provide its Services;
- (b) Subject to the approval of the Director of Information Technology, access to and use of County’s facilities, equipment, hardware and software required by Contractor to perform the Services;

- (c) Personnel and assistance as is reasonably required to enable Contractor to perform the Services in cooperation with the County as set forth in Schedule A; and
- (d) An identified representative granted authority to negotiate the plans and deliverables described in the applicable Statement of Work if so required.

7. Warranty. Contractor warrants that the Services will be performed in a professional and diligent manner by personnel who are competent in performing their individual tasks and will perform in accordance with the documentation.

DISCLAIMER. TO THE GREATEST EXTENT PERMITTED BY LAW, EXCEPT FOR THE LIMITED WARRANTY PROVIDED IN SECTION 7, THE SERVICES ARE PROVIDED TO THE COUNTY “AS IS” AND THERE ARE NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HEREWITH.

CONTRACTOR DISCLAIMS ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SERVICES AND ANY MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HEREWITH, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

CONTRACTOR DOES NOT REPRESENT OR WARRANT THAT THE SERVICES SHALL MEET ANY OR ALL OF THE COUNTY’S PARTICULAR REQUIREMENTS, EXCEPT TO THE EXTENT SET OUT IN THIS AGREEMENT. NO AGREEMENTS VARYING OR EXTENDING ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT SHALL BE BINDING ON EITHER PARTY UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED SIGNING OFFICER OF CONTRACTOR.

8. Limitation of Liability. TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR, ITS AFFILIATES, AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND SHAREHOLDERS’ ENTIRE LIABILITY AND THE COUNTY’S EXCLUSIVE REMEDY WITH RESPECT TO THE SERVICES AND ANY OTHER PRODUCTS, MATERIALS SUPPLIED BY CONTRACTOR IN CONNECTION WITH THIS AGREEMENT FOR DAMAGES FOR ANY CAUSE AND REGARDLESS OF THE CAUSE OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED IN THE AGGREGATE AN AMOUNT THAT IS EQUAL TO ONE AND ONE HALF TIMES THE FEES PAID TO CONTRACTOR BY THE COUNTY PURSUANT TO THE RELEVANT STATEMENT OF WORK.

IN NO EVENT SHALL THE COUNTY OR CONTRACTOR, ITS AFFILIATES AND EACH OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES AND SHAREHOLDERS,

BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR SPECIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO FOR LOST REVENUE OR LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA, FAILURE TO REALIZE EXPECTED SAVINGS, OR COST OF SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH LOSS OR DAMAGE OR SUCH LOSS OR DAMAGE IS FORSEEABLE AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9. Confidential Information.

(a) Definition. Each party acknowledges that it may receive Confidential Information from the other party or otherwise in connection with this Agreement. "Confidential Information" means all information or material that the disclosing party treats as confidential and any information relating to third parties that the disclosing party has an obligation to treat as confidential, which is disclosed by or obtained by a party in connection with this Agreement, whether such information is in oral, written, graphic or electronic form, which: is (A) marked "Confidential," "Restricted," or "Proprietary Information" or other similar marking, (B) known by the parties to be considered confidential or proprietary. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving party from a third party who is not under an obligation of confidentiality; (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information which such independent development can be established by evidence that would be acceptable to a court of competent jurisdiction.; or (v) is subject to disclosure by the County under chapter 42.56 RCW.

(b) Confidentiality Obligations. Each of the parties agrees:

(i) to maintain the Confidential Information of the other party in confidence and to take all reasonable steps, which shall be no less than those steps it takes to protect its own confidential and proprietary information, to protect the Confidential Information of the other party from unauthorized use, disclosure, copying or publication;

(ii) not to use the Confidential Information of the other party other than in the course of exercising its rights or performing its obligations under this Agreement;

(iii) subject to Section 27 of this Agreement, not to disclose or release such Confidential Information except to the extent required by applicable law or during the course of or in connection with any litigation, arbitration or other proceeding based upon or in connection with the subject matter of this Agreement, provided that the receiving party shall first give reasonable notice to the disclosing party prior to such disclosure so that the disclosing party may obtain a protective order or

equivalent and provided that the receiving party shall comply with any such protective order or equivalent;

(iv) not to disclose or release such Confidential Information to any third person without the prior written consent of the disclosing party, except for authorized employees or agents of the receiving party who have a need to know such information for the purpose of performance under this Agreement and exercising its rights under this Agreement, and who are bound by confidentiality obligations at least as protective of the disclosing party's Confidential Information as this Agreement; and

(v) to take such actions as may be reasonably necessary to enforce its agreements with its employees and agents, including commencing legal proceedings.

10. Changes. No changes or additions shall be made in this Agreement except as agreed to by both parties in accordance with the process set forth in Schedule A, Section 7.4, reduced to writing and executed with the same formalities as are required for the execution of this Agreement.

11. County Contact Person. The assigned contact person (or project manager) for the County for this Agreement shall be:

Name: Renee Macchi
Title: Continuous Improvement Specialist
Department: Service & Technology Excellence Program
Telephone: (425) 262-2139
Email: renee.macchi@snoco.org

12. County Review and Approval. When the Contractor has completed any milestone set forth in the Statement of Work, the acceptance procedures set forth in the Statement of Work shall apply. The County shall promptly review and inspect the work to determine whether the work is acceptable. If the County determines the work conforms to the requirements of this Agreement, the County shall notify the Contractor in accordance with the acceptance criteria set forth in the Statement of Work that the County accepts the work. If the County determines the work contains errors, omissions, or otherwise fails to conform to the requirements of this Agreement, the County shall reject the work by providing the Contractor with written notice describing the problems with the work and describing the necessary corrections or modifications to same. In such event, the Contractor shall promptly remedy the problem or problems and re-submit the work to the County. The Contractor shall receive no additional compensation for time spent correcting errors, unless such errors are caused by or contributed to by the County. Payment for the work will not be made until the work is accepted by the County.

13. Subcontracting and Assignment. The Contractor shall not subcontract, assign, or delegate any of the rights, duties or obligations covered by this Agreement without prior express written consent of the County, which shall not be unreasonably withheld. Any attempt by the Contractor to subcontract, assign, or delegate any portion of the Contractor's obligations under this Agreement to another party in violation of the preceding sentence shall be null and void and shall constitute a material breach of this Agreement.

14. Records and Access; Audit; Ineligible Expenditures. The Contractor shall maintain adequate records to support billings. Said records shall be maintained for a period of seven (7) years after completion of this Agreement by the Contractor. The County or any of its duly authorized representatives shall have access at reasonable times and on reasonable notice to any books, documents, papers and records of the Contractor which are directly related to this Agreement for the purposes of making audit examinations, obtaining excerpts, transcripts or copies, and ensuring compliance by the County with applicable laws. Expenditures under this Agreement, which are determined by audit to be ineligible for reimbursement and for which payment has been made to the Contractor, shall be refunded to the County by the Contractor.

15. Indemnification.

a. Professional Liability.

Subject to the Contractor's limitation of liability pursuant to Section 8, the Contractor agrees to indemnify the County and its officers, officials, agents and employees from damages and liability for damages, including reasonable attorneys' fees, court costs, expert witness fees, and other claims-related expenses, arising out of the performance of the Contractor's professional services under this Agreement, to the extent that such liability is caused by the negligent acts, errors or omissions of the Contractor, its principals, employees or subcontractors and only to the extent that a court of competent jurisdiction has finally determined the Contractor's liability. The Contractor has no obligation to pay for any of the indemnitees' defense-related cost prior to a final determination of liability or to pay any amount that exceeds Contractor's finally determined percentage of liability based upon the comparative fault of the Contractor, its principals, employees and subcontractors. For the purpose of this section, the County and the Contractor agree that the County's costs of defense shall be included in the definition of damages above.

b. All Other Liabilities Except Professional Liability.

To the maximum extent permitted by law, the limitations of liability set forth in Section 8 shall not apply to any third party claim brought against the County alleging (i) injury to persons or property caused by Contractor; or (ii) that the Services infringe any copyrights, patents or other valid Canadian or United States intellectual property rights of any third party. The Contractor shall pay any damages finally awarded against Contractor (including court costs and reasonable attorneys' fees) in connection therewith; provided that (i) The County notifies the Contractor promptly in writing of the claim, (ii) the Contractor has sole control of the defense and all related settlement negotiations, and (iii) The County provides the Contractor with all commercially reasonable assistance, information and authority to perform the above. The foregoing shall not apply to the extent that the basis for such third party claim is attributable to (i) the conduct of the County or the conduct of its agents (or the failure of the County or its agents to act), or (ii) any breach by the County of this Agreement.

The obligations of Contractor contained herein shall survive the expiration, abandonment or termination of this Agreement.

Nothing contained within this provision shall affect or alter the application of any other provision contained within this Agreement.

16. Insurance Requirements. The Contractor shall procure by the time of execution of this Agreement, and maintain for the duration of this Agreement, (i) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the services hereunder by the Contractor, its agents, representatives, or employees, and (ii) a current certificate of insurance and additional insured endorsement when applicable.

a. General. Each insurance policy shall be written on an "occurrence" form, except that Professional Liability, Errors and Omissions coverage, if applicable, may be written on a claims made basis. If coverage is approved and purchased on a "claims made" basis, the Contractor will ensure continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the work which is the subject of this Agreement.

The Insurance obligations under this Agreement shall be at least the minimum Insurance requirements shown in this Agreement. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the indemnity or other obligations of the Contractor under this agreement

b. Liability. The Contractor's maintenance of insurance as required by this Agreement shall not be construed to increase the liability of the Contractor beyond the limitation of Contractor's liability set out in Section 8 to the coverage provided by such insurance.

c. Minimum Scope and Limits of Insurance. The Contractor shall maintain coverage at least as broad as, and with limits no less than:

(i) General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operations;

(ii) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. CA 0001 current edition, Symbol 1;

(iii) Workers' Compensation: To meet applicable statutory requirements for workers' compensation coverage of the state or states of residency of the workers providing services under this Agreement;

(iv) Employers' Liability or "Stop Gap" coverage: \$1,000,000;

(v) Professional Liability, Errors and Omissions coverage: \$1,000,000

In the event that services pursuant to this Agreement either directly or indirectly involve or require professional Services, Professional Liability, Errors and Omissions coverage shall be provided.

(vi) Crime Fidelity, Theft, Disappearance & Destruction Liability (to include Employee theft, wire transfer, computer fraud, forgery & mail coverage, and client coverage) with minimum limit \$5,000,000 per occurrence and in the aggregate. The policy

shall cover "client's property," not just when legally liable and shall have a Joint Loss Payee Endorsement in favor of Snohomish County.

(vii) Technology Errors and Omissions and Cyber Liability Insurance appropriate to the Contractor's profession and work hereunder, with limits not less than \$5,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

1. The Policy shall include, or be endorsed to include, property damage liability coverage for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the County in the care, custody, or control of the Contractor. If not covered under the Contractor's liability policy, such "property" coverage of the County may be endorsed onto the Contractor's Cyber Liability Policy as covered property as follows:

d. Other Insurance Provisions and Requirements. The insurance coverages required in this Agreement for all liability policies except workers' compensation and Professional Liability, if applicable, must contain, or must be endorsed to contain, the following provisions:

(i) The County, its officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Agreement. Such coverage shall be primary and non-contributory insurance as respects the County, its officers, officials, employees and agents. Additional Insured Endorsement shall be included with the certificate of insurance, "CG 2026 07/04" or its equivalent is required.

(ii) The Contractor's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(iii) Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the County and shall be the sole responsibility of the Contractor.

(iv) Insurance coverage must be placed with insurers with a Best's Underwriting Guide rating of no less than A:VIII, or, if not rated in the Best's Underwriting Guide, with minimum surpluses the equivalent of Best's surplus size VIII. Professional Liability, Errors and Omissions insurance coverage, if applicable, may be placed with insurers with a Best's rating of B+:VII. Any exception must be approved by the County.

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits until after forty-five (45) calendar days' prior written notice has been given to the County.

If at any time any of the foregoing policies fail to meet minimum requirements, the Contractor shall, upon notice to that effect from the County, promptly obtain a new policy,

and shall submit the same to the County, with the appropriate certificates and endorsements, for approval.

e. Subcontractors. The Contractor shall include all subcontractors as insureds under its policies or, shall furnish separate certificates of insurance and policy endorsements for each subcontractor. **Insurance coverages provided by subcontractors instead of the Contractor as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.**

17. County Non-discrimination. It is the policy of the County to reject discrimination which denies equal treatment to any individual because of his or her race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability as provided in Washington's Law against Discrimination, Chapter 49.60 RCW, and the Snohomish County Human Rights Ordinance, Chapter 2.460 SCC. These laws protect against specific forms of discrimination in employment, credit transactions, public accommodation, housing, county facilities and services, and county contracts.

The Contractor shall comply with the substantive requirements of Chapter 2.460 SCC, which are incorporated herein by this reference. Execution of this Agreement constitutes a certification by the Contractor of the Contractor's compliance with the requirements of Chapter 2.460 SCC. If the Contractor is found to have violated this provision, or to have furnished false or misleading information in an investigation or proceeding conducted pursuant to this Agreement or Chapter 2.460 SCC, this Agreement may be subject to a declaration of default and termination at the County's discretion. This provision shall not affect the Contractor's obligations under other federal, state, or local laws against discrimination.

18. Federal Non-discrimination. Snohomish County assures that no persons shall on the grounds of race, color, national origin, or sex as provided by Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352), as amended, and the Civil Rights Restoration Act of 1987 (Pub. L. No. 100-259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any County sponsored program or activity. Snohomish County further assures that every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs and activities are federally funded or not.

19. Employment of County Employees. SCC 2.50.075, "Restrictions on future employment of County employees," imposes certain restrictions on the subsequent employment and compensation of County employees. The Contractor represents and warrants to the County that it does not at the time of execution of this Agreement, and that it shall not during the term of this Agreement, employ a former or current County employee in violation of SCC 2.50.075. For breach or violation of these representations and warranties, the County shall have the right to terminate this Agreement without liability.

20. Compliance with Other Laws. The Contractor shall comply with all other applicable federal, state and local laws, rules, and regulations in performing this Agreement.

21. Compliance with Grant Terms and Conditions. The Contractor shall comply with any and all conditions, terms and requirements of any federal, state or other grant, if any, that wholly or partially funds the Contractor's work hereunder.

22. Prohibition of Contingency Fee Arrangements. The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the County shall have the right to terminate this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

23. Force Majeure. If either party is unable to perform any of its obligations under this Agreement as a direct result of an unforeseeable event beyond that party's reasonable control, including but not limited to an act of war, act of nature (including but not limited to earthquake and flood), embargo, riot, sabotage, epidemic, labor shortage or dispute (despite due diligence in obtaining the same), or governmental restriction imposed subsequent to execution of the Agreement (collectively, a "force majeure event"), the time for performance shall be extended by the number of days directly attributable to the force majeure event. Both parties agree to use their best efforts to minimize the effects of such failures or delays.

24. Suspension of Work. The County may, at any time, instruct the Contractor in writing to stop work effective immediately, or as directed, pending either further instructions from the County to resume the work or a notice from the County of breach or termination under Section 25 of this Agreement. The County shall be responsible to pay all Fees incurred up to and including the date of suspension.

25. Non-Waiver of Breach; Termination.

a. The failure of the County to insist upon strict performance of any of the covenants or agreements contained in this Agreement, or to exercise any option conferred by this Agreement, in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

b. If the Contractor is in material breach of any of its obligations hereunder, and fails to deliver a remedial plan to address the alleged breach or written notice disputing the alleged breach within thirty (30) business days of receipt of written notice from the County detailing the alleged breach, the County may terminate this Agreement on ten (10) days' written notice, in which case the County shall pay the Contractor for the Services and corresponding reimbursable expenses, performed and incurred up to the date of termination.

c. The County may terminate this Agreement upon ten (10) business days' written notice to the Contractor for any reason other than stated in subparagraph b above, in which case

The County or the Contractor may, by notice to the other given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

27. Public Records Act. This Agreement and all public records associated with this Agreement shall be available from the County for inspection and copying by the public where required by the Public Records Act, Chapter 42.56 RCW (the "Act"). To the extent that public records then in the custody of the Contractor are needed for the County to respond to a request under the Act, as determined by the County, the Contractor agrees to make them promptly available to the County. If the Contractor considers any portion of any record provided to the County under this Agreement, whether in electronic or hard copy form, to be protected from disclosure under law, the Contractor shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Act to inspect or copy the information so identified by the Contractor and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Contractor (a) of the request and (b) of the date that such information will be released to the requester unless the Contractor obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Contractor fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified.

The County has, and by this section assumes, no obligation on behalf of the Contractor to claim any exemption from disclosure under the Act. The County shall not be liable to the Contractor for releasing records not clearly identified by the Contractor as confidential or proprietary. The County shall not be liable to the Contractor for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

28. Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties. The language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings of this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

29. Complete Agreement. This Agreement constitutes the entire understanding of the parties. Any written or verbal agreements that are not set forth herein or incorporated herein by reference are expressly excluded.

30. Conflicts between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

31. Mediation. The parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator

or a mediator appointed by mediation services mutually agreeable to the parties. Such mediator shall be knowledgeable in software system agreements. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notifies the other of its desire to have a dispute be placed before a mediator. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorney's fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties. Nothing in this Section shall inhibit a party's right to seek injunctive relief at any time.

32. No Third Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the County and the Contractor. This Agreement shall not be deemed to have conferred any rights, express or implied, upon any third parties.

33. Governing Law; Venue. This Agreement shall be governed by the laws of the State of Washington or the federal laws of the United States, as applicable. The venue of any action arising out of this Agreement shall be in the federal courts in Seattle, Washington, or in the state court in Snohomish County, Washington.

34. Severability. Should any clause, phrase, sentence or paragraph of this agreement be declared invalid or void, the remaining provisions of this Agreement shall remain in full force and effect.

35. Authority. Each signatory to this Agreement represents that he or she has full and sufficient authority to execute this Agreement on behalf of the County or the Contractor, as the case may be, and that upon execution of this Agreement it shall constitute a binding obligation of the County or the Contractor, as the case may be.

36. Survival. Those provisions of this Agreement that by their sense and purpose should survive expiration or termination of the Agreement shall so survive.

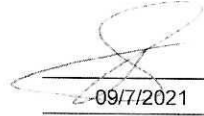
37. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

Signature page follows.

SNOHOMISH COUNTY:

CAYENTA, a division of N. HARRIS
COMPUTER CORPORATION

County Executive Date

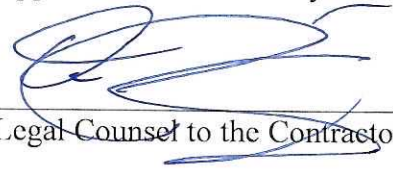


09/7/2021 Date
Jeff Bender, CEO

Approved as to insurance
and indemnification provisions:

Approved as to form only:

Risk Management Date



Legal Counsel to the Contractor Date
Sept 7, 2021

Approved as to form only:

Deputy Prosecuting Attorney Date

COUNCIL USE ONLY	
Approved	<u>9/29/2021</u>
ECAF #	<u>2021-0636</u>
MOT/ORD	<u>Motion 21-316</u>

Schedule A
Statement of Work