



BOARD OF SUPERVISORS AGENDA ITEM REPORT  
AWARDS / CONTRACTS / GRANTS

Award  Contract  Grant

Requested Board Meeting Date: 09/03/2024

\* = Mandatory, information must be provided

or Procurement Director Award:

**\*Contractor/Vendor Name/Grantor (DBA):**

Carahsoft Technology Corp. (Headquarters: Palo Alto, CA)

**\*Project Title/Description:**

VMware Enterprise

**\*Purpose:**

Award: Supplier Contract No. SC2400002212. This Supplier Contract is effective September 03, 2024, to April 30, 2027, in the not-to-exceed contract amount of \$10,000,000.00 (including sales tax). Administering Department: Information Technology.

**\*Procurement Method:**

Pursuant to Pima County Procurement Code 11.24.010, Cooperative procurement authorized, for Requisition No. 24-242, the Procurement Director approved the use of Cobb County, GA Contract No. 23-6692-01, which was awarded through competitive procedures reasonably similar to those set forth by Pima County Procurement Code.

PRCUID: 521761

Attachment: Cooperative Procurement Agreement.

**\*Program Goals/Predicted Outcomes:**

Provide business continuity with the County's current IT configuration, maximize efficiency within its infrastructure, and enhance its ability to recover from disaster and security related events.

**\*Public Benefit:**

Continued use of existing VMware / Broadcom software and related services is more cost effective than replacing the entire infrastructure with new infrastructure hardware and tools. Additionally, in the event of a disaster and/ or security event, critical systems will be restored in a shorter timeframe.

**\*Metrics Available to Measure Performance:**

Currently, Pima County's goal is to maintain 99.999% up time. By continuing the usage of VMware / Broadcom software and related services, we will reduce downtime and costs by not converting to a different provider or rearchitecting its systems.

**\*Retroactive:**

No.

TO: COB 08/02/2024

VERS: N/A

PGS: 35

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (\*) fields

Contract / Award Information

Document Type: SC Department Code: N/A Contract Number (i.e., 15-123): 2400002212
Commencement Date: 09/03/24 Termination Date: 04/30/27 Prior Contract Number (Synergen/CMS): N/A
[X] Expense Amount \$ 10,000,000.00 \* [ ] Revenue Amount: \$ N/A

\*Funding Source(s) required: Internal Services Fund

Funding from General Fund? Yes No If Yes \$ N/A % N/A
Contract is fully or partially funded with Federal Funds? Yes No
If Yes, is the Contract to a vendor or subrecipient? N/A
Were insurance or indemnity clauses modified? Yes No
If Yes, attach Risk's approval.
Vendor is using a Social Security Number? Yes No
If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: Department Code: Contract Number (i.e., 15-123):
Amendment No.: AMS Version No.:
Commencement Date: New Termination Date:
Prior Contract No. (Synergen/CMS):
Expense Revenue Increase Decrease Amount This Amendment: \$
Is there revenue included? Yes No If Yes \$
\*Funding Source(s) required:
Funding from General Fund? Yes No If Yes \$ %

Grant/Amendment Information (for grants acceptance and awards)

Award Amendment

Document Type: Department Code: Grant Number (i.e., 15-123):
Commencement Date: Termination Date: Amendment Number:
[ ] Match Amount: \$ [ ] Revenue Amount: \$
\*All Funding Source(s) required:
\*Match funding from General Fund? Yes No If Yes \$ %
\*Match funding from other sources? Yes No If Yes \$ %
\*Funding Source:

\*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Procurement Officer, Fred LeVeque Acting Division Manager, Troy McMaster
Department: Procurement Director, Terri Spencer Telephone: 520.724.8728
Department Director Signature: Javier Baca Date:
Deputy County Administrator Signature: Date: 8-1-2024
County Administrator Signature: Date: 8/1/2024

**Pima County Procurement Department**  
**Administering Department:** Information Technology

**Project:** VMware Enterprise

**Contractor:** Carahsoft Technology Corp.  
3401 Hillview Avenue  
Palo Alto, CA 94304

**Amount:** \$ 10,000,000.00

**Contract No.:** SC2400002212

**Funding:** Internal Service Funds

**COOPERATIVE PROCUREMENT AGREEMENT**

**1. Parties, Background and Purpose.**

- 1.1. Parties. This Contract is between Pima County, a political subdivision of the State of Arizona (“County”), and Carahsoft Technology Corp. (“Contractor”).
- 1.2. Purpose. The Pima County Information Technology Department requires ongoing licensing, subscriptions, and related support for Contractor’s products.
- 1.3. Authority. County is authorized by Pima County Code § 11.24.010 and A.R.S. § 41-2632 to enter into cooperative purchasing arrangements The County has entered into such an agreement with National Intergovernmental Purchasing Alliance Company dba OMNIA Partners Public Sector (“OMNIA”) Master Intergovernmental Cooperative Purchasing Agreement effective March 5, 2019.
- 1.4. Contract.
  - 1.4.1. Cobb County, GA (“Cobb County”) entered into a contract (23-6692-01) for specified goods and services with Contractor, which is currently in effect (the “Cobb County Contract”). The Cobb County Contract is incorporated into this Contract by this reference. All capitalized terms, not otherwise defined herein, shall have the meanings as set forth in the Cobb County Contract. All references to Cobb County in the Cobb County Contract shall also be considered references to Pima County for the purposes of this Contract, as applicable. County’s additional terms and conditions are included in this Contract.
  - 1.4.2. The Cobb County Contract provides that another governmental entity with which OMNIA has a cooperative purchasing agreement may, with Contractor’s approval, purchase products and services at the same prices and under the same terms as in the Cobb County Contract.

## 2. Term.

2.1. Initial Term. The term of this Contract commences on September 03, 2024 and will terminate on April 30, 2027 (“Initial Term”). “Term,” when used in this Contract, means the Initial Term plus any exercised extension options under Section 2.2. If the commencement date of the Initial Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date.

2.2. Extension Options. County may renew this Contract for up to two (2) additional periods of up to one-year each (each an “Extension Option”). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.

## 3. Scope of Services.

Contractor will provide County with the Broadcom VMware Cloud Foundation 5 and related services described in **Exhibit A: VMware ELA Proposal** (19 pages), at the dates and times described on **Exhibit A** or, if **Exhibit A** contains no dates or time frames, then upon demand. The Contractor must comply with all requirements and specifications in the Cobb County Contract, except where altered by this Contract.

3.1. Broadcom Terms. Use of Broadcom’s software and services are subject to the terms and conditions referenced in Exhibit A and are incorporated into this Contract. The incorporated terms will apply to the County’s use of the software and related services except when in conflict with the terms of this Contract, and, as they pertain to this Contract, can only be changed by a formal written amendment executed by the Parties.

3.2. Order of Precedence. In the event of conflicting terms between the incorporated documents, the following order of precedence, superior to subordinate, dictates the order in which these conflicts will be resolved.

3.2.1. Amendments to Contract.

3.2.2. This Cooperative Procurement Agreement SC2400002212.

3.2.3. To the extent applicable, the Cobb County Contract.

3.2.4. Exhibit B: Carahsoft VMware Quote No. 48967220.

3.2.5. The relevant Terms found at <https://www.vmware.com/agreements.html>.

3.2.6. The relevant Terms found at <https://www.vmware.com/vmware-general-terms.html>.

3.2.7. The relevant Terms found at <https://www.broadcom.com/licensing>.

## 4. Reserved.

## 5. Compensation and Payment.

5.1. Rates; Adjustment. County will pay Contractor at the rates set forth in **Exhibit B** (3 pages). Those rates will remain in effect during an Extension Option period unless Contractor, at least 90 days before the end of the then-existing Term, or at the time the County informs Contractor that the County intends to extend the Term, if that is earlier, notifies County in writing of any adjustments to those rates, and the reasons for the adjustments.

- 5.2. Not-To-Exceed (NTE) Amount. County's total payments to Contractor under this Contract, including any sales taxes, may not exceed \$ 10,000,000.00 (the "NTE Amount"). The NTE Amount can only be changed by a formal written amendment executed by the Parties. Contractor is not required to provide any services, payment for which will cause the County's total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor's own risk.
- 5.3. Sales Taxes. The payment amounts or rates in **Exhibit B** include sales taxes. Contractor may invoice County for sales taxes that Contractor is required to pay under this Contract. Contractor will show sales taxes as a separate line item on invoices.
- 5.4. Timing of Invoices. Contractor will invoice County on an annual basis unless a different billing period is set forth in **Exhibit B**. County must receive invoices no more than 30 days after the end of the billing period in which Contractor delivered the invoiced products or services to County. County may refuse to pay for any product or service for which Contractor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.
- 5.5. Content of Invoices. Contractor will include detailed documentation in support of its invoices and assign each amount billed to an appropriate line item.
- 5.6. Invoice Submittal. Invoices are to be sent to:  
  
Pima County Finance & Risk Management – Accounts Payable  
P.O. Box 791  
Tucson, AZ 85702
- 5.7. Invoice Adjustments. County may, at any time during the Term and during the retention period set forth in Section 23 below, question any payment under this Contract. If County raises a question about the propriety of a past payment, Contractor will cooperate with County in reviewing the payment. Contractor will promptly refund fully to County any overpayment.

**6. Insurance.** The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. Contractor's insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A- VII, unless otherwise approved by County. County in no way warrants that the minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

6.1. Minimum Scope and Limits of Insurance. Contractor will procure and maintain at its own expense, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.

6.1.1. Commercial General Liability (CGL). Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Insurance shall include cover for liability arising from premises, operations, independent contractors, personal injury, bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products – completed operations.

- 6.1.2. Business Automobile Liability. Bodily Injury and Property Damage for any owned, leased, hired, and/or non-owned automobiles assigned to or used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 Each Accident.
- 6.1.3. Workers' Compensation (WC) and Employers' Liability. Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employers' Liability coverage with limits of \$1,000,000 each accident and \$1,000,000 each person - disease.
- 6.1.4. Technology Errors and Omissions (E&O) Insurance. The Technology E&O coverage shall have minimum limits not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate.

Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.

Coverage shall include or shall not exclude settlement and/or defense of claims involving intellectual property, including but not limited to patent or copyright infringement.

In the event that the Technology E&O insurance required by this Contract is written on a claims-made basis, Contractor shall warrant that continuous coverage will be maintained as outlined under "Additional Insurance Requirements – Claims-Made Coverage" section.

- 6.1.5. Network Security (Cyber)/Privacy Insurance. Coverage shall have minimum limits not less than \$2,000,000 Each Claim with a \$2,000,000 Annual Aggregate.

Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.

In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor must warrant that either continuous coverage will be maintained as outlined under "Additional Insurance Requirements – Claims-Made Coverage" section, or an extended discovery period will be exercised for a period of two (2) years beginning at the time of work under this Contract is completed.

- 6.2. Additional Insurance Requirements. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions.

- 6.2.1. Claims Made Coverage. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.
- 6.2.2. Additional Insured Endorsement. The General Liability and Business Automobile Liability policies must each be endorsed to include Pima County and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively "County and its Agents") as additional insureds with respect to vicarious liability arising out of the activities performed by or on behalf of the Contractor. The full policy limits and scope of protection must apply to the County and its Agents as an additional insured, even if they exceed the Insurance Requirements.
- 6.2.3. Subrogation Endorsement. The General Liability, Business Automobile Liability, and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of County and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- 6.2.4. Primary Insurance Endorsement. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by Pima County, its agents, officials, or employees shall be excess and not contributory insurance. The Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR).
- Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.
- 6.2.5. Subcontractors. Contractor must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that each subcontractor has done so, Contractor must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Contractor must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.
- 6.3. Notice of Cancellation. Each Required Insurance policy must provide, and certificates specify, that County will receive not less than thirty (30) days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payment of a premium. Notice must be mailed, emailed, hand-delivered or sent via facsimile transmission to the County Contracting Representative, and must include the County project or contract number and project description.
- 6.4. Verification of Coverage. Contractor shall furnish County with certificates of insurance (valid ACORD form or equivalent approved by County) as required by this Contract. An authorized representative of the insurer shall sign the certificates. Each certificate must include.

- 6.4.1. The Pima County tracking number for this Contract, which is shown on the first page of the Contract, and a project description, in the body of the Certificate.
  - 6.4.2. A notation of policy deductibles or SIRs relating to the specific policy.
  - 6.4.3. Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation waiver endorsements for the County and its Agents.
- 6.5. All certificates and endorsements, as required by this written agreement, are to be received and approved by County before, and be in effect not less than 15 days prior to, commencement of work. A renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date to include actual copies of the additional insured and waiver of subrogation endorsements. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
  - 6.6. All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the County project or contract number and project description on the certificate. County reserves the right to require complete copies of all insurance policies required by this Contract at any time.
  - 6.7. Approval and Modifications. County's Risk Manager may modify the Insurance Requirements at any point during the Term of this Contract. This can be done administratively, with written notice from the Risk Manager, and does not require a formal Contract amendment. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, nor the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

## **7. Indemnification.**

Contractor Indemnification. To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnitee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. Contractor is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.



7.1. County Indemnification. County is not permitted to offer indemnification, therefore any such requirement in the Contract and its incorporated documents is hereby null and void.

**8. NON-WAIVER OF LIABILITY.** COUNTY AS A PUBLIC ENTITY SUPPORTED BY TAX MONIES, IN EXECUTION OF ITS PUBLIC TRUST, CANNOT AGREE TO WAIVE ANY LAWFUL OR LEGITIMATE RIGHT TO RECOVER MONIES LAWFULLY DUE IT. THEREFORE, CONTRACTOR AGREES THAT IT WILL NOT INSIST UPON OR DEMAND ANY STATEMENT WHERE COUNTY LIMITS OR WAIVES ANY RIGHT COUNTY MIGHT HAVE TO RECOVER ACTUAL LAWFUL DAMAGES IN ANY COURT OF LAW UNDER APPLICABLE ARIZONA LAW, EXCEPT TO THE EXENT PERMITTED BY LAW. ANY LANGUAGE IN THIS AGREEMENT TO THE CONTRARY IS HEREBY NULL AND VOID.

**9. Laws and Regulations.**

9.1. Compliance with Laws. Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.

9.2. Licensing. Contractor warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.

9.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

**10. Independent Contractor.** Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under County's Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.

**11. Subcontractors.** Contractor is fully responsible for all acts and omissions of any subcontractor, and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts any of them may be liable, to the same extent that the Contractor is responsible for the acts and omissions of its own employees. Nothing in this Contract creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.

**12. Assignment.** Contractor may not assign its rights or obligations under this Contract, in whole or in part, without the County's prior written approval. County may withhold approval at its sole discretion.

**13. Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

**14. Americans with Disabilities Act.** Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C.§§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).

**15. Authority to Contract.** Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.

**16. Full and Complete Performance.** The failure of either party to insist, in one or more instances, upon the other party's complete and satisfactory performance under this Contract, or to take any action based on the other party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Contract, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

**17. Cancellation for Conflict of Interest.** This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

**18. Termination by County.**

18.1. Without Cause. County may terminate this Contract at any time, without cause, by serving a written notice upon Contractor at least 30 days before the effective date of the termination. In the event of such termination, County's only obligation to Contractor will be payment for services rendered prior to the date of termination.

18.2. With Cause. County may terminate this Contract at any time without advance notice and without further obligation to County when County finds Contractor to be in default of any provision of this Contract.

18.3. Non-Appropriation. Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.

**19. Notice.** Any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County:

Terri Spencer, Procurement Director  
Pima County Department  
150 W Congress, 5<sup>th</sup> Floor  
Tucson, AZ 85701  
520.724.3722  
terri.spencer@pima.gov

Contractor:

Natalie LeMay, State & Local Contracts Manager  
Carahsoft Technology Corp.  
11493 Sunset Hills Road, Suite 100  
Reston, VA 20190  
703.871.8500  
Natalie.lemay@carahsoft.com

**20. Non-Exclusive Contract.** Contractor understands that this Contract is nonexclusive and is for the sole convenience of County. County reserves the right to obtain like Services from other sources for any reason.

- 21. Remedies.** Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.
- 22. Severability.** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.
- 23. Use of County Data.** Unless it receives County's prior written consent, Contractor: (a) shall not access, process, or otherwise use County Data other than as necessary to provide contracted services or products; and (b) shall not intentionally grant any third party access to County Data, including without limitation Contractor's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, Contractor may disclose County Data as required by applicable law or by proper legal or governmental authority. Contractor shall give County prompt notice of any such legal or governmental demand and reasonably cooperate with County in any effort to seek a protective order or otherwise to contest such required disclosure, at County's expense. Upon termination or completion of the Contract, Contractor will, within 60 calendar days, either return all County Data to County or will destroy County Data and confirm destruction to County in writing. As between the parties, County retains ownership of County Data. "County Data" means data in electronic or paper form provided to Contractor by County, including without limitation personal identifying information as defined in A.R.S. § 13-2001(10).
- 24. Books and Records.** Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.
- 25. Public Records.**
- 25.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., all documents related to this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.
- 25.2. Records Marked Confidential; Notice and Protective Order. If Contractor reasonably believes that some of its records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL" before submitting them to County. In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction in Arizona, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

## **26. Legal Arizona Workers Act Compliance.**

- 26.1. Compliance with Immigration Laws. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. §§ 41-4401 and 23-214 (A) (together the “State and Federal Immigration Laws”). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.
- 26.2. Books & Records. County has the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party’s compliance with the State and Federal Immigration Laws.
- 26.3. Remedies for Breach of Warranty. Any breach of Contractor’s or any subcontractor’s warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Contractor.
- 26.4. Subcontractors. Contractor will advise each subcontractor of County’s rights, and the subcontractor’s obligations, under this Section 25 by including a provision in each subcontract substantially in the following form:

“Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor’s employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor’s books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract.”

## **27. Reserved.**

- 28. Written Orders.** County will order products or services under this Contract by issuing a Delivery Order (DO) document. Order documents will be furnished to Contractor via e-mail or telephone.

Contractor must not supply materials or services pursuant to the contract that are not documented or authorized by a Delivery Order (DO) at the time of provision. County accepts no responsibility for control of or payment for materials or services not documented by a County Delivery Order (DO).

Contractor will establish, monitor, and manage an effective contract administration process that assures compliance with all requirements of this Contract. In particular, Contractor will not provide goods or services other than those described in this Contract, in excess of the Maximum Payment Amount, or after the Term of the Contract has ended, without a Contract amendment properly executed and issued by County, as provided below. Any items provided in excess of that stated in this Contract are at Contractor's own risk.

- 29. Counterparts.** The parties may execute the Contract that County awards pursuant to the solicitation in any number of counterparts, each counterpart is considered an original, and together such counterparts constitute one and the same instrument.
- 30. Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
- 31. Forced Labor of Ethnic Uyghurs.** Pursuant to A.R.S. § 35-394 if Contractor engages in for-profit activity and has 10 or more employees, Contractor certifies it is not currently using, and agrees for the duration of this Contract to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Contractor becomes aware during the term of the Contract that the Company is not in compliance with A.R.S. § 35-394, Contractor must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days.
- 32. Web Based Terms and Conditions.** If software and related services are subject to any terms and conditions hosted on Contractor's website (collectively the "Contractor's Terms and Conditions"), the parties acknowledge and agree that the online hosting of Contractor's Terms and Conditions is for ease of administration only, and Contractor is hereby given notice that County cannot accept any revision or modification to the Contractor's Terms and Conditions without a signed written amendment executed by the Pima County Board of Supervisors or the Pima County Procurement Director. As such, the parties also acknowledge and agree that the Contract is subject to the Contractor's Terms and Conditions posted to Contractor's website as of the signature date of this Contract until so amended by the parties, and no terms in the Contractor's Terms and Conditions shall be used to nullify or void the terms found in this Contract.

**33. Click-Through Terms and Conditions.**

33.1. Click-Through Terms; Acquisition of Software. If Contractor uses a web based ordering system, an electronic purchase order system, an electronic order acknowledgement, a form of an electronic acceptance, or any software based ordering system with respect to the software and related services (each an “Electronic Ordering System”), the parties acknowledge and agree that an Electronic Ordering System is for ease of administration only, and Contractor is hereby given notice that the persons using Electronic Ordering Systems on behalf of County do not have any actual or apparent authority to create legally binding obligations between the parties. Accordingly, where an authorized County user is required to “click through” or otherwise accept or be made subject to any terms and conditions in using an Electronic Ordering System, any such terms and conditions are deemed void upon presentation.

33.2. Click-Through Terms; Usage of System. If the process of accepting, installing, activating or otherwise initiating the usage of Contractor’s products presents terms and conditions on screen (“click through terms”) to the County employee performing the action, the parties acknowledge and agree that these terms are informational only, and Contractor is hereby given notice that the persons performing initiation activities on behalf of County do not have any actual or apparent authority to create legally binding obligations between the parties. Accordingly, where an authorized County user is required to “click through” or otherwise accept or be made subject to any terms and conditions while initiating product usage, any such terms and conditions are deemed void upon presentation.

**34. Amendment.** The parties may modify, amend, alter or extend this Contract only by a written amendment signed by the parties.

**35. Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

***SIGNATURE PAGE TO FOLLOW***

This Contract will become effective when all parties have signed it. The effective date of the Contract will be the date this Contract is signed by the last party (as indicated by the date associated with that party's signature).

---

---

IN WITNESS WHEREOF, the parties have approved this Professional Services Agreement and agree to be bound by the terms and conditions of the Contract on the dates written below.

**PIMA COUNTY**

**CARASOFT TECHNOLOGY CORP.**

\_\_\_\_\_  
Chair, Board of Supervisors

*Natalie LeMay*  
\_\_\_\_\_  
Authorized Officer Signature

\_\_\_\_\_  
Date

Natalie LeMay  
\_\_\_\_\_  
Printed Name and Title

07/26/2024  
\_\_\_\_\_  
Date

ATTEST

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Date

APPROVED AS TO FORM

  
\_\_\_\_\_  
Deputy County Attorney

Rachelle Barr      07/26/2024  
\_\_\_\_\_  
Print DCA Name

CONTRACT	
NO.	<u>SC2400002212</u>
AMENDMENT NO.	<u>00</u>
This number must appear on all invoice, correspondence and documents pertaining to this contract.	

The contents of this contract are confidential. Requests for a copy shall be submitted to the Clerk of the Board by completing a Public Records Request pursuant to County Administrative Procedure 4-4. The Public Records Request form can be located at <http://webcms.pima.gov/> under the 'Quick Links' section. Release of confidential contract information involves a process above and beyond the basic Public Records Request process. This process will be performed by the Procurement Department after the Clerk of the Board receives the completed Public Records Request.

If you have any questions, please call (520)724-8161.