

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO
AND
SYNTELLECT, INC.**

THIS AGREEMENT, entered into this _____ day of _____ ,
20____, by and between the COUNTY OF SAN MATEO, hereinafter called
"County," and Syntellect, Inc., hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing software support and maintenance services for the Vista framework as well as professional services as needed for system modifications and enhancements.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

- Exhibit A—Services
- Exhibit A1 – Syntellect Quote for Maintenance Services
- Exhibit A2 – Maintenance Descriptions
- Exhibit B—Payments and Rates
- Exhibit C – Contractor’s Declaration Form

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in Exhibit “B,” Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit “A.”

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed **One Hundred Twenty Six Thousand One Hundred Eighty Four Dollars, \$126,184.**

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from **August 1, 2007 to June 30, 2010.**

This Agreement may be terminated by Contractor, the Director of the Human Services Agency or her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the county learns of said unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the Department/Division with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the Department/Division of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to

be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability \$1,000,000
 . . .
- (b) Motor Vehicle Liability Insurance \$1,000,000
 . . .
- (c) Professional Liability \$1,000,000
 . . .

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
 - i) termination of this Agreement;

- ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
- iii) liquidated damages of \$2,500 per violation;
- iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

(c) CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

15. Controlling Law

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

16. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited in the United State mail, postage prepaid, or when deposited with a public telegraph company for transmittal, charges prepaid, addressed to:

**In the case of County, to:
Clarisa Simon-Soriano, Director of Automation
County of San Mateo
Human Services Agency
400 Harbor Blvd., Bldg. A
Belmont, CA 94002
650-802-6539**

**In the case of Contractor, to:
Sharon Lappe
Syntellect, Inc.
16610 N. Black Canyon Hwy., Suite 100
Phoenix, AZ 85053
602-789-2899**

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
Rose Jacobs Gibson, President
Board of Supervisors, San Mateo County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

SYNTELLECT, INC.

Contractor's Signature

Date: _____

SERVICES

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services:

- 1) Self-Service Support for software and maintenance services on the Vista product as detailed in Exhibit A1, Syntellect quote and Exhibit A2, Syntellect Continuum – Maintenance Descriptions, and
- 2) Professional services for Moves Adds and Changes (MAC) Support as needed to implement minor system modifications and/or enhancements as detailed in Exhibit A2, Syntellect Continuum – Maintenance Descriptions.
- 3) Professional services as needed for system modifications and enhancements can include changes to the structure of program menus and implementation of program menu translations into various languages to better serve monolingual clients. System modifications and enhancements will be prioritized by the Human Services Agency management and implemented accordingly.

SYNTELLECT INC.

EXHIBIT A1

COUNTY OF SAN MATEO

Billing Location:

Director of Automation
Human Services Agency
400 Harbor Blvd. Bldg. C
Belmont, CA 94002

Equipment Location:

Director of Automation
Human Services Agency
400 Harbor Blvd. Bldg. C
Belmont, CA 94002

SITE ID: 730112**MAINTENANCE COVERAGE - SELF SERVICE**

Description	Effective Date	Maintenance Value
Self Service Software, Third Party & Application Coverage Software \$16,232.55, 3rd Party \$3,578.35, App \$11,028.70	8/1/07 - 6/30/08 Estimated Tax	\$ 30,839.60 \$ 669.60
Self Service Software, Third Party & Application Coverage Software \$17,707.53, 3rd Party \$3,903.63, App \$12,031.40	7/1/08 - 6/30/09 Estimated Tax	\$ 33,642.56 \$ 730.44
Self Service Software, Third Party & Application Coverage Software \$18,185.63, 3rd Party \$4,009.03, App \$12,356.25	7/1/09 - 6/30/10 Estimated Tax	\$ 34,550.91 \$ 750.16
		<hr/> \$ 101,183.27

Three year contract to be invoiced separately upon annual renewal date. Invoices will be sent 60 days in advance. Taxes are applicable only to Vista software. Professional Services are not taxable. Estimated taxes quoted are at the current rate of 8.25% which is then divided by 50%. If any changes are made to the tax rate by the State of California, actual invoices may vary from the above quoted tax. This quote does not include any additional projects that are currently being worked or that may be requested during the coverage period(s).

Authorized by: _____

Title: _____

Purchase Order No: _____

Date: _____

Telephone: _____



CONTINUUM - MAINTENANCE DESCRIPTIONS

OVERVIEW

Syntellect offers 24x7x365 maintenance support. Standard Maintenance services apply to Syntellect provided software, product and custom application programming. Server support is available for an additional fee. In addition to the coverage options, Syntellect offers cost effective and convenient prepayment options. The prepayment program provides price protection and discounts off of the yearly maintenance costs.

Support Description	Live-Service Support	Self-Service Support
Helpline Support: Telephone support from Syntellect experts, escalation to systems experts (operating system, host, telephony, etc.) and to Syntellect R&D if needed.	<ul style="list-style-type: none"> • 24 x 7 x 365 availability • Initial work begins within 2 hours of incident reported 	<ul style="list-style-type: none"> • 24 x 7 x 365 availability • Initial work begins within 2 hours of incident reported
Continuum Software Upgrades: Major software releases including new features and functionality. Additional costs for upgrades may include third party software, additional hardware, and telephony cards.	<ul style="list-style-type: none"> • Continuum software free of charge • Installation, Labor and Coordination requirements handled by the MAC Group at prevailing rates • After hour rates may apply 	<ul style="list-style-type: none"> • Continuum software free of charge • Installation, Labor and Coordination requirements handled by the MAC Group at prevailing rates • After hour rates may apply
Continuum Software Updates: Enabled new features and/or functionality associated with Software updates/upgrades are not included in the Maintenance and Support Services offerings and are chargeable to the Customer. Additional costs for upgrades may include third party software, additional hardware, and telephony cards.	<ul style="list-style-type: none"> • Continuum software free of charge • Remote Installation free of charge • On-Site installation support provided at \$1,500 / day plus Travel and Expenses 	<ul style="list-style-type: none"> • Continuum software free of charge • Remote installation free of charge • On-Site installation support provided at \$1,500 / day plus Travel and Expenses
Customized Application Support: Syntellect will fix scenarios where the custom application is not performing as described in the final specification. Any changes to the application that affect the final specification will be billable at the standard rates.	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • Application not performing to final specification fixed free of charge • Any changes from final specification are billable at standard rates
Server Support: Syntellect will provide maintenance support on servers purchased from Syntellect or a certified reseller.	<ul style="list-style-type: none"> • On-site with parts within 4 hours of problem determination (subject to manufacturers parts availability) 	<ul style="list-style-type: none"> • On-site with parts within 4 hours of problem determination (subject to manufacturers parts availability)
Billable Support: Helpdesk support that falls outside the standard support terms will be billable at specified rates. (Eg- changes to telephony host/network environments)	<ul style="list-style-type: none"> • \$187.50 / hour with a 1 hour minimum 	<ul style="list-style-type: none"> • \$187.50 / hour with a 1 hour minimum
MAC Support: Moves Adds and Changes department performs Custom Application changes and sale of additional Software licenses, telephony cards, servers, etc.	<ul style="list-style-type: none"> • \$187.50/hr w/ 2hr minimum • \$281.00/hr after hours 	<ul style="list-style-type: none"> • \$187.50/hr w/ 2hr minimum • \$281.00/hr after hours

PAYMENT AND RATES

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor, upon receipt and approval of an invoice, based on the following payment schedule:

Vista Self-Service Support and Maintenance Services on the Vista product:

8/1/07 to 6/30/08	\$31,510.00
7/1/08 to 6/30/09	34,373.00
7/1/09 to 6/30/10	<u>35,301.00</u>
	\$101,184.00*

*This amount includes taxes at the rate of 4.125%.

Payment for Self-Service Software Support and Maintenance Services on the Vista product will be upon receipt and approval of invoices as follows:

Lump sum of \$31,510.00 for the period 8/1/07 - 6/30/08;
Lump sum of \$34,373.00 for the period 7/1/08 - 6/30/09; and,
Lump sum of \$35,301.00 for the period 7/1/09 - 6/30/10;

Professional Services for Moves Adds Changes (MAC) Support:

8/1/07 to 6/30/10 - Up to a maximum of \$25,000.00

Professional services for MAC Support will be at the rate of \$187.50 per hour during regular business hours and \$281.00 after hours as needed for system modifications and enhancements, payable upon receipt and approval of invoice.

In no event shall the total agreement amount exceed \$126,184.

**County of San Mateo
Contractor's Declaration Form**

I. CONTRACTOR INFORMATION

Contractor Name:	Syntellect, Inc.	Phone:	602-789-2801
Contact Person:	Sharon Lappe	Fax:	602-789-2899
Address:	16610 N. Black Canyon Hwy., Suite 100 Phoenix, AZ 85053		

II. EQUAL BENEFITS (check one or more boxes)

Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.

- Contractor complies with the County's Equal Benefits Ordinance by:
 - offering equal benefits to employees with spouses and employees with domestic partners.
 - offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- Contractor does not comply with the County's Equal Benefits Ordinance.
- Contractor is exempt from this requirement because:
 - Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for less than \$5,000.
 - Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.

III. NON-DISCRIMINATION (check appropriate box)

- Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

IV. EMPLOYEE JURY SERVICE (check one or more boxes)

Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.

- Contractor complies with the County's Employee Jury Service Ordinance.
- Contractor does not comply with the County's Employee Jury Service Ordinance.
- Contractor is exempt from this requirement because:
 - the contract is for less than \$100,000
 - Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to comply when the collective bargaining agreement expires.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Signature

Name

Date

Title