

**AMENDMENT TO AGREEMENT
BETWEEN THE COUNTY OF SAN MATEO AND
ORCHARD SOFTWARE CORPORATION**

THIS AMENDMENT TO THE AGREEMENT, entered into this _____ day of _____, 2009, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and Orchard Software Corporation, 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, the parties entered into an Agreement for the purpose of securing a Public Health Laboratory Information System Software, and implementation and maintenance services on May 23, 2006; and

WHEREAS, the parties wish to amend the Agreement to increase the maximum obligation by \$80,000 from \$365,024 for a new maximum of \$445,024, and extend the term through April 30, 2012.

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

- 1. Paragraph 3 is hereby deleted in its entirety and replaced with the following:**

- 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 work performed is unacceptable. In no event shall the County's total fiscal obligation under this contract exceed FOUR HUNDRED FORTY-FIVE THOUSAND TWENTY-FOUR DOLLARS (\$445,024).

- 2. Paragraph 4 is hereby deleted in its entirety and replaced with the following:**

- 4. Term and Termination**

Subject to compliance with all terms and conditions, the term of this agreement shall be from May 1, 2006 through April 30, 2012.

This Agreement may be terminated by Contractor, the Health Department Director or his/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.

3. Paragraph 10 is hereby deleted in its entirety and replaced with the following:

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, ordinances and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Federal Regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements set forth in Attachment "H," 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. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

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

4. Paragraph 18 of Exhibit A is hereby deleted in its entirety and replaced with the following:

18. Investment and Payment Terms: Total Investment in the Orchard Harvest

LIS shall not exceed \$445,024. Payment terms are described in Exhibit B.

5. **Exhibit B of the original Agreement is deleted in it's entirety and replaced with the version of Exhibit B that is attached.**
6. **All other terms and conditions of the agreement dated May 23, 2006, between the County and Contractor shall remain in full force and effect.**

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

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo
County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Orchard Software Corporation

Contractor's Signature

Date: _____

EXHIBIT B – PAYMENTS AND RATES
AGREEMENT BETWEEN COUNTY OF SAN MATEO
AND ORCHARD SOFTWARE CORPORATION

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

1. SCHEDULE OF CHARGES.

County shall make payment to Contractor based on the rates and in the manner specified below. In no event shall the County's total fiscal obligation under this Agreement exceed FOUR HUNDRED FORTY-FIVE THOUSAND TWENTY-FOUR DOLLARS (\$445,024). All payments are due at the milestone below and past due 60 days after milestone or receipt of invoice whichever is later.

1.1 Implementation Phase May 2006 – January 2007 (\$265,020)

10% (\$26,502) of purchase price due at signing of agreement

25% (\$66,255) of purchase price due upon electronic delivery of Software Components as described in Appendix A, item 2

25% (\$66,255) due upon completion of initial hardware installation

30% (\$79,506) due upon completion of initial software installation

10% (\$26,502) due upon acceptance of the System as agreed upon in Appendix A

1.2 Maintenance/Support Phase January 2007 – May 2012 (\$110,462)

January 2007-December 2007: Annual maintenance fee is included in purchase

January 2008-December 2008: 100% (\$25,002) Annual maintenance fee, payable in January 2008

January 2009-December 2009: 100% (\$25,002) Annual maintenance fee, payable in January 2009

January 2010-December 2010: 100% (\$25,002) Annual maintenance fee, payable in January 2010

January 2011-December 2011: 100% (25,002) Annual maintenance fee, payable in January 2011

January 2012-May 2012: 41.6% (\$10,418) Annual maintenance fee, pro-rated for five months, payable in January 2012

1.3 Additional Services Phase January 2007– May 2009 (\$64,584)

1.3.1 CDC/State of California Interface (\$13,500)

50% (\$6,750) payable upon start CDC/ State of CA Reporting Interface

50% (\$6,750) payable upon completion/ CDC State of CA Reporting Interface or \$6,750

1.3.2 Additional LIS User Licenses

Twenty (20) licenses are included in purchase price, additional licenses may be purchased at a one-time rate of \$5,500 per licenses.

1.3.3 Additional Interfaces

Standard interfaces into Orchard not included in Exhibit A may be charged at a rate not to exceed \$13,500 per interface.

Instrument Interfaces into Orchard not included in Exhibit A may be charged at a rate not to exceed \$3,500 per interface.

Instrument Interfaces 2 way not included in Exhibit A may be charged at a rate not to exceed \$5,500 per interface.

1.3.4 Professional Services

Hardware consulting services and Custom Programming may be charged at a rate not to exceed \$145 per hour, plus reasonable pre-approved travel expenses if on-site.

Additional On-Site installation and Training not included in Exhibit A may be charged at a rate of \$7,750 per week, plus reasonable pre-approved travel expenses if on-site.

Advanced User Training at Orchard may be charged at a rate of \$3,900 per user per week. This rate includes airfare, hotel and per diem for the user.

All other items billed monthly as costs are incurred.

2. SCHEDULE OF RATES.

During the term of the Agreement, the rates below will be in force.

RATES under Schedule 1.1

	Qty	Unit Price	Extension C
** HARDWARE / NETWORK			
* 1.1 MAIN COMPUTER, CPU, OR FILE SERVER(S)			
- Harvest LIS Server	2	11,250.00	22,500.00
* 1.9 SHIPPING AND INSURANCE (included in 1.1, 1.10)			0.00
* 1.10 OTHER HARDWARE			
- Laser Bar Code Scanner	2	500.00	1,000.00
- Eltron 2824S Bar Code Label Printers	3	500.00	1,500.00
* Subtotal			2,500.00
** Total: HARDWARE / NETWORK			25,000.00
** SOFTWARE			
* 2.1 APPLICATION SOFTWARE			
- Orchard Harvest LIS Application License	2	18,500.00	37,000.00
- Harvest LIS User License	20	5,500.00	110,000.00
- Microbiology Module	2	6,500.00	13,000.00
* Subtotal			160,000.00
** Total: SOFTWARE			160,000.00
** INTERFACES			
* 3.1 INTERFACE HARDWARE			0.00
* 3.2 INTERFACE SOFTWARE/IMPLEMENTATION			
- Billing/EMR Interface	1	7,500.00	7,500.00
- Siemens Orders Interface	1	7,500.00	7,500.00
- Siemens Results Interface	1	7,500.00	7,500.00
- BD MIGHT Instrument Interface	1	0.00	0.00
- Roche Cobas Amplifier (2-way) Ins I/F	1	0.00	0.00
- Roche MagNA Purre LC Instrument I/F	1	0.00	0.00
** Total: INTERFACES			22,500.00
** IMPLEMENTATION			
* 4.1 HARDWARE AND SOFTWARE INSTALLATION			
- 10 weeks of On-Site Installation and Training	10	7,750.00	77,500.00
- 2 weeks of In-house Training	2	3,900.00	7,800.00
** Total: IMPLEMENTATION			85,300.00
** DISCOUNTS			
- State of California discount (10%)	1	-27,780.00	-27,780.00
** Total: DISCOUNTS			-27,780.00
*** Grand Total			250,020.00

RATES under Schedule 1.2

Annual Maintenance Fees
Annual Silver software support Months 0-12: Included in installation fee
Prepaid Annual Silver software support (1 Year): \$25,002

RATES under Schedule 1.3

ADDITIONAL SERVICES PHASE		
Software:		

Harvest LIS User License	Each	5,500.00
Interfaces:		
- CDC/ CA State PHIN Reporting Interface	Each	13,500.00
- Standard Interface into Orchard	Each	13,500.00
- Instrument Interface into Orchard	Each	3,500.00
- Instrument Interface 2 way	Each	5,500.00
Professional Services		
Hardware consulting*	Hour	145.00
Custom Programming *	Hour	145.00
On-Site Installation/ Training		
Advanced User Training at Orchard	Week	7,750.00
Including airfare, hotel and per diem	Week	3,900.00
* Plus reasonable pre-approved travel expenses if on-site		