

novacoast

# Statement of Work

## Novell to Windows Migration

Prepared For:

**Tulare County Information &  
Technology Group**

Issued:

03.20.2018

Valid to:

06.30.2018

# Team

## Michael Howden

Practice Manager

P: (800) 949-9933, Ext. 5140

E: mhowden@novacoast.com

## Shelly Cobb

Client Executive

P: 805-453-8792

E: scobb@novacoast.com

## Bob Lloyd

Territory Manager

P (800) 949-9933

E: blloyd@novacoast.com

## Billing Administration

Novacoast Accounting

P. 800.949.9933 x4000

E: billing@novacoast.com

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## Novacoast Corporate Office

1505 Chapala Street Santa Barbara, CA 93101

P: 800.949.9933 | F: 805.564.1809

<http://www.novacoast.com>

# Document Information

## Revision History

Created by:	Novacoast	Revision: 1
	February 9, 2018	
Last Modified By:	Shelly Cobb	Revision: 7
	April 6, 2018	

## About this document:

Information found in this document is derived from a variety of sources, including but not limited to Novacoast partner product documentation, Novacoast partner Technical Support documents, sources publicly available on the Internet, as well as Novacoast's vast experience in implementing relevant technology solutions.

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The Tulare County Information & Technology Group, hereinafter referred to as "Customer", and Novacoast agree to the following provisions.

## Change Control Process

The Change Control Process governs changes to the scope of this project throughout the project's duration. It applies to new components and to enhancements of existing components.

A written Change Request communicates any desired changes to this project. It describes the proposed change, the reason for the change, and the effect the change might have on the project. The Novacoast project manager supplies the appropriate Change Management documents.

Both Novacoast and the customer review the Change Request and approve or reject it. Both parties must sign the approval portion of the Change Request to authorize the implementation of any change that affects the project's scope, schedule, or fee.

## Cancellation and Rescheduling Policy

For any project cancellations made by customer within five (5) business days of the scheduled start of services, customer will incur a cost of one-half of the total project costs as stated in this SOW. For any project cancellations made by customer within two (2) business days of the scheduled start of services, customer will incur the full cost of the project as stated in this SOW.

If Customer wishes to suspend or cancel project prior to completion of final milestone or project completion, Customer agrees to render payment for 100% of current milestone within thirty (30) days of suspension of project. A re-engagement fee of USD 10,000 will be payable if the project is restarted at a later date, not exceeding ninety (90) days.

The invoice for additional costs is issued against the existing purchase order. When and if the solution is started, the customer agrees to issue an amended purchase order to cover the additional costs

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# About Novacoast

## Who we are

Novacoast is an international IT Professional Services and Product Development company built on a foundation of engineering expertise and a culture of creative problem solving. Empowered on every level by our flexible and fearless perspective, Novacoast combines its advanced technical knowledge with our customers' expertise so together we can make informed decisions and avoid costly IT mistakes.

## What we do

We specialize in identity and access management, security and compliance, network infrastructure, remote management, desktop management, and open source solutions.

We offer custom application and product development. The Novacoast Development team is made up of talented developers with agile skillsets and dedicated user interface designers. We have experience in designing mobile, social, web, and enterprise software applications along with customizations for existing software. We also provide technical staffing to our clients through our Staffing Services division, which leverages our engineering expertise and extensive network of industry contacts to provide selection, grooming and training of contract, part time or full time appointments

## How we work

Our service areas are built around key engineers with expertise in certain technologies—specialists who are resources to clients and to other engineers within Novacoast. Basically, all Novacoast engineers have access to a collaborative cavalry. This means Novacoast combines specialist capabilities with a generalist approach to cross-functional needs in large enterprises. Our diverse know-how also allows us to support small to mid-size businesses, which typically have the same needs and IT dependencies as large businesses, but work within narrower budgetary constraints.

Although the ratio of technical personnel remains high at Novacoast, we have additional skill sets focused on client business needs, project management, and technical documentation.

Headquartered in Santa Barbara, CA, Novacoast delivers services nationally and internationally.

## The Novacoast Services Model

The Novacoast Services Model delivers these core services:

- ❑ Evaluation of your business needs
- ❑ Technical assessment of your current IT environment
- ❑ Planned information systems that grow with you
- ❑ Custom software development
- ❑ Automation of your business applications
- ❑ Front-end assessment of your technical training needs
- ❑ Training resources designed to improve employee skills
- ❑ Complete documentation and training manuals
- ❑ Cutting-edge tech support

# Scope of Work

## Overview

County of Tulare is undertaking a migration from Novell eDirectory to Microsoft Active Directory. Customer has asked Novacoast (Consultant) to evaluate their existing AD infrastructure, provide a scope and design for the migration assistance, and assist with the production migration process.

## Phase 1 – Planning

Novacoast Delivery Manager will work with Customer to develop a high-level project plan and project task checklist. This will detail out the work steps and timing for the implementation and migration. This will also include the determination of what customer resources will be required to complete the migration project. Tasks included in this phase:

- ❑ Kick off meeting
  - Review Scope of work
  - Review existing network and email environment
  - Review Customer processes, identify key stakeholders, outline operational procedures, etc.
  - Identify Customer project resources and availability
  - Review initial timetable and specific work blackouts, holidays, etc.
- ❑ Define key project elements
- ❑ Create initial high level project plan
- ❑ Review and schedule onsite visits (if necessary)
- ❑ Determine production migration groups and notification process
- ❑ Deliver, update and review project plan as required

Novacoast Delivery Manager anticipates that the Planning phase will require a minimum of two (2) 30 minute meetings (more may be required if all participants are not available during each meeting time) to review/discuss Customer requirements and future file access plans.

Novacoast will have in attendance for these meetings the following resources: Consultant delivery manager, Consultant lead engineers and additional engineer/developer resources as needed.

It is requested that County of Tulare be represented by Customer Project Sponsor, Customer Project Team Lead, Customer ITS Project Manager, Customer representative with knowledge of existing email environment, Novell environment, vCenter environment and current/future server roll out schedule.

## Phase 1 Assumptions

- ❑ Customer will provide key project personnel with contact information
- ❑ Customer will provide Consultant engineers access credentials
- ❑ Customer will provide Consultant engineers with migration servers and workstations for script development and production migrations (Specifications to be provided by Consultant)

## Phase 1 Deliverables

- ❑ Draft Project Schedule, including Customer and Novacoast project team blackout dates, vacations, holidays, etc.
- ❑ Key Milestones by Phase
- ❑ High Level Project Plan
- ❑ Schedule Onsite Visits and book travel accordingly, in advance
- ❑ Project team communication list

## Phase 2 – Data Validation

During the data validation phase, Novacoast Consultant will validate the information provided by Customer of the network infrastructure and file services environment, volume and share information, rights and trustee information, and user information pertaining to file access and permissions. Novacoast Consultant will validate the Customer requirements for the file services architecture, data access policies and process using the following steps:

- Validate current file servers and document server/volume structure with volume type
- Validate current use of UNC-pathing and OLE for file access and drive mappings in order to facilitate least intrusive migration
- Validate target goals pertaining to file services
  - Validate Global Name Spacing requirements and feasibility
  - Validate distributed file requirements
  - Validate business continuity requirements
  - Validate rollback plans and time frames
- Validate disaster recovery requirements
- Validate high availability and redundancy requirements
- Validate archive requirements
- Validate current growth rates for future storage requirements
- Validate current desktop policies for accessing file services data, and document issues for correction
- Validate current Novell eDirectory environment for proper file access control
  - Validate group memberships
  - Validate login scripts and mapped drives
- Validate current Macintosh file access requirements and usage
- Validate business applications utilizing file services for data import and export
- Validate existing backup and recovery procedures
- Validate existing SSL certificate requirements
- Validate existing DNS environment
- Develop metric for baseline performance testing

Validation will consist of review and comparison of County data and file structures against best practices so that Novacoast Consultant can make recommendations offered to minimize risk and improve performance. Consultant anticipates that the data validation phase will require a minimum of four (4), 30 minute meetings (more may be required if all participants are not available during each meeting time) to review/discuss Customer requirements and future file access plans.

Novacoast will have in attendance for these meetings the following resources: Consultant delivery manager, Consultant lead engineer and additional engineer/developer resources as needed.

It is requested that County of Tulare be represented by Customer Project Sponsor, Customer Project Team Lead, Customer ITS Project Manager, and Customer representative with knowledge of existing email environment, Novell environment, vCenter environment and current/future server roll out schedule.

## Phase 2 Assumptions

- Customer will provide Novacoast Consultant with all data and documentation required for validation of items listed in above bullet points

## Phase 2 Deliverables

- Phase 2 validation steps and recommendations (County of Tulare internal sign off)

- Performance testing baseline (County of Tulare internal sign off)
- Inventory Tracking Sheet (Source Data)
- Requirements Documentation

### **Phase 3 – Design and Migration Architecture**

Based on data presented and validated in phases 1 and 2, and using experience and industry best practices, Novacoast Consultant will architect the migration plan to meet Customer requirements. Novacoast Consultant's strategy for the file share and data migration will be to capture all current, relevant data (including metadata, rights/trustee information), current methods for accessing data (drive mappings, UNC paths etc.) and migrate and convert that information over to the Windows files services system as defined during the project. For the end user, the goal for the migration to be virtually unnoticed will depend on changes to UNC and global name spacing. If possible, users will see the same drive letters (unless determined during the project that a change is required), users will be able to connect to systems with current UNC paths (unless determined during the project that a change is to occur) and embedded objects will be updated if feasible (if access into files is not blocked, and there are not changes to file pathing). Migration will be handled on region/department/data category as determined during the project. Novacoast Consultant will work with County of Tulare staff to define success criteria for migrated data and Novacoast Consultant will validate the data that is being migrated. Validation will consist of reviewing and comparing County data against best practices and making recommendations. It will be necessary for Customer staff to be involved in the validation process.

- Validate current Active Directory environment for migration of Novell objects
- Validate IDM drivers for eDirectory and Active Directory
  - Provide additional assistance to ensure accounts and passwords are synced correctly
- Validate file storage volumes for migration of data
  - Validate Customer implementation of file storage structure based on Customer requirements
- Develop file copy process from current Novell servers/volumes to Windows servers
- Develop trustee to permission translation and migration scripts
- Review and make recommendations for any Active Directory groups used to control access to file resources
- Document migration process
  - Plan migration schedule for each server, volume, and resource
  - Document migration process and file migration and permission validation
  - Document migration fall back procedure
  - Document configuration and installation steps
- Validate migration process where possible using new Windows server
- Document migration schedule per region, server, volume basis
- Develop User Acceptance Criteria plan and documentation
- Identify Pilot Group users provided by Customer for migration validation

Novacoast Consultant will provide a review of the proposed migration plan as it pertains to the requirements and architecture. This is anticipated to be a 1 hour discussion.

Novacoast will have present: Consultant delivery manager, Consultant lead engineer and additional resources will be present.



It is requested that County of Tulare be represented by Customer Project Sponsor, Customer Project Team Lead, Customer ITS Project Manager, and any other managerial or technical representatives Customer determines should be present.

### **Phase 3 Assumptions**

- County of Tulare will provide Consultant engineers with pilot group users

### **Phase 3 Deliverables**

- Recommendations for any Active Directory groups used to control access to file resources (if necessary)
- Migration Success Criteria

## **Phase 4 – Production Migration**

Novacoast Consultant will work with County of Tulare to determine proper schedule for production file services. Consultant will not be responsible for modifying any applications, but will need to work with Customer to ensure applications dependent on file services are working correctly. Consultant can bring in additional resources at additional cost, if required, to assist with application migration support. Consultant is not including physically visiting workstations within the Customer environment as a part of the migration process. If it is determined that the desktop/laptop system will require physical visits, a change order will be issued or Customer staff will be responsible for visiting desktop/laptops.

- Audit/Document current file hierarchy and trustee/rights assignment
- Audit/Document total file count of current file services volumes for production group
- Run pre file copy process on file services for production groups
- Run trustee/rights to permissions translation scripts
- Compare file count on source and target volumes
- Compare trustee with permissions on source and target volumes
- Develop Zenworks bundle to remove Novell client
- Test application functionality
- Perform clean up file copy process just prior to file services cutover
- Support help desk as needed for post migration support
  - Up to 3 days remote
- Update migration process documentation as needed

After each site migration, a review will be performed with necessary team members from both Customer and Consultant to validate migration success. Any open items still outstanding will be assigned to a Customer resource for resolution and follow up.

### **Phase 4 Assumptions**

- Customer responsible for visiting workstations
- Customer responsible for application functionality
- Customer will provide a local technical support contact for each site's migration
- Customer's Microfocus ZENworks environment will be updated and functional with all workstations having the agent installed

### **Phase 4 Deliverables**

- Cutover Plan/Schedule

- ❑ File migration success reports
- ❑ Administration documentation
- ❑ Decommission Novell Servers that were migrated
- ❑ Decommission IDM drivers for eDirectory
- ❑ Issue log with resolution steps or maintenance of the vendor effort required

## Phase 5 – Project close out

Consultant will meet with key stakeholders to review project documentation and goals

- ❑ Review key project elements to ensure completion
- ❑ Review final, as-built project documentation
- ❑ Review any outstanding issues or open items
- ❑ Complete project sign off documentation

## Phase 5 Assumptions

The following assumptions are being made as part of this project phase:

- ❑ Customer Furnishing Novacoast engineers with information and data on Customer systems operations, activities, and existing systems, as reasonably required to achieve the project objectives
- ❑ Customer Providing Novacoast staff with the necessary security access to systems and facilities during the performance of services
- ❑ Customer Providing and being solely responsible for the backup of all computer systems
- ❑ Customer Providing adequate workspace and power sources at each facility where services will be performed, if on-site
- ❑ Customer Providing suitable server platforms with properly installed and patched network operating system (NOS) software, and obtaining any other commercial software licenses necessary for Novacoast to complete the services described in the SOW. Expected NOS will be Windows 2016 current patch level or currently supported version of Windows Server operating system.
- ❑ Customer Providing and being solely responsible for contract of any necessary telecommunications facilities (data communications circuit, analog phone lines, wiring, etc.), and for the costs associated with such facilities
- ❑ Customer Ensuring the availability and responsiveness of key personnel needed to support the implementation of the project

## Phase 5 Deliverables

- ❑ Completed project sign off documentation

A Limited Assistance Novacoast Delivery Manager is added to this project. Novacoast's "Limited Assistance" Delivery Manager roles and duties include:

- ❑ A weekly status report will be generated using Novacoast's pre-defined templates to capture and communicate the current status of the project. The report will include current expected timelines, major project phase and task assignments, and any project risks identified and recommended resolutions by the project team.
- ❑ The Delivery Manager will host and participate in a single weekly project status meeting to gather the necessary details for the status report and discuss any issues or risks currently pending. The Delivery Manager will not be required to join other project meetings.

- The Delivery Manager will maintain regular contact with Novacoast project staff.
- Customer will be responsible for providing a single primary contact that can work with the Novacoast Delivery Manager. The Novacoast Delivery Manager will not be responsible for managing or direct communication with the customer's extended project team outside of the weekly status meetings.
- Delivery Management will be provided remotely for the entirety of this project.
- Specific deliverables and dates for their sign-off will be mutually agreed upon by the Delivery Manager for Consultant and Customer Project Manager

# Cost of Assistance

## Agreement of Standard Working Hours

This proposal covers services performed via remote access during the standard business hours of Monday through Friday, 8am to 6pm, and scheduled required after-hours work.

If on-site visits are requested by Customer, travel is included for two engineers for a maximum of two on-site visits consisting of a maximum of a one week duration per visit.

## Cost of Assistance

This SOW and the figures quoted within are valid for thirty (30) days from date of SOW delivery. This term may be extended based on mutual agreement of the Parties.

**Table 1: Cost of Assistance**

DESCRIPTION		COST
Senior Novacoast engineer completing Phases and Deliverables 1-5		\$89,673.91
Senior Engineer – Overtime		\$5,250.00
Delivery Management		Included
	Fixed Cost Total	\$94,923.91
	Travel Optional*	Included
<b>Fixed Cost + Travel Total</b>		<b>\$94,923.91</b>

All rates quoted in this SOW are in US Dollars unless otherwise stated.

\* Travel costs for two Novacoast Engineers, with a maximum of two on-site visits consisting of a maximum of one week duration per visit is included. Optional components may result in an adjustment to travel estimate

## Payment Terms

Novacoast will invoice 25% of the total fixed project cost upon signature of this Statement of Work.

Further billing is determined by the following mutually-agreed upon milestones:

- 25% upon completion of Phase 1
- 15% upon completion of Phase 2
- 15% upon completion of Phase 3
- 15% upon completion of Phase 4
- 5% upon completion of Phase 5

An authorized signature shall constitute acceptance of these services and products in the attached document and is required to schedule Novacoast resources.

# Terms and Conditions

**COUNTY OF TULARE'S  
GENERAL AGREEMENT TERMS AND CONDITIONS  
(Form revision approved 01/01/2018)**

- 1. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK:** CONTRACTOR is not entitled to any payments from COUNTY until services are delivered to the County Department for which services are provided under the Agreement. Payments to CONTRACTOR by COUNTY shall not excuse CONTRACTOR from its obligation to replace unsatisfactory deliverables, including equipment, components, materials, or services even if the unsatisfactory character of such deliverables, equipment, components, materials, or services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and services that do not conform to the requirements of this Agreement may be rejected by COUNTY and in such case must be replaced by CONTRACTOR without delay and at no cost to the COUNTY.
- 2. DISALLOWANCE:** If CONTRACTOR requests or receives payment from COUNTY for services hereunder, reimbursement for which is later disallowed by the State of California or United States Government, CONTRACTOR shall promptly refund the disallowed amount to COUNTY upon COUNTY'S request. At its option, COUNTY may offset the amount disallowed from any payment due or to become due to CONTRACTOR under this Agreement or any other Agreement between CONTRACTOR and COUNTY. CONTRACTOR'S obligations under this section 2 will survive the expiration or termination of this Agreement.
- 3. LIABILITY:** COUNTY'S payment obligations under this Agreement shall be limited to the payment of the compensation provided for in section 3, "PAYMENT FOR SERVICES," of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall either party be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.
- 4. QUALIFIED PERSONNEL:** CONTRACTOR shall utilize only competent personnel under the supervision of, and in the employment of, CONTRACTOR (or CONTRACTOR'S authorized subcontractors) to perform the services. CONTRACTOR will comply with COUNTY'S reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at COUNTY'S request, must be supervised by CONTRACTOR. CONTRACTOR shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.
- 5. INDEPENDENT CONTRACTOR STATUS:** The Parties enter into this Agreement with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. The Parties agree that the CONTRACTOR and any of its agents, employees, or officers cannot be considered agents, employees, or officers of COUNTY.

CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR will be solely responsible for determining the means and methods of performing the specified services and COUNTY will have no right to control or exercise any supervision over CONTRACTOR as to how the CONTRACTOR will perform the services. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- (1) Withhold FICA (Social Security) from CONTRACTOR'S payments.
- (2) Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
- (3) Withhold state or federal income tax from payments to CONTRACTOR.
- (4) Make disability insurance contributions on behalf of CONTRACTOR.
- (5) Obtain unemployment compensation insurance on behalf of CONTRACTOR.

Notwithstanding this independent contractor relationship, COUNTY will have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

- 6. COMPLIANCE WITH LAW:** CONTRACTOR must provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR must comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.
- 7. LICENSES AND PERMITS:** CONTRACTOR represents and warrants that it possesses and will maintain during the term of this Agreement all licenses and permits required for its performance of the services required under this Agreement.
- 8. GOVERNING LAW:** The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Tulare County, California.
- 9. RECORDS AND AUDIT:** CONTRACTOR must maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR must maintain complete and accurate records with respect to any payments to employees or subcontractors. All of the records must be prepared in accordance with generally accepted accounting procedures, must be clearly identified, and must be kept readily accessible. Upon request, CONTRACTOR must make the records available within Tulare County to the Auditor of Tulare County and to his or her agents and representatives, for the purpose of auditing and/or copying the records for a period of five (5) years from the date of final payment under this Agreement.
- 10. CONFLICT OF INTEREST:**

- (a) At all times during the performance of this Agreement, CONTRACTOR must comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to, Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which the officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision that has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.
- (b) CONTRACTOR agrees that if any facts come to its attention that raise any questions as to the applicability of conflicts of interests laws, then it will immediately inform COUNTY and provide all information needed for resolution of this question

**11. INSURANCE:** The attached Exhibit C outlines the minimum scope, specifications, and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in Exhibit C cannot be used to reduce limits available to COUNTY as an additional insured from CONTRACTOR'S full policy limits. Insurance policies cannot be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer(s). If CONTRACTOR fails to maintain or renew coverage, or to provide evidence of renewal, then COUNTY may consider that failure a material breach of this Agreement. COUNTY may also withhold any payment otherwise due to CONTRACTOR for failure to provide evidence of renewal until CONTRACTOR provides such evidence.

**12. INDEMNIFICATION AND DEFENSE:**

- (a) To the fullest extent permitted by law, CONTRACTOR must indemnify, defend (at CONTRACTOR'S sole cost and expense and with legal counsel approved by COUNTY, which approval may not be unreasonably withheld), protect and hold harmless COUNTY, all subsidiaries, divisions and affiliated agencies of COUNTY, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and COUNTY general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of CONTRACTOR with respect to any work performed or services provided under this Agreement (including, without limitation, the acts, errors and/or omissions of CONTRACTOR, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). CONTRACTOR'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR'S indemnification obligation shall be reduced in proportion to the established comparative liability.
- (b) The duty to defend is a separate and distinct obligation from CONTRACTOR'S duty to indemnify. CONTRACTOR shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to CONTRACTOR of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to CONTRACTOR by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party's rights to indemnification under this Agreement. An allegation or determination that persons other than CONTRACTOR are responsible for the Claim does not relieve CONTRACTOR from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if CONTRACTOR asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then CONTRACTOR may submit a claim to the COUNTY for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the Indemnified Party. CONTRACTOR'S indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. CONTRACTOR'S liability for indemnification under this Agreement is in addition to any liability CONTRACTOR may have to COUNTY for a breach by CONTRACTOR of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth in this Agreement be construed to limit CONTRACTOR'S indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties.
- (c) CONTRACTOR must indemnify and hold COUNTY harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by COUNTY, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

**13. TERMINATION:**

- (a) **Without Cause:** COUNTY may terminate this Agreement without cause by giving thirty (30) days' prior written notice to CONTRACTOR of its intention to terminate under this provision, specifying the date of termination. COUNTY will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of any compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. COUNTY will not impose sanctions on CONTRACTOR under these circumstances.
- (b) **With Cause:** Either Party may terminate this Agreement immediately, by written notice to the other Party, should the other Party:

- (1) Be adjudged a bankrupt, or
- (2) Become insolvent or have a receiver appointed, or
- (3) Make a general assignment for the benefit of creditors, or
- (4) Suffer any judgment that remains unsatisfied for 30 days, and that would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) Materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) Material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR'S behalf, as to any matter related in any way to COUNTY'S retention of CONTRACTOR, or
- (7) Other misconduct or circumstances that, in the sole discretion of COUNTY, either impairs the ability of CONTRACTOR to competently provide the services under this Agreement, or exposes COUNTY to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. If CONTRACTOR fails to perform according to the terms and conditions of this Agreement, then COUNTY may, in addition to any other remedy it may have, issue a declaration of default after 10 days written notice to CONTRACTOR

Upon a material breach, the Agreement may be terminated after the failure of the defaulting Party to remedy the breach to the satisfaction of the non-defaulting Party within 5 days of written notice specifying the breach. If the breach is not remedied within that 5-day period, then the non-defaulting Party may terminate this Agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 5-day period, then the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting Party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting Party must immediately embark on its plan to cure the default or breach. If the default or breach is not cured within the time agreed, then the non-defaulting Party may terminate this Agreement upon written notice specifying the date of termination.

COUNTY will pay to CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. COUNTY will not pay lost anticipated profits or other economic loss, nor will COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If COUNTY terminates this Agreement for cause and the expense of finishing CONTRACTOR'S scope of work exceeds the unpaid balance of the Agreement, then CONTRACTOR must pay the difference to COUNTY. COUNTY may impose sanctions under these circumstances, which may include possible rejection of future proposals based on specific causes of CONTRACTOR'S non-performance.

(c) **Effects of Termination:** Expiration or termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where COUNTY terminates CONTRACTOR'S services, that termination will not affect any rights of COUNTY to recover damages against CONTRACTOR.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of the COUNTY department or agency for which CONTRACTOR'S services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective

**14. LOSS OF FUNDING:** It is understood and agreed that if COUNTY'S funding is either discontinued or reduced for the services to be provided hereunder, then COUNTY will have the right to terminate this Agreement under section 13 (a) ("Termination Without Cause") as of the end of the term for which funds are appropriated. Such termination shall be without penalty, liability, or expense to COUNTY of any kind, provided that COUNTY shall pay CONTRACTOR in accordance with section 13 (a) for services satisfactorily performed prior to the date of such termination and to the extent funds have been appropriated for such payment.

**15. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES:** Under applicable federal and state law, if CONTRACTOR submits a false claim to COUNTY under this Agreement, then CONTRACTOR will be liable to COUNTY for the statutory penalties set forth in those statutes, including but not limited to statutory fines, treble damages, costs, and attorneys' fees. CONTRACTOR will be deemed to have submitted a false claim to COUNTY if CONTRACTOR:

- (a) Knowingly presents or causes to be presented to COUNTY a false claim or request for payment or approval;
- (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by COUNTY;
- (c) Conspires to defraud COUNTY by getting a false claim allowed or paid by COUNTY;



(d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to COUNTY; or

(e) Is a beneficiary of an inadvertent submission of a false claim to COUNTY, later discovers the falsity of the claim, and fails to disclose the false claim to COUNTY within a reasonable time after discovery of the false claim

**16. FORM DE-542:** If CONTRACTOR is an individual, CONTRACTOR acknowledges that this Agreement is subject to filing obligations under Unemployment Insurance Code Section 1088.8 Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include CONTRACTOR'S full name, social security number, address, the date this Agreement was executed, the total amount of the Agreement, its expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make that information available and to complete Form DE-542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

**17. WORKS FOR HIRE:** CONTRACTOR acknowledges that all work(s) under this Agreement are "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to COUNTY all rights and interests CONTRACTOR may have in the work(s) it prepares under this Agreement, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Agreement for COUNTY will be the sole property of COUNTY, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to COUNTY. CONTRACTOR will execute all necessary documents to enable COUNTY to protect COUNTY'S intellectual property rights under this section.

**18. WORK PRODUCT:** All work product, equipment, or materials created for COUNTY or purchased by COUNTY under this Agreement belong to COUNTY and CONTRACTOR must immediately deliver them to COUNTY at COUNTY'S request upon termination or completion of this Agreement.

**19. TIME OF ESSENCE:** The Parties agree that time is of the essence under this Agreement, unless they agree otherwise in writing.

**20. CONFIDENTIALITY:** CONTRACTOR may not use or disclose any information it receives from COUNTY under this Agreement that COUNTY has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by COUNTY. Unless required to do so by law, including, but not limited to, the Ralph M. Brown Act or the California Public Records Act, COUNTY may not disclose to third parties any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential. If COUNTY determines that it must disclose any information that CONTRACTOR previously identified as confidential, then it shall promptly give CONTRACTOR written notice of its intention to disclose such information and the authority for such disclosure. CONTRACTOR shall have period of five (5) calendar days thereafter within which to seek a protective court order to prevent such disclosure or to notify COUNTY that it will not seek such an order. COUNTY shall cooperate with CONTRACTOR in any efforts to seek such a court order. COUNTY shall not disclose the information until the five (5) day period has expired without a response from CONTRACTOR, or CONTRACTOR has notified COUNTY that it will not seek such an order, or CONTRACTOR has sought and a court has declined to issue a protective order for such information. If CONTRACTOR seeks a protective order for such information, CONTRACTOR shall defend and indemnify COUNTY from any and all loss, injury, or claim arising from COUNTY'S withholding of the information from the requestor. This includes any attorney's fees awarded to the requestor. The duty of COUNTY and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Agreement.

**21. ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY, which consent COUNTY may grant, delay, deny, or condition in its absolute discretion.

**22. DISPUTES AND DISPUTE RESOLUTION:** CONTRACTOR shall continue with its responsibilities under this Agreement during any dispute. If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, and if the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, then either Party may pursue litigation to resolve the dispute.

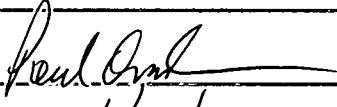
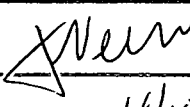
**23. PROPERTY TAXES:** Under the terms of California Revenue and Taxation Code section 107.6 (possessory interest tax), CONTRACTOR'S possession or use of any COUNTY-owned real property under this Agreement may create a "possessory interest" in the real property. If a possessory interest is created, then it may be subject to property taxation and CONTRACTOR may be subject to the payment of property taxes on that possessory interest.

**24. FURTHER ASSURANCES:** Each Party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement

- 25. CONSTRUCTION:** This Agreement reflects the contributions of all Parties and so the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.
- 26. HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.
- 27. NO THIRD-PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the Parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.
- 28. WAIVERS:** The failure of either Party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any later breach. The acceptance by either Party of either performance or payment will not be considered a waiver of any preceding breach of the Agreement by the other Party.
- 29. ORDER OF PRECEDENCE:** In the event of any conflict or inconsistency between or among the body of the Agreement (which includes these "General Agreement Terms and Conditions") and any Exhibit, Schedule, or Attachment, then the terms and conditions of the body of the Agreement shall prevail.
- 30. CONFLICT WITH LAWS OR REGULATIONS/ SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the Parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either Party is lost, then the Agreement may be terminated at the option of the affected Party. In all other cases, the remainder of the Agreement will continue in full force and effect.
- 31. ENTIRE AGREEMENT:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding will be of any force or effect. No part of this Agreement may be modified without the written consent of both Parties.
- 32. ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR must not discriminate in employment or in the provision of services based any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation. The Parties recognize that both CONTRACTOR and COUNTY have the responsibility to protect COUNTY employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, CONTRACTOR agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. COUNTY, in its sole discretion, has the right to require CONTRACTOR to replace any employee who provides services of any kind to COUNTY under this Agreement with other employees where COUNTY is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. COUNTY'S right to require replacement of employees under this section does not preclude COUNTY from terminating this Agreement with or without cause as provided for under this Agreement.
- 33. DRUG-FREE WORKPLACE POLICY:** CONTRACTOR acknowledges that under the Federal Drug-Free Workplace Act of 1989 and the California Drug-Free Workplace Act of 1990, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on COUNTY premises. CONTRACTOR agrees that any violation of this prohibition by CONTRACTOR, its employees, agents, or assigns will be deemed a material breach of this Agreement.
- 34. RECYCLED PAPER CONTENT:** To the extent CONTRACTOR'S services under this Agreement include printing services, pursuant to Public Contract Code section 22153 CONTRACTOR shall use paper that meets the recycled content requirements of Public Contract Code section 12209.
- 35.** Without prior written consent, neither CONTRACTOR nor COUNTY nor any of its affiliates will, for a period of one (1) year following the termination of this Agreement, solicit for employment or employ any employee of the other Party. In the event of a violation, the hiring Party will pay within ten (10) days of retention of said employee a lump sum fee equal to 50% of the previous year's earnings, including commission and bonus payments, of the employee at the time of separation. This section shall not be construed as prohibiting either party from engaging in any general or public solicitation for positions (ie., through newspaper advertisements, job posting boards etc.) or from hiring the other parties personnel who independently respond to such general and public solicitation.

# Authorizing Signatures

The undersigned acknowledge that they are authorized to enter into this SOW on behalf of their respective organizations. Signatures below will constitute acceptance of all terms contained in this SOW and any supporting documents referenced throughout.

COUNTY OF TULARE		NOVACOAST
	Printed Name	President/CEO Paul Anderson
	Signature	
	Date	4/11/2018
	Printed Name	COO/Treasurer Janice Newlon
	Signature	
	Date	4/10/18

APPROVED AS TO FORM:  
COUNTY COUNSEL

By  2018576  
Deputy 4/12/18

# Customer Contacts

<b>CUSTOMER INFORMATION</b>	
Company Name:	
Billing Address:	
County:	
To the Attention of:	
Tax Status, if exempt please provide certificate	

<b>IT CONTACT</b>	
Name:	
Phone:	
Email:	

<b>A/P CONTACT</b>	
Name:	
Phone:	
Email:	