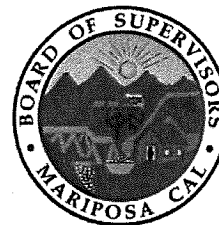




# MARIPOSA COUNTY

County Counsel • (209) 966-3222



## RESOLUTION - ACTION REQUESTED 2018-147

MEETING: April 3, 2018  
TO: The Board of Supervisors  
FROM: Steve Dahlem, County Counsel - Interim Human Resources Director  
RE: Approve Agreement with Municipal Code Online

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### RECOMMENDATION AND JUSTIFICATION:

Approve Agreement with Municipal Code Online, Inc. to Provide Software for the County Code On-Line; and Authorize the Board of Supervisors Chair to Sign a Five-Year Agreement.

This software service will include the creation of custom service/instance online; allocation of required resources; transfer of current codes; and training and assistance as needed.

### BACKGROUND AND HISTORY OF BOARD ACTIONS:

This software will allow the County Code to become more searchable to all users while also meeting the Americans with Disabilities Act recommendations and requirements.

### ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

### FINANCIAL IMPACT:

**\$2,500/year for five years.**

### ATTACHMENTS:

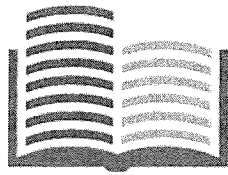
**Municipal Code Online Agt (PDF)**

**RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]**

**MOVER:** Kevin Cann, District IV Supervisor

**SECONDER:** Marshall Long, District III Supervisor

**AYES:** Smallcombe, Jones, Long, Cann, Menetrey



**MUNICIPAL  
CODE ONLINE™**

855-686-4263

[www.municipalcodeonline.com](http://www.municipalcodeonline.com)

## **Municipal Code Online (MCO) Software as a Service Agreement**

This MCO Software as a Service Agreement ("SaaS Agreement") is made and entered into on this date \_\_\_\_\_ (Effective Date), by and between:

**Municipal Code Online, INC.**

("MCO", "Service Provider" or "Party"), a Utah corporation with its principal place of business at:

**1920 N 1700 W**

**Farr West, Utah 84404**

AND

**Mariposa County**

("Customer" or "Party"), with its principal place of business at:

**PO Box 784**

**5100 Bullion St.**

**Mariposa, CA 95338**

The Parties hereby agree as follows:

1. **Contract Period:** This Agreement is effective when signed by Customer and MCO representative(s). Initial term of this Agreement is provided herein (see clause 15), and commences from the Effective Date. Subsequently, this Agreement shall automatically renew annually for a term of one (1) year, and is subject to any fee adjustment agreed to by both parties, unless either Party shall give notice of cancellation at least thirty (30) days prior to the expiration of the original term or any renewal thereof. If Customer terminates this Agreement, then, in addition to amounts due for use of the Services actually rendered prior to the end of the contract period, there shall be immediately due and payable by Customer an amount equal to the 50% of the fees that would have been paid the remainder of the term.
2. **Software Service:** This includes:
  - a. the creation of the custom service/instance online
  - b. allocation of the required resources for the service

- c. customer service assistance throughout the term
  - d. the transfer and adaptation of a single document—generally the Customer’s Municipal Ordinances and/or code, to be consumable within the Service.
  - e. the transfer and adaptation of an *additional* documents, if the terms permit such (Minutes Book / Municipal Resolutions / Administrative Rules / Policies & Procedures, etc.).
  - f. These documents must be provided to MCO from the Customer, and in digital form wherever possible. The destination format for storage and presentation of the Customer’s document will be in the form of standard HTML and PDF.
3. **Billing & Payment:** Payments are due in advance annually. A URL comprising the Service for the Customer, and Username(s) and Password(s) (if applicable), may not be provided if payment is not received. This Service and accompanying support will be terminated if payments are not received within the terms, after serving a seven days’ notice via U.S. certified mail.
4. **Representations and Warranties General:** Each Party represents and warrants that it has the right and authority to enter into this Agreement, and by entering into this Agreement, it will not violate, conflict with or cause a material default under any other contract, agreement, indenture, decree, judgment, undertaking, conveyance, lien or encumbrance to which it is a party or by which it or any of its property is or may become subject or bound.
- a. **Compliance with the Laws:** Each Party shall, at its own expense, comply with all laws, regulations, and other legal requirements that apply to it and this Agreement.
  - b. **Acceptable Use:** Customer is solely responsible for the content of any postings, data, or transmissions using the Services, or any other use of the Services by Customer or by any person or entity Customer permits to access the Services. Customer represents and warrants that it will: (a) not use the Services in a manner that: (i) is prohibited by any law or regulation, or to facilitate the violation of any law or regulation; or (ii) will disrupt a third party’s similar use or Licensed Materials; (b) not violate or tamper with the security of any MCO computer equipment, service, or program. If MCO has reasonable grounds to believe that Customer is utilizing the Services for any such illegal or disruptive purpose MCO may suspend the Services immediately with notice to Customer. MCO may terminate the Agreement as contemplated in Section 12 if Customer in fact fails to adhere to the foregoing acceptable use standards.
  - c. **DISCLAIMER:** THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE ONLY WARRANTIES MADE BY MCO. MCO MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, ANY RELATED SERVICE OR SOFTWARE. MCO HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING OR COURSE OF PERFORMANCE.

NO ORAL OR WRITTEN INFORMATION GIVEN BY MCO, ITS EMPLOYEES, LICENSORS, OR THE LIKE WILL CREATE A WARRANTY.

- d. **LIMITATION OF LIABILITY:** EXCLUDING THE LIABILITY UNDER THE SECTION ENTITLED "NO INFRINGEMENT" BELOW, UNDER NO CIRCUMSTANCES WILL MCO OR ANYONE ELSE INVOLVED IN ADMINISTERING, DISTRIBUTING OR PROVIDING THE SERVICES, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE SERVICES, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE OR LOST PROFITS, OR DAMAGES THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR EMAIL, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, FAILURE OF PERFORMANCE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO MCO'S RECORDS, PROGRAMS OR SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT OF ANY BREACH BY MCO OF THIS AGREEMENT, MCO'S LIABILITY TO CUSTOMER WILL NOT EXCEED 25% OF THE ANNUAL PAYMENT PAID TO MCO BY CUSTOMER.
- e. **No Infringement.** MCO warrants that its software (excluding Customer content) will not infringe any patent, trademarks, copyright or any proprietary rights of a third party or constitute a misuse or misappropriation of a trade secret. Customer shall notify MCO promptly in writing of any known action brought against Customer based on an allegation that Customer's use of any materials infringes any patent, trademark, copyright, or infringes any right of a third party, or constitutes misuse or misappropriation of a trade secret ("Infringement"). MCO will defend, indemnify and hold Customer harmless from any such action at MCO's sole expense, provided that MCO shall have the sole control of the defense of any such action, all negotiations and/or its settlement, and Customer reasonably cooperates with MCO in such defense. In the event that a final injunction is obtained against Customer's use of the Services by reason of an Infringement or Customer is otherwise prohibited from using same, MCO shall to the extent possible and at its expense, within sixty (60) days, either:
  - i. Procure for Customer the right to continue to use the Services that are infringing, or
  - ii. Replace or modify the Services to make its use non-infringing while being capable of performing the same function. If neither option is available to MCO, then Customer, at Customer's option, may terminate this Agreement without penalty or further payment other than payment of fees for use of the Services prior to said termination.

## 5. Confidential Information

- a. **Definition:** For purposes of this Agreement "Confidential Information" shall mean information including, without limitation computer programs, source or object codes, algorithms, know-how, formulas, processes, technical inventions (whether

patentable or not), schematics, and other technical information, or if disclosed verbally, is identified as confidential at the time of disclosure. In addition to the foregoing, Confidential Information shall include third party software, if any, that may be provided to Customer under this Agreement, including any related source or object codes, technical data, data output of such software, documentation, or correspondence owned by the applicable licensor. Confidential Information excludes information that: (i) was or becomes publicly known through no fault of the receiving Party; (ii) was rightfully known or becomes rightfully known to the receiving Party without confidential or proprietary restriction from a source other than the disclosing Party; (iii) is independently developed by the receiving Party without the participation of individuals who have had access to the Confidential Information; (iv) is approved by the disclosing Party for disclosure without restriction in a written document which is signed by a duly authorized officer of such disclosing Party; and (v) the receiving Party is legally compelled to disclose; provided, however, that prior to any such compelled disclosure, the receiving Party will: (a) assert the privileged and confidential nature of the Confidential Information against the third party seeking disclosure, and (b) cooperate fully with the disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event that such protection against disclosure is not obtained, the receiving Party will be entitled to disclose the Confidential Information, but only as, and to the extent, necessary to legally comply with such compelled disclosure.

- b. **Non-disclosure:** Each Party agrees to maintain all Confidential Information in confidence to the same extent that it protects its own similar Confidential Information.
- c. **Injunctive Relief:** In the event of an actual or threatened breach of the above confidentiality provisions, the non-breaching Party will have no adequate remedy at law and will be entitled to immediate injunctive and other equitable relief, without bond and without the necessity of showing actual money damages.
- d. **Customer Responsibility:** Customer is solely responsible for the content of data transmitted by Customer using the Services, and shall defend, indemnify and hold harmless MCO from and against all liabilities and costs (including reasonable attorneys' fees) arising from any and all third-party claims by any person based upon the content of any such communications data or content.
- e. **Customer is not permitted to resell the Services:** Customer shall use the Services only for lawful purposes. To the extent deemed necessary by Customer, Customer shall implement security procedures necessary to limit access to the Services to Customer's authorized users and shall maintain a procedure external to the Services for reconstruction of lost or altered files, data or programs.
- f. **Contact:** Customer is responsible for establishing designated points of contact to interface with MCO

6. **Licenses:** MCO hereby grants to customer a personal, nonexclusive, nontransferable license during the term of this Agreement to use, in object code form, all software and related documentation provided by MCO ("Licensed Material"), which may be furnished to Customer under this Agreement. Customer agrees to use commercially reasonable efforts to ensure that its employees and users of all Licensed Material hereunder comply with the terms and conditions set out in this Agreement. Customer also agrees to refrain from taking any steps, such as reverse assembly or reverse compilation, to derive a source code equivalent to the Licensed Material. All Licensed Material furnished to Customer under this Agreement shall be used by Customer only for Customer's internal business purposes, shall not be reproduced or copied in whole or in part.
7. **Customer Data:** All data is owned by Customer and is to be strictly held as confidential. MCO will delete and destroy all copies of data once the Agreement is terminated with or without default. Customer has the option to receive a backup of data prior to deletion. All right, title and interest in and to the Licensed Material, and all copyrights, patents, trademarks, service marks or other intellectual property or proprietary rights relating thereto, belong exclusively to MCO.
8. **Customer Acknowledgement:** The Customer acknowledges that software is complex and never wholly free from defects, errors and bugs, and the MCO gives no warranty or representation that the software will be wholly free from such defects, errors and bugs. The MCO does not warrant or represent that the software will be compatible with any application, program, or other software utilized by the Customer. MCO provides a publishing and indexing software framework for books, and therefore cannot be held liable for content produced by Customer.
9. **Professional Services Excluded:** MCO will not and does not purport to provide any legal, taxation, or accountancy advice or services under this Agreement or in relation to the software. Any additional services that may be rendered under this Agreement by MCO, employees, officers, or agents shall constitute recommendations from a consultant and nothing more. MCO does not warrant or represent that the software will not give rise to any civil or criminal legal liability on the part of the Customer or any other person.
10. **Place of Notice:** Any notice required by this Agreement shall be deemed properly received if sent by certified mail to:
  - a. **Municipal Code Online Inc.**  
1920 N 1700 W  
Farr West, Utah 84404
  - b. **Mariposa County**  
PO Box 784  
5100 Bullion St.  
Mariposa, CA 95338
11. **Service Outage:** A Service Outage is an incident that impacts Customer that results in the public service not being delivered at a level reasonably expected. Malfunction of common features regularly used by administrators do not comprise a Service Outage and are Support issues. Routine maintenance and upgrades are not considered Service Outages. MCO will acknowledge by email, phone or text requests from Customer for

credit for Service Outage(s) originating with MCO within 3 business days. The credit for Service Outage(s) will be determined by the following equation,  $G \times D$  (explained below):

- a. The sum of days Outage occurs (G)
- b. Finding the daily expense by dividing the annual payment of one (1) year's License Fee by 365 (D)

12. **Backup of Data:** MCO will perform regular backup of Customer data.

13. **Termination:** Customer shall be responsible for payment of all charges under a terminated Agreement incurred as of the effective date of termination. This Agreement may be terminated immediately upon written notice by either Party if the other Party becomes insolvent or involved in a liquidation or termination of business, files a bankruptcy petition, has an involuntary bankruptcy petition filed against it (if not dismissed within thirty days of filing), becomes adjudicated bankrupt, or becomes involved in an assignment for the benefit of its creditors. If a Party fails to perform or observe any material term or condition of this Agreement and the failure continues unremedied for thirty (30) days after receipt of written notice:

- a. The other Party may terminate this agreement, or
- b. Where the failure is a non-payment by Customer of any charge when due, MCO, may, at its option, terminate or suspend Services with seven days' notice.

14. **Support:** Customer shall receive support by MCO for any and all requests as they pertain to malfunction of the software outside the reasonable control and expectations of the Customer. MCO will be notified of any such malfunctions via a provided support email address, *support@municipalcodeonline.com*. Customer will receive a response to notifications within 3 business days.

15. **Price, Fees & Additional Costs:**

a. **Term and Annual Fee:** Customer shall pay MCO an annual fee under this Agreement in the amount of:

- i.  **\$2500 annually for a 5-year term, beginning on the Effective Date.** This option permits Customer access to manage and publish their own Municipal Code, and all additional books such as Resolutions, Minutes, Cemetery, etc., and *reasonable* custom books upon client request (wherein the software hosts books containing organizable, dynamic and searchable text, and the text's governing document(s) as evidence). Customer's Municipal Code, up to its most current state, will be initially transferred to the MCO online instance by MCO. Customer may retain the numbering in their present code, or accept MCO's suggested code numbering at no additional cost. The transferring of any additional book/book content is Customer's responsibility (unless Customer requests additional transfer services from MCO).
- ii. At the conclusion of this agreement, MCO is likely to encourage Customer to continue to enter into another multiple-year agreement to receive the same services.

This fee includes completing all necessary prerequisite tasks to be able to use and obtain access to all functionality of the given software as described in this Agreement. The implementation includes all term and annual fees for the duration of this Agreement. This fee also provides for the allocation of ongoing resources and any included feature and product enhancements made available to the Service generally. This fee is billed up front and in whole for the next term.

- b. **Codifying Past or Future Ordinances & Training:** Customer claims to have less than 25 pages of ordinances or resolutions that still need to be codified, which will incur no charge because of the multiple-year agreement. Therefore, Customer will be expected to:
  - i. Codify all future legislation into the transferred code.
  - ii. Review MCO's numbering and codification standards, whereby customer may adopt MCO's model to improve clarity, ease future updating and to improve legislative references.
  - iii. Evaluate if MCO should assist in additional codification efforts. If desired upon Customer request, Customer may be charged in *addition* to the Annual Fee mentioned in 15(a), and at the rate mentioned in 15(d).
  - iv. Evaluate MCO's assistance to provide a sample Adopting Ordinance whereby Customer may make the Online Municipal Ordinances become the official Code.
  - v. Receive training to Codify passed ordinances, and to draft and codify future Ordinances. To ensure Customer's staff is confident to codify in-house as past and ongoing Ordinances are inserted to the code, MCO will train staff in person or online, and provide a step-by-step guide for in-house Codification using MCO.
- c. **Start-up & Transfer Fees:** Any Start-up and Transfer fees are **\$0** as such fees are hereby waived based upon the initial multi-year term of this Agreement.
- d. **Support, Technical & Consultation Fees:** Support or assistance with any software Service or platform functionality will be provided to the Customer via a provided support email address at no additional cost.
  - i. Other non-technical support or assistance such as Codification of Ordinances or Resolutions will be billed at a rate of \$15/pg, or \$40/hr, rounded up to the next nearest hour interval.
  - ii. Data input on Customer's behalf *not related* to Ordinance or Resolution transferring will be billed at a *lesser* per page rate, decided between written correspondence.
  - iii. Consulting support including but not limited to the drafting of legalese for legal documents and related legal tasks, legal consultation, graphic design services, presentations, meeting attendance, or special projects requested by Customer will be billed at a rate of \$100/hr, rounded up to the next nearest hour interval.

Any requested support, technical, consultation or otherwise which will result in incurring any added or additional expense to the Customer, will first be made



known to the Customer and subsequently approved by an authorized party on the behalf of the Customer. Written documentation of requests must be sent to MCO by the Customer or its authorized agent, before any work can or will be completed and invoiced.

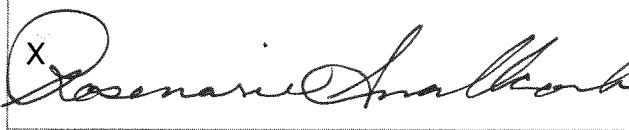
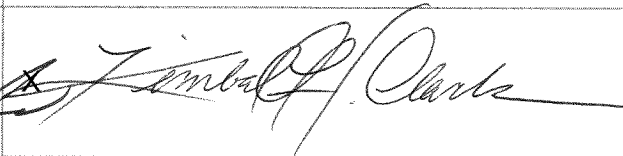
- e. **Upgrade Fees:** If an upgrade is desired by Customer at a later date which increases access not permitted in the original terms, an addendum to this agreement will be required, and the annual fee may increase.

#### 16. **General Provisions & Force Majeure:**

- a. This Agreement, including any amendments and attachments hereto that are incorporated herein, constitute the entire agreement between the parties and shall be binding on the parties when accepted by Customer.
- b. No modification, termination or waiver of any provisions of this Agreement shall be binding upon a Party unless in writing signed by an authorized officer of the relevant Party(ies).
- c. No provision of any purchase order or other document issued by Customer, which purports to alter, vary, modify, or add to the provisions of this Agreement, shall be binding upon MCO or effective for any purpose, unless accepted by MCO in writing.
- d. It is further expressly understood and agreed that, there being no expectations to the contrary between the parties, no usage of trade or other regular practice or method of dealing either within the computer software industry, MCO's industry or between the parties shall be used to modify, interpret, supplement, or alter in any manner the express terms of this Agreement or any part thereof.
- e. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment relationship between the parties, nor shall either Party have the right, power, or authority to create any obligation or duty, express or implied, on behalf of the other.
- f. The Licensed Materials shall not be exported or re-exported in violation of any export provisions of the United States or any other applicable jurisdiction.
- g. This Agreement may not be assigned, sublicensed or transferred, in whole or in part, by Customer without the prior written consent of MCO. Any attempted assignment, subletting or transfer shall be void.
- h. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- i. No delay or failure of MCO or Customer in exercising any right herein and no partial or single exercise thereof shall be deemed of itself to constitute a waiver of such right or any other rights herein. Any waiver by MCO or Customer of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach.

- j. Neither Party is held liable in the event that a Party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of natural disaster, terrorism, fire, explosion, power blackout, earthquake, flood, the elements, strike, embargo, labor disputes, acts of civil or military authority, war, acts of god, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, actions or decrees of governmental bodies or communication line failure not the fault of the affected Party or other causes beyond such Party's reasonable control (a "Force Majeure Event") the Party who has been so affected shall give notice to the other Party and shall do everything possible to resume performance.
- k. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and each of which together shall constitute a single instrument.
- l. This Agreement shall be governed by and construed under the laws of the State of Utah applicable to contracts made in and without regard to conflicts of law.

**Signature below by your authorized representative is your consent to the terms and conditions of this Agreement.**

CONSENT BY CUSTOMER	CONSENT BY MCO
<input checked="" type="checkbox"/> 	
Printed Name: <u>Rosemarie Smallcombe</u>	Printed Name: <b>Kimball Clark</b>
Title: <u>Board Chair</u>	Title: <b>President</b>
Date: <u>April 3, 2018</u>	Date: <b>March 6, 2018</b>
Attest: <u>Ken LaRode</u>	

**APPROVED AS TO FORM:**

  
**STEVEN W. DAHLEM**  
**COUNTY COUNSEL**