



Moraga-Orinda Fire District

Board of Directors

CALL AND NOTICE OF A SPECIAL MEETING

May 21, 2021

**11:00 a.m. OPEN SESSION
(No Closed Session)**

Pursuant to Executive Order N-29-20, Teleconferencing Restrictions of the Brown Act have been suspended.

PLEASE NOTE TELECONFERENCE MEETING INFORMATION:

To join the Meeting:

By Phone: 1-669-900-6833

Please click the link below to join the webinar by Zoom:

<https://us02web.zoom.us/j/88451416394>

Webinar ID: 884 5141 6394

Public Participation is encouraged by joining via the ZOOM link or the dial-in information above. You can access either via a smartphone or computer App (Zoom) or via phone.

Live Public Comment can be provided via the Zoom app (during public comment) by the raise hand or chat function. If participating by phone, dial *9 to *raise your hand*. Staff will unmute participant to allow comment. Participants will be unmuted in the order of hands raised or chat request to comment.

Written Public Comment can be provided via email at info@mofd.org. Emails will be read into the record by staff during public comment at their normal cadence and will be limited to a maximum of 3 minutes. To be read into the record, e-mail must contain in the subject line "Public Comment – Not on the Agenda" or "Public Comment – Agenda Item #" with the relevant agenda item indicated.

The meeting will be live streamed via the MOFD YouTube Channel. A link is accessible via the District's website.

1. OPENING CEREMONIES

- 1.1. Call the Meeting to Order
- 1.2. Roll Call

2. PUBLIC COMMENT

At the beginning of each regular District Board meeting, any member of the public may address the District Board concerning any item not on the Board's agenda but within the subject matter jurisdiction of the Board. Speakers will be limited to three (3) minutes unless otherwise specified by the Presiding Officer. The public will be given an opportunity to speak on each agenda item at the time it is called. The Board may discuss and/or take action regarding any or all of the items listed below. Once the public comment portion of any item on this agenda has been closed by the Board, no further comment from the public will be permitted unless authorized by the Board and if so authorized, said additional public comment shall be limited to the provision of information not previously provided to the Board or as otherwise limited by order of the Presiding Officer or the Board.

3. SPECIAL AGENDA

3.1. **Authorize Staff to Enter into a Software Agreement with Zonehaven, Inc. to Develop a Comprehensive Evacuation Support System in the Amount of \$627,750**

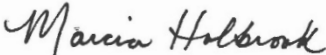
- 1) Discuss; 2) Deliberate; 3) Authorize Staff to Enter into a Software Agreement with Zonehaven, Inc. to Develop a Comprehensive Evacuation Support System in the Amount of \$627,750.

4. ADJOURNMENT

The Moraga-Orinda Fire Protection District ("District"), in complying with the Americans with Disabilities Act ("ADA"), requests individuals who require special accommodations to access, attend and/or participate in District Board meetings due to a disability, to please contact the District Chief's office, (925) 258-4501, at least one business day prior to the scheduled District Board meeting to ensure that we may assist you.

Any disclosable public records related to an open session item on a Regular meeting agenda and distributed by the Moraga-Orinda Fire District to a majority of members of the Board of Directors less than 72 hours prior to that meeting are available for public inspections at 1280 Moraga Way, Moraga, during normal business hours.

I hereby certify that this agenda in its entirety was posted on May 19, 2021, at the Moraga and Orinda Fire Administration offices, Stations 41, 42, 43, 44, and 45. Agenda provided to the Moraga Town Office (Hacienda) and Orinda City Hall.



Marcia Holbrook
District Secretary/Clerk



Moraga-Orinda Fire District

TO: Board of Directors

FROM: David Winnacker, Fire Chief

DATE: May 21, 2021

SUBJECT: Item 3.1 – Authorize Staff to Enter into a Software Agreement with Zonehaven, Inc. to Develop a Comprehensive Evacuation Support System in the Amount of \$627,750

BACKGROUND

The District was awarded a grant as a sub-recipient of an Urban Areas Security Initiative Grant (UASI) awarded to Contra Costa County in the amount of \$300,000. The purpose of the grant is to contract the development of a comprehensive evacuation support system consisting of fire modeling, evacuation polygons and an evacuation decision support tool. The project must be completed by December 31, 2021. The Board authorized acceptance of the grant on January 20, 2021 (Attachment C.)

Following board acceptance of the grant, staff worked closely with Contra Costa County OES and staff at Bay Area UASI to develop a compliant bid process.

On January 29, 2021 the District initiated a competitive bidding process and issued a Request for Proposals (RFP) for Cloud-Based Evacuation Management and Community Evacuation Interface Software. The RFP was directly sent via email to nine potential bidders/vendors. The RFP was also posted on the District's website along with an announcement regarding the RFP. As a result of the RFP distribution, the District was contacted via phone and email by three vendors who sought additional information. The District promptly provided all additional information. Proposals were due February 12, 2021 (15-days after issuance of the RFP.) The District received one proposal from Zonehaven, Inc.

The Zonehaven proposal is for a term of three years and the costs are as follows:

	Year 1	Year 2	Year 3	Total
Set-up cost	\$135,000			\$135,000
License fee	225,000	\$164,250	\$164,250	553,500
Discount for 3-year contract	(60,750)			(60,750)
Total	\$299,250	\$164,250	\$164,250	\$627,750

As a result of a single bid being received, Bay Area UASI directed MOFD submit a request for sole source approval from California Office of Emergency Services. This request was submitted on March 26, 2021.

On May 14, 2021 the California Office of Emergency Services approved the Noncompetitive Procurement Contract with Zonehaven, Inc. in the Amount of \$300,000 (Attachment A.) Sufficient

appropriations are available in the FY2021 budget for year one of the contract (\$300,000). This purchase complies with the District's Purchasing Ordinance and has been reviewed and approved by Contra Costa County OES and Bay Area UASI.

Per Section 14.1 of the agreement, the agreement may be terminated with at least 30 day notice at the conclusion of the first year or any subsequent year without penalty.

With County OES support, staff is seeking additional grant funding for year two and three of the contract. In the absence of additional funding, staff will recommend terminating the contract as part of the FY2022 budget process under Section 14.1 before any MOFD funds beyond the current \$300,000 grant are expended.

Staff recommends the Board authorize staff to enter into a software agreement with Zonehaven, Inc. (Attachment B) to develop a comprehensive evacuation support system in the amount of \$627,750.

RECOMMENDATION

- 1) Discuss; 2) Deliberate; 3) Authorize Staff to Enter into a Software Agreement with Zonehaven, Inc. to Develop a Comprehensive Evacuation Support System in the Amount of \$627,750.

ATTACHMENTS

Attachment A – Letter from the California Office of Emergency Services approving the Noncompetitive Procurement Contract with Zonehaven, Inc.

Attachment B – Software Agreement with Zonehaven, Inc.

Attachment C – January 2021 Item 9.4 Authorize Acceptance of the Urban Areas Security Initiative Grant to Develop a Comprehensive Evacuation Support System and Authorize Capital Projects Fund Revenue and Expenditure Budget Adjustment Increases in the Amount of \$300,000

May 14, 2021

Craig Dziedzic
General Manager
Bay Area UASI
1011 Turk Street
San Francisco, CA 94102

SUBJECT: **NONCOMPETITIVE PROCUREMENT CONTRACT APPROVAL**
Homeland Security Grant Program (HSGP)
Grant Subaward #2020-0095; Cal OES ID #075-95017

Dear Craig Dziedzic:

The California Governor's Office of Emergency Services (Cal OES) has reviewed and approved the Noncompetitive Procurement Authorization Request noted below. Our assessment included reviewing documentation submitted to support the proposed expenditures and to determine compliance with the Code of Federal Regulations (CFR) and program guidelines.

<u>Project Title</u>	<u>Vendor</u>	<u>Requested Amount</u>
Fire Modeling	Zonehaven, Inc.	\$300,000

Thank you for your work in protecting California. We look forward to your continued collaboration toward our homeland security strategy and appreciate your cooperation and support.

Sincerely,



TORAN BAHA
Chief, Grants Procurement Compliance



3650 SCHRIEVER AVENUE • MATHER, CA 95655
(916) 845-8506 TELEPHONE
www.CalOES.ca.gov

SaaS Software Agreement

This SaaS Software Agreement (“**Agreement**”) is being entered into as of _____ (“**Effective Date**”) by and between Moraga Orinda Fire District (“**Customer**”), a Government Entity with a principal place of business at 1280 Moraga Way, Moraga, CA 94556, and Zonehaven Inc. (“**Supplier**”), a Delaware corporation with a principal place of business at 2034 Great Highway, San Francisco, CA 94116.

In consideration of the mutual promises and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed by the parties, the parties agree as follows:

1. DEFINITIONS.

1.1 “**Data**” means information and data other than Confidential Information submitted by or on behalf of Customer to Supplier for incorporation into the SaaS Service.

1.2 “**Documentation**” means the online user instructions, help files and training materials made available by Supplier to Customer for use with the SaaS Service, as may be updated from time to time by Supplier.

1.3 “**SaaS Service**” means Internet access to Supplier’s evacuation planning software platform.

1.4 “**Services**” means the SaaS Service and any Setup Services.

1.5 “**Setup Services**” means the implementation, consulting, development and other professional services that Supplier may perform as described in **Exhibit A**.

1.6 “**Third Party Offerings**” means applications, services, platforms, software and products provided by third parties that interoperate with the SaaS Service.

1.7 “**Users**” means Customer’s employees and consultants (a) who are authorized by Customer to access and use the SaaS Service and (b) who have been supplied user identifications and passwords for such purpose by Customer (or by Supplier at Customer’s request).

2. LICENSES AND RESTRICTIONS.

2.1 **Access and Use License.** Subject to Customer’s compliance with the terms and conditions contained in this Agreement, Supplier hereby grants to Customer, during the term of this Agreement, a limited, non-exclusive, non-transferable right for its Users to access and use the SaaS Service in accordance with the Documentation in each case solely for Customer’s internal business purposes. Customer agrees that its purchase of the Services is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Supplier regarding any future functionality or features.

2.2 **Restrictions.** Customer shall not, directly or indirectly, and Customer shall not permit any User or third party to: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the object code, source code or underlying ideas or algorithms of the SaaS Service; (b) modify, translate, or create derivative works based on any element of the SaaS Service or any related Documentation; (c) rent, lease, distribute, sell, resell, assign, or otherwise transfer its rights to use the SaaS Service; (d) use the SaaS Service for timesharing purposes or otherwise for the benefit of any person or entity other than for the benefit of Customer; (e) remove any proprietary notices from the Documentation; (f) publish or disclose to third parties any evaluation

of the SaaS Service without Supplier's prior written consent, except as otherwise required by law; (g) use the SaaS Service for any purpose other than its intended purpose; (h) interfere with or disrupt the integrity or performance of the SaaS Service; or (i) attempt to gain unauthorized access to the SaaS Service or their related systems or networks.

2.3 **Reservation of Rights.** Except as expressly granted in this Agreement, there are no other licenses granted to Customer, express, implied or by way of estoppel. All rights not granted in this Agreement are reserved by Supplier.

3. **THIRD PARTY OFFERINGS.**

3.1 **Third Party Offerings.** The SaaS Service may contain features designed to interoperate with Third Party Offerings. To use such features, Customer may be required to obtain access to such Third Party Offering from their providers. Any use by Customer of any such Third-Party Offerings, and any exchange of data between Customer and any provider of a Third Party Offering, is solely between Customer and the applicable provider of the Third Party Offering. Supplier does not warrant or support any Third Party Offering.

3.2 **Supplier Access Codes.** To the extent that Supplier requires that Customer grant Supplier authorizations, passwords or other user credentials to a Third Party Offering ("**Supplier Access Codes**") to enable interoperability with the SaaS Service, Customer shall promptly provide such Supplier Access Codes. Supplier shall not share, reassign, divulge or disclose any Supplier Access Codes except to Supplier employees or contractors specifically engaged in the performance of the Services upon receiving Customer's written consent. Supplier Access Codes shall constitute Customer's Confidential Information under this Agreement.

4. **PASSWORDS; SECURITY.**

4.1 **Passwords.** Supplier will issue to Customer user logins and passwords for each of its Users authorized to access and use the SaaS Service. Customer shall be, and shall ensure that each of its Users are, responsible for maintaining the confidentiality of all user logins and passwords and for ensuring that each user login and password is used only by the User to which it was issued. Customer is solely responsible for any and all access and use of the SaaS Service that occurs using logins and passwords Supplier issues to Users. Customer shall restrict its Users from sharing passwords. Customer agrees to immediately notify Supplier of any unauthorized use of any account or login and password issued to Customer's Users, or any other breach of security known to Customer. Customer is responsible for all use of Customer's User accounts, and Customer is responsible for compliance by each User with the terms of this Agreement. Supplier shall have no liability for any loss or damage arising from Customer's failure to comply with the terms set forth in this Section.

4.2 **No Circumvention of Security.** Neither Customer nor any User may circumvent or otherwise interfere with any user authentication or security of the SaaS Service. Customer will immediately notify Supplier of any breach, or attempted breach, of security known to Customer.

5. **CUSTOMER OBLIGATIONS.**

5.1 **Data.** Customer shall deliver Data to Supplier as reasonably requested by Supplier. Customer hereby grants to Supplier a non-exclusive, royalty-free, transferable, perpetual, irrevocable, worldwide, fully paid-up license (with rights to sublicense, including, without limitation, through multiple tiers of sublicensees) to use, reproduce, prepare derivative works, distribute, perform, display, and otherwise exploit the Data in connection with the SaaS Service. For the avoidance of doubt, this license survives any termination or expiration of this Agreement.

5.2 Acceptable Uses. Customer shall be solely responsible for its actions and the actions of its Users while using the SaaS Service. Customer acknowledges and agrees: (a) to abide by all local, state, national, and international laws and regulations applicable to Customer's use of the SaaS Service, including, without limitation, the provision and storage of Data; (b) not to interfere or disrupt networks connected to the SaaS Service or interfere with other ability to access or use the SaaS Service; and (c) to use the SaaS Service only in accordance with the Documentation. Customer acknowledges and agrees that Supplier neither endorses the contents of any Customer communications or Data, nor assumes any responsibility for any offensive material contained therein, any infringement of Third-Party intellectual property rights arising therefrom or any crime facilitated thereby. Supplier, in its discretion, may remove, in its reasonable belief, any content in violation of this Section 5.2 posted or stored using the SaaS Service or transmitted through the SaaS Service, upon reasonable notice to Customer. Notwithstanding the foregoing, Supplier does not guarantee, and does not and is not obligated to verify, authenticate, monitor or edit the Data or any other information or data input into or stored in the SaaS Service for completeness, integrity, quality, accuracy or otherwise. Customer shall be responsible and liable for the completeness, integrity, quality, accuracy, legality, reliability, and appropriateness of Data.

5.3 Accuracy of Customer's Contact Information; Email Notices. Customer agrees to provide accurate, current and complete information as necessary for Supplier to communicate with Customer from time to time regarding the Services, issue invoices or accept payment, or contact Customer for other account-related purposes. Customer agrees to keep any online account information current and inform Supplier of any changes in Customer's legal business name, address, email address and phone number. Customer agrees to accept emails from Supplier at the e-mail addresses specified by its Users for login purposes.

5.4 Temporary Suspension. Supplier may temporarily suspend Customer's or its Users' access to the SaaS Service in the event that either Customer any of their Users is engaged in, or Supplier in good faith suspects Customer or any of their Users is engaged in, any unauthorized conduct (including, but not limited to any violation of this Agreement). Supplier shall provide reasonable notice to Customer prior to such suspension. A suspension may take effect for Customer's entire account and Customer understands that such suspension would therefore include User sub-accounts. Customer agrees that Supplier shall not be liable to Customer, any of its Users, or any other third party if Supplier exercises its suspension rights as permitted by this Section. Upon determining that Customer has ceased the unauthorized conduct leading to the temporary suspension to Supplier's reasonable satisfaction, Supplier shall reinstate Customer's and its Users' access and use of the SaaS Service. Notwithstanding anything in this Section to the contrary, Supplier's suspension of SaaS Service is in addition to any other remedies that Supplier may have under this Agreement or otherwise, including but not limited to termination of this Agreement for cause. Additionally, if there are repeated incidences of suspension, regardless of the same or different cause and even if the cause or conduct is ultimately cured or corrected, Supplier may, in its reasonable discretion, determine that such circumstances, taken together, constitute a material breach.

6. AVAILABILITY; SUPPORT.

6.1 Availability. Subject to the terms and conditions of this Agreement, Supplier will use commercially reasonable efforts to make the SaaS Service available with minimal downtime 24 hours a day, 7 days a week; provided, however, that the following are excepted from availability commitments: (a) planned downtime (with regard to which Supplier will use commercially reasonable efforts to provide at least 24 hours advance notice, and (b) routine maintenance times as reasonably specified by Supplier, and (c) any unavailability caused by circumstances of Force Majeure described in **Section 15.10**. Certain enhancements to the SaaS Service made generally available at no cost to all subscribing customers during the term of this Agreement will be made available to Customer at no additional charge, subject to any conditions that may be required by Supplier. However, the availability of some new enhancements or modules to the SaaS Service may require the payment of additional fees, and Supplier will determine at its sole discretion whether access to any other such new enhancements will require an additional fee. This Agreement will apply to, and the SaaS Service includes, any bug fixes, error

corrections, new builds, enhancements, updates, upgrades and new modules to the SaaS Service subsequently provided by Supplier to Customer hereunder.

6.2 **Support.** Supplier will provide technical support to Customer via both telephone and electronic mail on weekdays during the hours of 9:00 am through 5:00 pm Pacific time, with the exclusion of US federal holidays (“**Support Hours**”). Customer may initiate a helpdesk ticket during Support Hours by calling the Supplier or by emailing support@zonehaven.com.

7. **SETUP SERVICES.** Supplier shall use commercially reasonable efforts to perform the Setup Services as set forth in **Exhibit A**. Supplier and Customer shall cooperate to enable Supplier to perform the Setup Services according to the dates of performance and delivery terms set forth in **Exhibit A**. In addition, Customer shall perform any Customer obligations specified in **Exhibit A**. In the event the Setup Services are not performed in material accordance with the terms of **Exhibit A**, Customer shall notify Supplier in writing no later than thirty (30) calendar days after performance of the affected Setup Services by Supplier. Customer’s notice shall specify the basis for non-compliance with **Exhibit A**, and if Supplier agrees with the basis for non-compliance, then at Supplier sole option, Supplier shall re-perform the Setup Services at no additional charge to Customer or refund to Customer the applicable fees for the affected Setup Service. THE FOREGOING CONSTITUTES CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND SUPPLIER’S SOLE AND EXCLUSIVE LIABILITY WITH RESPECT TO PERFORMANCE OR NON-PERFORMANCE OF THE SETUP SERVICES.

8. FEES AND PAYMENT.

8.1 **Fees.** Customer agrees to pay all fees specified in **Exhibit B** using one of the payment methods the Supplier supports. Except as otherwise specified in this Agreement or in **Exhibit B**, (a) fees are quoted and payable in United States dollars, (b) fees are based on Services purchased, regardless of actual usage, and (c) payment obligations are non-cancelable and fees paid are non-refundable. Fees are based on yearly periods that begin on the Effective Date and each yearly anniversary thereof. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding, except as may be required by law.

8.2 **Invoices and Payment.** Except as otherwise specified in this Agreement or in **Exhibit B**, all fees will be invoiced in advance. Except as otherwise set forth in the applicable exhibit, Customer agrees to pay all invoiced amounts within thirty (30) calendar days of the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Supplier and notifying Supplier of any changes to such information.

8.3 **Overdue Charges.** If Supplier does not receive fees by the due date, then at Supplier’s discretion, such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

8.4 **Suspension of Service.** If any amounts owed by Customer for the Services are ten (10) or more days overdue, Supplier may, without limiting Supplier’s other rights and remedies, suspend Customer’s and its Users’ access to the Services until such amounts are paid in full.

8.5 **Taxes.** “**Taxes**” means all taxes, levies, imposts, duties, fines or similar governmental assessments imposed by any jurisdiction, country or any subdivision or authority thereof including, but not limited to federal, state or local sales, use, property, excise, service, transaction, privilege, occupation, gross receipts or similar taxes, in any way connected with this Agreement or any instrument, or agreement required hereunder, and all interest, penalties or similar liabilities with respect thereto, except such taxes imposed on or measured by a party’s net income. Notwithstanding the foregoing, Taxes shall not include payroll taxes attributable to the compensation paid to workers or employees and each party shall be responsible for its own federal and state payroll tax collection, remittance, reporting and filing obligations. Fees and charges imposed under this

Agreement or under any document ancillary to or referenced by this Agreement shall not include Taxes except as otherwise provided herein. Customer shall be responsible for all of such Taxes. If, however, Supplier has the legal obligation to pay Taxes and is required or permitted to collect such Taxes for which Customer is responsible under this section, Customer shall promptly pay the Taxes invoiced by Supplier unless Customer has furnished Supplier with valid tax exemption documentation regarding such Taxes at the execution of this Agreement or at the execution of any subsequent instrument or agreement ancillary to or referenced by this Agreement. Customer shall comply with all applicable tax laws and regulations. Customer hereby agrees to indemnify Supplier for any Taxes and related costs paid or payable by Supplier attributable to Taxes that would have been Customer's responsibility under this **Section 8.5** if invoiced to Customer. Customer shall promptly pay or reimburse Supplier for all costs and damages related to any liability incurred by Supplier as a result of Customer's non-compliance or delay with its responsibilities herein. Customer's obligation under this **Section 8.5** shall survive the termination or expiration of this Agreement.

9. REPRESENTATIONS AND WARRANTIES; DISCLAIMER.

9.1 **Mutual Representations and Warranties.** Each party represents, warrants and covenants that: (a) it has the full power and authority to enter into this Agreement and to perform its obligations hereunder, without the need for any consents, approvals or immunities not yet obtained; (b) it has the right to grant the licenses it grants hereunder; and (c) its acceptance of and performance under this Agreement shall not breach any oral or written agreement with any third party or any obligation owed by it to any third party to keep any information or materials in confidence or in trust.

Supplier warrants and represents that it is specially trained, licensed, experienced and competent to perform all the services, responsibilities and duties specified in the Agreement and that such services, responsibilities and duties shall be performed, whether by Contractor or designated subcontractors, in a manner according to generally accepted practices.

9.2 **Disclaimer.** EXCEPT FOR THE WARRANTIES SET FORTH IN THIS **SECTION 9**, THE SERVICES ARE PROVIDED ON AN AS-IS BASIS. CUSTOMER'S USE OF THE SAAS SERVICE AND THE SETUP SERVICES IS AT ITS OWN RISK. SUPPLIER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS, STATUTORY AND IMPLIED REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, QUALITY, SUITABILITY, OPERABILITY, CONDITION, SYSTEM INTEGRATION, NON-INTERFERENCE, WORKMANSHIP, TRUTH, ACCURACY (OF DATA OR ANY OTHER INFORMATION OR CONTENT), ABSENCE OF DEFECTS, WHETHER LATENT OR PATENT, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. THE EXPRESS WARRANTIES MADE BY SUPPLIER IN **SECTION 9** ARE FOR THE BENEFIT OF THE CUSTOMER ONLY AND NOT FOR THE BENEFIT OF ANY THIRD PARTY. ANY SOFTWARE PROVIDED THROUGH THE SAAS SERVICE IS LICENSED AND NOT SOLD.

EXCEPT FOR THE WARRANTIES SET FORTH IN THIS **SECTION 9**, NO AGENT OF SUPPLIER IS AUTHORIZED TO ALTER OR EXPAND THE WARRANTIES OF SUPPLIER AS SET FORTH HEREIN. SUPPLIER DOES NOT WARRANT THAT: (A) THE USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (B) THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (C) ANY DATA OR INFORMATION WILL BE ACCURATE OR RELIABLE; (D) THE QUALITY OF ANY INFORMATION OR OTHER MATERIAL OBTAINED BY CUSTOMER THROUGH THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (E) THE SERVICES WILL BE ERROR-FREE OR THAT ERRORS OR DEFECTS IN THE SERVICES WILL BE CORRECTED; OR (F) THE SERVER(S) THAT MAKE THE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. SUPPLIER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

AS BETWEEN THE PARTIES, CUSTOMER IS SOLELY RESPONSIBLE FOR ALL DECISIONS THAT IT MAKES IN RELIANCE ON INFORMATION PRESENTED THROUGH THE SERVICES. SUPPLIER SHALL NOT BE LIABLE FOR ANY RESULTING BODILY INJURY, DEATH OF ANY PERSON OR DAMAGE TO REAL OR TANGIBLE, PERSONAL PROPERTY.

10. INDEMNIFICATION.

10.1 Supplier Indemnity.

(a) **General.** During term of this Agreement, Supplier, at its expense, shall defend Customer and its officers, directors and employees (the “**Customer Indemnified Parties**”) from and against all actions, proceedings, claims and demands by a third party (a “**Third-Party Claim**”) alleging that the SaaS Service infringes any copyright or misappropriates any trade secret and shall pay all damages, costs and expenses, including attorneys’ fees and costs (whether by settlement or award of by a final judicial judgment) paid to the third party bringing any such Third-Party Claim. Supplier’s obligations under this Section are conditioned upon (i) Supplier being promptly notified in writing of any claim under this Section, (ii) Supplier having the sole and exclusive right to control the defense and settlement of the claim, and (iii) Customer providing all reasonable assistance (at Supplier’s expense and reasonable request) in the defense of such claim. In no event shall Customer settle any claim without Supplier’s prior written approval. Customer may, at its own expense, engage separate counsel to advise Customer regarding a Claim and to participate in the defense of the claim, subject to Supplier’s right to control the defense and settlement.

(b) **Mitigation.** If any claim which Supplier is obligated to defend has occurred, or in Supplier’s determination is likely to occur, Supplier may, in its sole discretion and at its option and expense (a) obtain for Customer the right to use the SaaS Service, (b) substitute a functionality equivalent, non-infringing replacement for such the SaaS Service, (c) modify SaaS Service to make it non-infringing and functionally equivalent, or (d) terminate this Agreement and refund to Customer any prepaid amounts attributable to the period of time after the date Customer becomes unable to use the SaaS Service, as reasonably determined by Supplier.

(c) **Exclusions.** Notwithstanding anything to the contrary in this Agreement, the foregoing obligations shall not apply with respect to a claim of infringement if such claim arises out of (i) Customer’s use of infringing or misappropriated Data, (ii) use of the SaaS Service in combination with any software, hardware, network or system not supplied by Supplier where the alleged infringement relates to such combination, (iii) any modification or alteration of the SaaS Service other than by Supplier, (iv) Customer’s continued use of the SaaS Service after Supplier notifies Customer to discontinue use because of an infringement claim, (v) Customer’s violation of applicable law, or (vi) Third Party Offerings.

(d) **Sole Remedy.** THE FOREGOING STATES THE ENTIRE LIABILITY OF SUPPLIER WITH RESPECT TO THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS BY THE SAAS SERVICE OR OTHERWISE, AND CUSTOMER HEREBY EXPRESSLY WAIVES ANY OTHER LIABILITIES OR OBLIGATIONS OF SUPPLIER WITH RESPECT THERETO.

10.2 **Customer Indemnity.** Customer shall defend Supplier and its licensors and their respective officers, directors and employees (“**Supplier Indemnified Parties**”) from and against any and all Third-Party Claims which arise out of or relate to: (a) a claim or threat that the Data (and the exercise by Supplier of the rights granted herein with respect thereto) infringes, misappropriates or violates any third party’s intellectual property rights, privacy rights or other rights; (b) Customer’s use or alleged use of the SaaS Service other than as permitted under this Agreement; (c) arising from the occurrence of any of the exclusions set forth in **Section 10.1(c)**; or (d) bodily injury, death of any person or damage to real or tangible, personal property resulting from Customer’s use or alleged use of the SaaS Service. Customer shall pay all damages, costs and expenses, including attorneys’ fees and costs (whether by settlement or award of by a final judicial judgment) paid to the third party

bringing any such Third-Party Claim. Customer's obligations under this Section are conditioned upon (x) Customer being promptly notified in writing of any claim under this Section, (y) Customer having the sole and exclusive right to control the defense and settlement of the claim, and (z) Supplier providing all reasonable assistance (at Customer's expense and reasonable request) in the defense of such claim. In no event shall Supplier settle any claim without Customer's prior written approval. Supplier may, at its own expense, engage separate counsel to advise Supplier regarding a Third-Party Claim and to participate in the defense of the claim, subject to Customer's right to control the defense and settlement.

11. CONFIDENTIALITY.

11.1 **Confidential Information.** "Confidential Information" means any and all non-public technical and non-technical information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") in any form or medium, whether oral, written, graphical or electronic, pursuant to this Agreement, that is confidential under federal, state, or local law, or marked confidential and proprietary, or that the Disclosing Party identifies as confidential and proprietary, or that by the nature of the circumstances surrounding the disclosure or receipt ought to be treated as confidential and proprietary information, including but not limited to: (a) techniques, sketches, drawings, models, inventions (whether or not patented or patentable), know-how, processes, apparatus, formulae, equipment, algorithms, software programs, software source documents, APIs, and other creative works (whether or not copyrighted or copyrightable); (b) information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information; and (c) proprietary or confidential information of any third party who may disclose such information to Disclosing Party or Receiving Party in the course of Disclosing Party's business. Confidential Information of Supplier shall include the SaaS Service, the Documentation, and pricing and other terms and conditions of this Agreement. Confidential Information also includes all summaries and abstracts of Confidential Information. For the avoidance of doubt, Customer agrees that Data is not Confidential Information of Customer.

11.2 **Non-Disclosure.** Each party acknowledges that in the course of the performance of this Agreement, it may obtain the Confidential Information of the other party. Subject to **Section 12.2 (Anonymized Usage Statistics)**, the Receiving Party shall, at all times, both during the term of this Agreement and thereafter, keep in confidence and trust all of the Disclosing Party's Confidential Information received by it, and the Receiving Party shall not use the Confidential Information of the Disclosing Party other than as necessary to fulfill the Receiving Party's obligations or to exercise the Receiving Party's rights under this Agreement. Each party agrees to secure and protect the other party's Confidential Information with the same degree of care and in a manner consistent with the maintenance of such party's own Confidential Information (but in no event less than reasonable care), and to take appropriate action by instruction or agreement with its employees or other agents who are permitted access to the other party's Confidential Information to satisfy its obligations under this Section. Subject to **Section 12.2 (Anonymized Usage Statistics)**, the Receiving Party shall not disclose Confidential Information of the Disclosing Party to any person or entity other than its officers, employees and agents who need access to such Confidential Information in order to affect the intent of this Agreement and who are subject to confidentiality obligations at least as stringent as the obligations set forth in this Agreement.

11.3 **Exceptions to Confidential Information.** The obligations set forth in **Section 11.2 (Non-Disclosure)** shall not apply to the extent that Confidential Information includes information which: (a) was known by the Receiving Party prior to receipt from the Disclosing Party either itself or through receipt directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) was developed by the Receiving Party without use of the Disclosing Party's Confidential Information; or (c) becomes publicly known or otherwise ceases to be secret or confidential, except as a result of a breach of this Agreement or any obligation of confidentiality by the Receiving Party. Nothing in this Agreement shall prevent the Receiving Party from disclosing Confidential Information to the extent the Receiving Party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction;

provided, however, that prior to any such disclosure, the Receiving Party shall (x) assert the confidential nature of the Confidential Information to the agency; (y) immediately notify the Disclosing Party in writing of the agency's order or request to disclose; and (z) cooperate fully with the Disclosing Party in protecting against any such disclosure and in obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

11.4 **Injunctive Relief.** The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Receiving Party will be entitled, in addition to any other available remedies, to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

12. PROPRIETARY RIGHTS.

12.1 **SaaS Service.** As between Supplier and Customer, all right, title and interest in the SaaS Service and any other Supplier materials furnished or made available hereunder, and all modifications and enhancements thereof, belong to and are retained solely by Supplier or Supplier's licensors and providers, as applicable.

12.2 Ownership and title to all reports, documents, plans, specifications, data and estimates produced and delivered to Customer in connection with this Agreement that do not contain any Supplier Confidential Information or intellectual property will automatically be vested in the Customer; and no further agreement will be necessary to transfer ownership to the Customer. All other inventions, works of authorship and developments conceived, created, written, or generated by or on behalf of Supplier, whether solely or jointly, including without limitation, in connection with Supplier's performance of the Services hereunder, all resulting work product and deliverables and all intellectual property rights therein, shall remain the sole and exclusive property of Supplier. Supplier shall furnish the Customer all necessary copies of non-proprietary data needed to complete the services under Exhibit A of this Agreement.

12.3 **Anonymized Usage Statistics.** Notwithstanding anything in this Agreement to the contrary, during and after the term of this Agreement, Supplier is free to use and disclose data and information relating to Customer's use of the Services in any aggregated or de-identified form ("**Anonymized Usage Statistics**"). As between Supplier and Customer, all right, title and interest in the Anonymized Usage Statistics and all intellectual property rights therein, belong to and are retained solely by Supplier. Without limiting the foregoing, Customer agrees that Supplier may (a) make Anonymized Usage Statistics publicly available, (b) disclose Anonymized Usage Statistics to third parties, and (c) use Anonymized Usage Statistics for any purpose, including any analysis, service enhancement or marketing. During the term of this Agreement and for one year thereafter, Supplier and Customer shall maintain all books, documents, papers, accounting records, data and other evidence pertaining to the performance of the services under Exhibit A of this Agreement, including but not limited to, the costs of administering the Agreement. Each party shall make such data and materials available at its respective offices at all reasonable times. During the term of this Agreement and for one year thereafter, Customer or Customer's duly authorized representative shall have access to any books, records, data and documents of the Supplier that are related to Services under this Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

13. LIMITATION OF LIABILITY.

13.1 **No Consequential Damages.** NEITHER SUPPLIER NOR ITS LICENSORS OR SUPPLIERS SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST DATA, BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE OR LOST BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUPPLIER OR ITS LICENSORS OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES

ARISING OUT OF THE LICENSING, PROVISION OR USE OF THE SAAS SERVICE, SETUP SERVICES, OR THE RESULTS THEREOF. SUPPLIER WILL NOT BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

13.2 Limits on Liability. NEITHER SUPPLIER NOR ITS LICENSORS OR SUPPLIERS SHALL BE LIABLE FOR CUMULATIVE, AGGREGATE DAMAGES GREATER THAN AN AMOUNT EQUAL TO THE AMOUNTS PAID BY CUSTOMER TO SUPPLIER UNDER THIS AGREEMENT DURING THE PERIOD OF 12 MONTHS PRECEDING THE DATE ON WHICH THE CLAIM FIRST ACCRUED.

13.3 Essential Purpose. CUSTOMER ACKNOWLEDGES THAT THE TERMS IN THIS **SECTION 13** (LIMITATION OF LIABILITY) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SHALL APPLY EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE.

14. TERM AND TERMINATION.

14.1 Term. This Agreement shall commence on the Effective Date and, unless terminated sooner in accordance with the terms of this Agreement, shall continue for an initial term of 3 years. After the initial term, this Agreement will automatically renew for additional one-year periods, unless either party gives the other party notice of its intent not to renew. This agreement may be terminated with at least 30 days of notice at the conclusion of the first year or any subsequent year. Termination will be effective at the end of the applicable term in which such notice is received.

14.2 Termination for Cause. A party may terminate this Agreement upon written notice to the other party in the event the other party (a) files a petition for bankruptcy or has a petition for bankruptcy filed against it that is not dismissed within sixty (60) days after filing or admits its inability to pay its debts as they mature, makes an assignment for the benefit of its creditors or ceases to function as a going concern or to conduct its operations in the normal course of business and such termination shall occur immediately upon notice; or (b) commits a material breach of this Agreement and does not remedy such breach within thirty (30) days after receipt of written notice of such breach. Upon any termination for cause by Customer, Supplier shall refund to Customer any prepaid amounts attributable to the period of time after the termination date, as reasonably determined by Supplier. Upon any termination for cause by Supplier, Customer shall pay any unpaid fees covering the remainder of the term of this Agreement after the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay any fees payable to Supplier for the period prior to the effective date of termination.

14.3 Effects of Termination. Upon expiration or termination of this Agreement, (a) Customer's use of and access to the SaaS Service and Supplier's performance of all Setup Services shall cease, and (b) all fees and other amounts owed to Supplier shall be immediately due and payable by Customer.

14.4 Survival. The termination or expiration of this Agreement for any reason shall not affect a party's rights or obligations that expressly or by their nature continue and survive (including, without limitation, the payment terms and the provisions concerning ownership, confidentiality, limitation of liability, indemnity, warranty disclaimers, and the Data license from Customer to Supplier).

15. MISCELLANEOUS.

15.1 Notices. Supplier may give notice to Customer by means of a general notice through the SaaS Service interface, electronic mail to Customer's e-mail address on record with Supplier, or by written communication sent by first class postage prepaid mail or nationally recognized overnight delivery service to Customer's address on record with Supplier. Customer may give notice to Supplier by written communication sent

by first class postage prepaid mail or nationally recognized overnight delivery service addressed to Supplier, 2034 Great Highway, San Francisco, CA 94116, Attention: Legal. Notice shall be deemed to have been given upon receipt or, if earlier, two (2) business days after mailing, as applicable. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

15.2 Governing Law. This Agreement and the rights and obligations of the parties to and under this agreement shall be governed by and construed under the laws of the United States and the State of California as applied to agreements entered into and to be performed in such State without giving effect to conflicts of laws rules or principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. The parties further agree to waive and opt-out of any application of the Uniform Computer Information Transactions Act (UCITA), or any version thereof, adopted by any state of the United States in any form. The parties hereto agree that venue or forum from any action or proceeding regarding this Agreement or performance thereof shall be in Contra Costa County, California.

15.3 Publicity. Supplier has the right to reference and use Customer's name and trademarks and disclose the nature of the Services provided hereunder in each case in Supplier business development and marketing efforts, including without limitation Supplier's website.

15.4 U.S. Government Customers. If Customer is a federal government entity, Supplier provides the SaaS Service, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the SaaS Service include only those rights customarily provided to the public as defined in these Terms. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included in these Terms.

15.5 Waiver. No term or provision of this Agreement shall be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether express or implied, shall constitute consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.

15.6 Severability. If any provision of this Agreement is held invalid or unenforceable for any reason, the remainder of the provision shall be amended to achieve as closely as possible the economic effect of the original term and all other provisions shall continue in full force and effect.

15.7 Assignment. Customer may not assign its rights or delegate its obligations under this Agreement to any third party, whether voluntarily or by operation of law or otherwise (including in connection with any merger or acquisition involving Customer), without the prior written consent of Supplier, such consent not to be unreasonably withheld, and subject to Customer paying any applicable transfer or set-up fees. Any purported assignment or transfer in violation of this section shall be void. Subject to the foregoing restrictions, this Agreement will bind and benefit the parties and their successors and permitted assigns.

15.8 Relationship of the Parties. Supplier is an independent contractor to Customer. There is no relationship of agency, partnership, joint venture, employment, or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf.

15.9 Attorneys' Fees. In any action to enforce this Agreement, the prevailing party shall be awarded all court costs and reasonable attorneys' fees incurred, including such costs and attorneys' fees incurred in enforcing and collecting any judgment.

15.10 **Force Majeure.** Neither party shall be liable for any failure or delay in performance under this Agreement due to fire, explosion, earthquake, storm, flood or other weather; unavailability of necessary utilities or raw materials; Internet service provider failures or delays, or denial of service attacks; war, civil unrest, acts of terror, insurrection, riot, acts of God or the public enemy; strikes or other labor problems; any law, act, order, proclamation, decree, regulation, ordinance, or instructions of government or other public authorities, or judgment or decree of a court of competent jurisdiction (not arising out of breach by such party of this Agreement); or any other event beyond the reasonable control of the party whose performance is to be excused.

15.11 **Entire Agreement.** This Agreement, including all exhibits and all documents referenced herein, constitute the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the Effective Date hereof.

ZONEHAVEN INC.

Moraga Orinda Fire District

By: _____

By: _____

Name: Charlie Crocker

Name: _____

Title: CEO

Title: _____

EXHIBIT A

DESCRIPTION OF SETUP SERVICES

Zonehaven pre-built preliminary Public Safety Zones for the County in order to help meet the goal of implementing the Evacuation Management Platform for the coming fire season. Based on the level of agency participation, the project is expected to take 8-10 weeks to implement. As part of the preparation your organization compiled:

- Multi-agency team assignments
- Dates for detailed project plan
- List of agency leads/points of contact

Task or Milestone	WK00	WK01	WK02	WK03	WK04	WK05	WK06	WK07	WK08
Contract Signed	*								
Kick off Meeting	*								
Initial Data Set-up									
Zone build and environment set up									
Bi-weekly leads meeting		*		*		*		*	
Delivery of DRAFT Public Safety Zones		*							
2 Online conference calto prepare for review meeting									
LE/Fire/OES team meetings (3hrs each)									
Zone and environment revisions									
Final zones delivered in platform (subs start)							*		
Integration with alert end points									
Deploy CEI on county website									3 mos (+)

EXHIBIT B

FEES

Product	Cost/Yr		TOTAL
One time Set-up EMP and CEI: Standard Wildfire Module	\$150,000	1	\$150,000
Existing Zonehaven Deployed Licenses within the County		10%	(\$15,000)
3-Year License EMP & CEI: Standard Wildfire Module (Cost per Year)	\$225,000	1	\$225,000
Discount for three-year contract		27%	(\$60,750)
Total 1st year License cost for 3-year Contract (Set-up plus License)			\$299,250
Annual License Subscription Cost Year 2			\$164,250
Annual License Subscription Cost Year 3			\$164,250

Payment:

1. *Set-up fee of \$135,000 due within 30 days of the date of this SaaS agreement.*
2. *1st year license cost of \$164,250 due within 30 days of date of Zones becoming agency approved as described in the RFP response or within 90 days of the date of this SaaS agreement, whichever is earlier.*



Moraga-Orinda Fire District

TO: Board of Directors

FROM: David Winnacker, Fire Chief

DATE: January 20, 2021

SUBJECT: Item 9.4 – Authorize Acceptance of the Urban Areas Security Initiative Grant to Develop a Comprehensive Evacuation Support System and Authorize Capital Projects Fund Revenue and Expenditure Budget Adjustment Increases in the Amount of \$300,000

BACKGROUND

The District has been awarded a grant as a subrecipient of an Urban Areas Security Initiative Grant (UASI) awarded to Contra Costa County in the amount of \$300,000. The purpose of the grant is to contract the development of a comprehensive evacuation support system consisting of fire modeling, evacuation polygons and an evacuation decision support tool. The project must be completed by December 31, 2021.

BUDGET ADJUSTMENT

Accepting grant funds requires a modification to the budget. A Capital Projects Fund budget adjustment is necessary to increase federal grant revenue and to increase equipment expenditures in the amount of \$300,000.

RECOMMENDATION

- 1) Discuss; 2) Deliberate; 3) Authorize Acceptance of the Urban Areas Security Initiative Grant to Develop a Comprehensive Evacuation Support System and Authorize Capital Projects Fund Revenue and Expenditure Budget Adjustment Increases in the Amount of \$300,000.

ATTACHMENTS

Attachment A – Memorandum of Agreement Between the County of Contra Costa Office of the Sheriff and Moraga-Orinda Fire District for the Distribution of FY2020 Urban Areas Security Initiative Grant Funds