



(3Q 78497)(Service Account Number: 40967)

Amendment - City of Merced, CA

Account Rep	Andrea Brandsma	Customer	City of Merced, CA
Email	andrea.brandsma@smarsh.com	Service Address	678 W 18th St
Company	Smarsh Inc.		Merced, California 95340-4700
Prepared on	5-Aug-2024	Billing Contact	Aarin Garrison
Valid until	4-Nov-2024	Contact Phone	(209) 385-6961
		Contact Email	garrisona@cityofmerced.org
		Technical Contact	Michelle Alcantara
Start Date	Upon Execution Date		
Renewal Date	18-Apr-2025		
Billing Frequency	Annual		
Order Type	Amendment		

Services	Unit Price	Prorated Unit Price	Minimum Quantity	Prorated Minimum Commitment
AT&T Mobile Message - Professional Archive Capture	\$ 120	\$ 84.33	5	\$ 421.67
Verizon - Professional Archive Capture	\$ 114.91	\$ 80.75	20	\$ 1,615.06
Onboarding - Professional Archive - Standard - Add Channel			1	\$ 1,575.00
Prorated Recurring Service Fee Subtotal				\$ 2,036.73
One-Time Fees Subtotal				\$ 1,575.00

Notes

The fees on this Order Form are prorated and the subscription term of the services will co-term with the Client's existing subscription term. The Prorated Recurring Services Fee is based on the Quote Preparation Date above. In the event that Customer executes this Order Form after the Quote Preparation Date, the Fees Smarsh invoices Customer will be less than the Fees indicated in this Order Form. All prices quoted are before tax. Applicable taxes will be added at time of invoicing. If you are tax exempt, please send a current copy of your tax-exempt certificate to accounting@smarsh.com



Terms & Conditions

The Services are subject to the terms and conditions of this Order Form and (i) the Smarsh Service Agreement available at www.smarsh.com/legal/ServiceAgreement, (ii) the Service Specific Terms referenced in or attached to this Order Form, and (iii) any exhibits or attachments to this Order Form that may amend, supersede, or append the terms referenced herein (collectively "Agreement"):

SERVICE SPECIFIC TERMS

- Mobile Channels Service Specific Terms available at <https://www.smarsh.com/legal/SSTMobilityChannels>;
- The applicable Professional Archive Onboarding package features described in more detail at <https://www.smarsh.com/legal/OnboardingServices-ProArchive>;

TERM

The Term of the Services shall begin on the Start Date set forth above, or if no Start Date is set forth above, the execution date of this Order Form, and shall continue for the Subscription Term specified above. For Services added during Client's existing Term, the Term of the Services will sync to and co-terminate upon Client's Renewal Date set forth above. Renewal of the Services shall be subject to the terms of the Agreement.

INVOICING

The Recurring Service Fees and One-Time Fees ("Fees") shall be invoiced at the billing frequency set forth on page 1 of this Order Form. For usage overages, Smarsh will invoice Client for any usage over the minimum quantities at the same per unit rate as indicated in the first page of this Order Form on a regular basis in arrears. Client agrees that the Recurring Services Fees set forth in this Order Form are Client's minimum commitment for the Term.

DATA MANAGEMENT FEES

If not priced above or set forth on a separate Order Form between Smarsh and the Client for the applicable data management services requested by the Client, the following standard data import, conversion (if applicable), and storage Fees for data imports Client's Professional Archive shall apply to data imports during the Client's term:

- Data Imports - One-time Fee (25 GB Minimum) - \$10/GB thereafter
- Import Data Conversion fees (25 GB Minimum) - \$3/GB
- Data Storage – Annual - \$2.50/GB



Amendment to the Smarsh Service Agreement

This Amendment ("**Amendment**") amends the Smarsh Service Agreement located at <https://www.smarsh.com/legal/ServiceAgreement> between Smarsh Inc. ("Smarsh") and City of Merced, CA Client ("Agreement"). This Amendment is effective as of the date last signed below, or on the date (i) the Client signs the Order Form to which this Amendment is attached. Capitalized terms not defined in this Amendment have the meaning provided in the Agreement.

WHEREAS, Client has requested certain modifications to the Agreement, and Smarsh has agreed to such modifications as set forth below;

THEREFORE, Client and Smarsh agree as follows:

- 1) **Conflict.** In the event of a conflict between this Amendment and the Agreement, the terms of this Amendment shall control with respect to the clauses and language modified by this Amendment.

- 2) Section 6.3 of the Agreement is hereby deleted and replaced with the following language:

6.3. Renewals & Non-Renewal – Limited Term. The Services that are provided on a recurring basis will not renew automatically for an additional, successive 12-month Service Term. The Services may be renewed by Client for an additional, successive 12-month Service Term (each a "Renewal Term") upon the execution of a renewal Order Form prior to the expiration of the then current Service Term. Smarsh may elect not to renew a Service by providing no less than 30 days written notice to the Client prior to the end of the then current Service Term.

- 3) Section 7.7 of the Agreement is hereby deleted and replaced with the following language:

7.7 Taxes. All Fees payable by Client under this Agreement are exclusive of taxes and similar assessments. Smarsh acknowledges that Client is tax-exempt.

- 4) Section 8.2 of the Agreement is hereby deleted and replaced with the following language:

8.2. Obligations with Respect to Confidential Information. Each party agrees: (a) that it will not disclose to any third party, or use for the benefit of any third party, any Confidential Information disclosed to it by the other party except as expressly permitted by this Agreement; and (b) that it will use reasonable measures to maintain the confidentiality of Confidential Information of the other party in its possession or control but no less than the measures it uses to protect its own confidential information. Either party may disclose Confidential Information of the other party: (i) pursuant to the order or requirement of a court, administrative or regulatory agency, or other governmental body, provided that the receiving party, if feasible and legally permitted to do so, gives reasonable notice to the disclosing party to allow the disclosing party to contest such order or requirement; (ii) to the parties' agents, representatives, subcontractors or service providers who have a need to know such information provided that such party shall be under obligations of confidentiality at least as restrictive as those contained in this Agreement ("Agents"); or (iii) pursuant to a public records request under those laws applicable to the Client and only to the extent that such confidential information is not subject to an exemption from such public record request, provided that the Client gives notice to Smarsh in a reasonable amount of time to allow Smarsh the opportunity to seek a protective order preventing such disclosure. Each party will promptly notify the other party in writing upon becoming aware of any unauthorized use or disclosure of the other party's Confidential Information.

- 5) Section 11.1 of the Agreement is hereby deleted and replaced with the following language:



11.1. Client Indemnification. To the extent permitted by those laws applicable to the Client, and without in any manner waiving its rights to sovereign immunity or increasing the limits of liability thereunder, Client will defend and indemnify Smarsh, its officers, directors, employees, and agents, from and against all third party claims, losses, damages, liabilities, demands, and expenses (including fines, penalties, and reasonable attorneys' fees), arising from or related to (i) Client Data and Client's use of Client Data, (ii) Smarsh's use of Client Data in accordance with this Agreement, and (iii) Client's use of the Services in violation of this Agreement or applicable laws, rules, and regulations. Smarsh will (a) provide Client with prompt written notice upon becoming aware of any such claim; except that Client will not be relieved of its obligation for indemnification if Smarsh fails to provide such notice unless Client is actually prejudiced in defending a claim due to Smarsh's failure to provide notice in accordance with this Section ; (b) allow Client sole and exclusive control over the defense and settlement of any such claim; and (c) if requested by Client, and at Client's expense, reasonably cooperate with the defense of such claim.

6) Section 13.5 of the Agreement is hereby deleted and replaced with the following language:

13.5. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to conflict/choice of law principles.

7) Section 13.11 of the Agreement is hereby deleted and replaced with the following language:

13.11. Amendments. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.

8) The following language is added to the Agreement as Section 14 – SLED Additional Terms.

14.1 Insurance. Smarsh shall, on a primary basis and at its sole expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverage and limits, including endorsements, necessary and appropriate to provide the Services under this Agreement. Smarsh agrees to provide, once every 12 months and upon written request by the Client, a summary of Smarsh's insurance coverage for review by the Client. In addition, Smarsh agrees to use commercially reasonable efforts to provide at least 30 days prior written notice of any material adverse changes to Smarsh's insurance coverage.

9) Except as otherwise set forth in this Amendment, the Agreement will remain unchanged and in full force and effect. This Amendment, together with the Agreement is the entire agreement between the parties, and supersedes all prior agreements between them, whether written or oral in nature



Purchase Order Information

Client to Complete:

Is a Purchase Order (PO) required for the purchase of the Services on this Order Form?

☐ No

☐ Yes – Please complete below

PO Number:

PO Amount:

Upon signature by Client and submission to Company, this Order Form shall become legally binding unless Company rejects this Order Form for any of the following reasons: (i) changes have been made to this Order Form (other than completion of the purchase order information and the signature block); or (ii) the requested purchase order information or signature is incomplete; or (iii) the signatory does not have authority to bind Client to this Order Form.

Client authorized signature

By: _____ Name: _____

Date: _____ Title: _____

APPROVED AS TO FORM:

Craig Cornwell
City Attorney
City of Merced

MAINTENANCE AGREEMENT

Smarsh INC

PO BOX 8023

Carol Stream, IL 60197-8023

Vendor Agreement # 988

Tyler Contract Entry #597

APPROVED:

BY: _____
City Manager

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

MAINTENANCE AGREEMENT

Smarsh INC

PO BOX 8023

Carol Stream, IL 60197-8023

Vendor Agreement # 988

Tyler Contract Entry #597

CONTRACTOR

Smarsh INC:

BY: Alex OpBroek
(Signature)

Alex OpBroek
(Typed Name)

Its: VP, Global Corp. Controller
(Title)

Telephone: (866) 762-7741

Email: alex.opbroek@smarsh.com
