

AGREEMENT

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2 THIS AGREEMENT is made and entered into this ____ day of _____, 2011,
3 by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California,
4 2220 Tulare Street, Fresno, CA 93721 (hereinafter "COUNTY"), and
5 _____, a corporation, whose principal
6 California address is _____ (hereinafter "CONTRACTOR").
7 COUNTY and CONTRACTOR are each a "Party" to this Agreement, and COUNTY and
8 CONTRACTOR are collectively referred to as "Parties" to this Agreement.

WITNESSETH

9
10 WHEREAS, the COUNTY currently operates an offender-paid, adult electronic
11 monitoring program (hereinafter "Probation's EM Program") for probationers chosen by the
12 COUNTY'S Probation Department (the "Probation Department" or "Probation") as suitable for
13 participation in an electronic monitoring program ("Participants"); and

14 WHEREAS, COUNTY has need for the continued provision of electronic monitoring
15 services and equipment to Participants on Probation's EM Program; and

16 WHEREAS, COUNTY issued Request for Quotation (RFQ) Number _____ and
17 Addenda Numbers One and Two thereto, and CONTRACTOR responded to such RFQ and
18 Addenda; and

19 WHEREAS, the CONTRACTOR is qualified and willing to perform said services and
20 has offered to provide such services and equipment to Participants, charging a fee to each
21 Participant, according to their ability to pay, instead of charging COUNTY.

22 NOW, THEREFORE, in consideration of their mutual promises, covenants and
23 conditions, hereinafter set forth, the sufficiency of which is acknowledged, the Parties agree
24 as follows:

1 **I. OBLIGATIONS OF CONTRACTOR**

2 A. General Description of Duties

3 CONTRACTOR shall provide Probation's EM Program with electronic
4 monitoring services, administrative services, and related equipment as described herein. The
5 services and equipment shall be provided on a timely basis.

6 CONTRACTOR shall perform all services and fulfill all responsibilities for
7 Probation's EM Program as defined in COUNTY'S RFQ Number ____ - _____, dated _____,
8 2011 (attached hereto as Exhibit "A" and incorporated herein by this reference), COUNTY'S
9 Addendum Number One to RFQ, dated _____, 2011 (attached hereto as Exhibit "B"
10 and incorporated herein by this reference), and COUNTY'S Addendum Number Two, dated
11 _____, 2011 (attached hereto as Exhibit "C" and incorporated herein by this reference),
12 hereinafter collectively referred to as COUNTY'S RFQ, and CONTRACTOR'S Response to
13 COUNTY'S RFQ, dated _____, 2011 (attached hereto as Exhibit "D" and incorporated
14 herein by this reference), CONTRACTOR'S Response to Addenda Number One and Two, all
15 of which are incorporated herein by reference and made part of this Agreement. A copy of the
16 COUNTY'S RFQ and CONTRACTOR'S Response to RFQ shall be retained and made
17 available to CONTRACTOR during the term of this Agreement by the COUNTY'S Probation
18 Department Contract Coordinator.

19 B. Electronic Monitoring Equipment and Services

20 1. CONTRACTOR shall install and remove all electronic monitoring
21 devices as required during the duration of this Agreement whether at the CONTRACTOR'S
22 local branch office, Participant's home, or other sites as approved by the Probation
23 Department.

24 2. CONTRACTOR shall provide "(model)" RF electronic monitoring

1 equipment and services as determined by COUNTY'S Probation Department.

2 CONTRACTOR is authorized to add or substitute other electronic monitoring equipment if
3 prior written approval is obtained from the Probation Department.

4 3. CONTRACTOR shall notify COUNTY of violation reports as
5 provided herein.

6 4. CONTRACTOR shall provide 24 hour per day, seven days per
7 week, electronic monitoring of Probation's EM Program Participants.

8 5. CONTRACTOR shall make available language translation services
9 to Participants on an as-needed basis.

10 6. The Parties hereto agree, and CONTRACTOR hereby
11 acknowledges, that with regard to the delivery of all services by CONTRACTOR under this
12 Agreement, time is of the essence.

13 C. Administrative Services

14 1. Written Statement of Rights

15 At the time Probation notifies CONTRACTOR a Participant is
16 eligible to participate in Probation's EM Program, the CONTRACTOR shall furnish the
17 Participant with a written statement of his/her rights in regard to the program for which the
18 Participant has been approved, including: (a) the fact that the Participant cannot be denied
19 consideration for participation in the program because of an inability to pay; and (b) the fact
20 that if the Participant is unable to reach agreement with the CONTRACTOR regarding the
21 Participant's ability to pay, the amount which is to be paid, or the manner and frequency with
22 which payment is to be made, that the matter shall be referred to the Superior Court to resolve
23 the differences.

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1 2. Fees

2 (a) CONTRACTOR shall perform all administrative duties
3 necessary for: (1) the determination of the fee to be assessed each Participant; (2) the
4 Participant's execution of an appropriate fee agreement; and (3) the CONTRACTOR'S
5 collection of such fees.

6 (b) CONTRACTOR shall bill the individual Participant a
7 program fee pursuant to the fee schedule set forth in Exhibit E hereto attached. The amount
8 of the program fee and the method and frequency of payment shall be set forth in an
9 agreement, signed by the Participant, to participate in Probation's EM Program.

10 (c) The program fee actually charged a Participant in
11 Probation's EM Program shall be determined according to his or her ability to pay. For
12 purposes of this Agreement, "ability to pay" shall have that meaning set forth in Penal Code
13 section 1208.2(e). No person shall be denied consideration for, or be removed from,
14 participation in Probation's EM Program because of an inability to pay all or a portion of the
15 program fees. The Participant may, at any time during his participation in Probation's EM
16 Program, request that his or her program fee be modified or suspended on the grounds of a
17 change in circumstances with regard to that Participant's ability to pay.

18 (d) If the Participant and the CONTRACTOR are unable to
19 come to an agreement regarding the Participant's ability to pay, or the amount which is to be
20 paid, or the method and frequency with which payment is to be made, the CONTRACTOR
21 shall advise the appropriate court and the court shall then resolve the disagreement by
22 determining the Participant's ability to pay, the amount which is to be paid, and the method
23 and frequency with which payment is to be made.

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1 D. Record Keeping

2 1. CONTRACTOR will be responsible for entering into its host
3 computer, as such information is provided by COUNTY, all required demographic, curfew and
4 system configuration data, date of termination data and all other data that is required for
5 monitoring the transmission data of each Participant sentenced to Probation's EM Program.

6 2. CONTRACTOR shall maintain census information for statistical
7 compilation.

8 3. CONTRACTOR shall print a summary of all transmissions
9 received during the monitoring of each sentenced Participant upon the Participant's
10 completion of his/her electronic monitoring term as ordered by the Courts.

11 4. CONTRACTOR shall retain and make available to COUNTY all
12 records required to be maintained under this Section throughout the duration of this
13 Agreement, plus two additional years beyond the term of the Agreement for each Participant
14 terminated during this Agreement.

15 5. CONTRACTOR shall document and maintain Violation reports,
16 i.e., record of each Participant's violation of Probation EM Program rules, and equipment
17 status information for each Participant for the duration of this Agreement.

18 E. Notification Policy

19 1. Once Participant has been enrolled in Probation's EM Program
20 and is active on the monitor, CONTRACTOR shall notify Probation staff of the enrollment via
21 e-mail by 8:30 a.m. the next business day.

22 2. All violations, except absconds as defined in Section E. 3. of this
23 Agreement, below, shall be reported to Probation staff by CONTRACTOR via phone between
24 8:00 a.m. and 5:00 p.m. followed by e-mail. If the violation occurs after 5:00 p.m.,

1 CONTRACTOR shall notify Probation staff via phone between 8:00 and 8:30 a.m. the next
2 business day followed by e-mail.

3 3. All absconds, i.e., the Participant has left the residence and failed
4 to return and remains out of contact, shall be reported to Probation staff by CONTRACTOR
5 via phone followed by e-mail within thirty (30) minutes of the violation, between the hours of
6 8:00 a.m. and 5:00 p.m. If the abscond occurs after 5:00 p.m., CONTRACTOR shall notify
7 Probation staff via phone between 8:00 and 8:30 a.m. the next business day, followed by e-
8 mail.

9 4. CONTRACTOR shall notify Probation staff of any changes to the
10 Participant's schedule (in and out times) via an Activity report to be e-mailed to Probation staff
11 once per week on those Participants with changes. The Chief Probation Officer or designee
12 and CONTRACTOR shall agree on a set week day for this to occur. CONTRACTOR may
13 approve minor schedule changes, such as a leave to attend a dentist appointment. More
14 significant changes to the Participant's schedule, such as a change to his/her work schedule
15 or increased hours away from the residence on a regular basis must be pre-approved by
16 Probation staff.

17 5. Any changes made to the Participant's address, phone number, or
18 other contact information shall be e-mailed to Probation staff by 8:30 a.m. the next business
19 day.

20 6. CONTRACTOR shall notify Probation via phone followed by e-mail
21 within one hour of a Participant being terminated from EM due to failure to pay fees and/or
22 failure to comply with Work Furlough Program rules.

23 7. Once Participant has served his/her term, has paid all fees, and
24 has returned all of the electronic monitoring equipment, CONTRACTOR shall notify Probation

1 by e-mail by 8:30 a.m. the next business day that Participant has completed the Program.

2 8. Other notification procedures may be implemented by agreement
3 between Chief Probation Officer or designee and CONTRACTOR. In the event
4 CONTRACTOR'S e-mail system is temporarily inoperable, a fax shall be utilized until it is
5 operable again.

6 **II. OBLIGATIONS OF COUNTY**

7 A. Probation shall determine who is eligible to be a Participant in Probation's
8 EM Program. Probation will notify CONTRACTOR of such determinations.

9 B. Probation shall have each Participant consent in writing to participate in
10 Probation's EM Program and to comply with the following rules:

11 1. The Participant shall remain within the interior premises of his or
12 her residence during the hours designated by Probation.

13 2. The Participant shall admit any person or agent designated by
14 Probation into his or her residence at any time for purposes of verifying the Participant's
15 compliance with the conditions of his or her detention.

16 3. The Participant shall agree to the use of electronic monitoring or
17 supervising devices for the purpose of helping to verify his or her compliance with the rules
18 and regulations of the home detention program.

19 4. The Participant shall agree that Probation may, without further
20 order of the court, immediately retake the person into custody to serve the balance of his or
21 her sentence in custody should any of the following occur: (1) if the electronic monitoring or
22 supervising devices are unable for any reason to properly perform their function at the
23 designated place of home detention, (2) if the Participant fails to remain within the place of
24 home detention, (3) if the Participant willfully fails to pay fees to CONTRACTOR as stipulated

1 in the fee agreement with CONTRACTOR, subsequent to the written notification of the
2 Participant that the payment has not been received and that return to custody may result, or
3 (4) if the Participant for any other reason no longer meets the established criteria for
4 participation in Probation's EM Program.

5 Probation shall deliver to Participant and CONTRACTOR a copy of the
6 above described agreement, and Probation and CONTRACTOR shall retain a copy of such
7 agreement for their files.

8 C. The Probation Department shall be responsible for all liaison work with all
9 involved or related courts. CONTRACTOR agrees to assist the Probation Department as
10 necessary, i.e., verify violations of Probation's EM Program.

11 D. The Probation Department shall provide CONTRACTOR with necessary
12 demographic and curfew information for each Participant.

13 **III. DAMAGE, THEFT, AND TAMPERING**

14 CONTRACTOR shall be responsible for all damage, theft, tampering or misuse
15 of electronic monitoring equipment provided to Probation's EM Program. CONTRACTOR
16 shall provide replacements, at no cost to COUNTY, in a timely manner for all electronic
17 monitoring equipment damaged, stolen, tampered with or misused.

18 **IV. TERM**

19 The term of this Agreement shall be for a period of five (5) years, commencing
20 on July 1, 2012 through and including June 30, 2017.

21 **V. TERMINATION**

22 A. **Breach of Contract**

23 The COUNTY may immediately suspend or terminate this Agreement in
24 whole or in part, where in the determination of the COUNTY there is:

- 1 (1) A failure to comply with any terms of this Agreement;
- 2 (2) A substantially incorrect or incomplete report submitted to the
- 3 COUNTY;
- 4 (3) Improperly performed service.

5 B. Evidence of Financial Non-Responsibility

6 The COUNTY may immediately terminate this Agreement at any time that

7 the CONTRACTOR fails to demonstrate evidence of financial responsibility by providing proof

8 of insurance coverage as delineated in Section IX of this Agreement.

9 C. Cause

10 Upon the discovery that CONTRACTOR is not in compliance pursuant to

11 Penal Code section 1203.016, the COUNTY shall give 60 days notice to CONTRACTOR that

12 the Agreement may be canceled if the specified deficiencies are not corrected. Shorter notice

13 may be given or the Agreement may be cancelled without notice whenever a serious threat to

14 public safety is present because the CONTRACTOR has failed to comply with Penal Code

15 section 1203.016.

16 D. Without Cause

17 Under circumstances other than those set forth above, this Agreement

18 may be terminated by COUNTY upon the giving of thirty (30) days advance written notice of

19 an intention to terminate.

20 VI. COMPENSATION

21 CONTRACTOR shall provide all equipment and services to Probation's EM

22 Program at no cost to the COUNTY. CONTRACTOR agrees that Participant is solely liable

23 for any and all fees and CONTRACTOR shall assess and bill for said fees as outlined in

24 Section I, Obligations of Contractor, subsection C, Administrative Services, item 2, "Fees" of

1 this Agreement.

2 **VII. INDEPENDENT CONTRACTOR**

3 In performance of the work, duties, and obligations assumed by CONTRACTOR
4 under this Agreement, it is mutually understood and agreed that CONTRACTOR, including
5 any and all of CONTRACTOR'S officers, agents, and employees will at all times be acting and
6 performing as an independent contractor, and shall act in an independent capacity and not as
7 an officer, agent, servant, employee, joint venturer, partner, or associate of the COUNTY.
8 Furthermore, COUNTY shall have no right to control or supervise or direct the manner or
9 method by which CONTRACTOR shall perform its work and function. However, COUNTY
10 shall retain the right to administer this Agreement so as to verify that CONTRACTOR is
11 performing its obligations in accordance with the terms and conditions thereof.

12 CONTRACTOR and COUNTY shall comply with all applicable provisions of law
13 and the rules and regulations, if any, of governmental authorities having jurisdiction over
14 matters the subject thereof.

15 Because of its status as an independent contractor, CONTRACTOR shall have
16 absolutely no right to employment rights and benefits available to COUNTY employees.
17 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its
18 employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely
19 responsible and save COUNTY harmless from all matters relating to payment of
20 CONTRACTOR'S employees, including compliance with Social Security, withholding, and all
21 other regulations governing such matters. It is acknowledged that during the term of this
22 Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or
23 to this Agreement.

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1 **VIII. HOLD-HARMLESS**

2 CONTRACTOR agrees to indemnify, save, hold harmless, and at COUNTY'S
3 request, defend the COUNTY, its officers, agents and employees from any and all costs and
4 expenses, damages, liabilities, claims and losses occurring or resulting to COUNTY in
5 connection with the performance, or failure to perform, by CONTRACTOR, its officers, agents
6 and employees under this Agreement, and from any and all costs and expenses, damages,
7 liabilities, claims and losses occurring or resulting to any person, firm or corporation who may
8 be injured or damaged by the performance, or failure to perform, of CONTRACTOR, its
9 officers, agents or employees under this Agreement.

10 **IX. INSURANCE**

11 Without limiting the COUNTY'S right to obtain indemnification from
12 CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full
13 force and effect the following insurance policies throughout the term of this Agreement:

14 A. Commercial General Liability

15 Commercial General Liability Insurance with limits of not less than One
16 Million Dollars and No/100s (\$1,000,000.00) per occurrence and an annual aggregate of Two
17 Million Dollars and No/100s (\$2,000,000.00). This policy shall be issued on a per occurrence
18 basis. COUNTY may require specific coverages including completed operations, products
19 liability, contractual liability, fire legal liability or any other liability insurance deemed necessary
20 because of the nature of this contract, to effectuate the purpose of Penal Code section
21 1203.016(j)(3)(B)(iii) & (iv).

22 B. Automobile Liability

23 Comprehensive Automobile Liability Insurance with limits for bodily injury
24 of not less than Two Hundred Fifty Thousand Dollars and No/100s (\$250,000.00) per person,

1 Five Hundred Thousand Dollars and No/100s (\$500,000.00) per accident and for property
2 damages of not less than Fifty Thousand Dollars and No/100s (\$50,000.00), or such coverage
3 with a combined single limit of Five Hundred Thousand Dollars and No/100s (\$500,000.00).
4 Coverage should include owned and non-owned vehicles used in connection with this
5 Agreement.

6 C. Worker's Compensation

7 A policy of worker's compensation insurance as may be required by the
8 California Labor Code.

9 CONTRACTOR shall obtain endorsements to the Commercial General
10 Liability insurance naming the County of Fresno, its officers, agents and employees,
11 individually and collectively, as additional insured, but only insofar as the operations under this
12 Agreement are concerned. Such coverage for additional insured shall apply as primary
13 insurance and any other insurance, or self-insurance, maintained by the COUNTY, its officers,
14 agents and employees, shall be excess only and not contributing with insurance provided
15 under the CONTRACTOR'S policies herein. This insurance shall not be cancelled or changed
16 without a minimum of thirty (30) days advance, written notice given to COUNTY.

17 Within thirty (30) days from the date CONTRACTOR executes this
18 Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated
19 above for all of the foregoing policies, as required herein, to the Probation Department,
20 Attention: Probation Business Manager, stating that such insurance coverages have been
21 obtained and are in full force; that the County of Fresno, its officers, agents and employees
22 will not be responsible for any premiums on the policies; that such Commercial General
23 Liability insurance names the County of Fresno, its officers, agents and employees,
24 individually and collectively, as additional insured, but only insofar as the operations under this

1 Agreement are concerned; that such coverage for additional insured shall apply as primary
2 insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers,
3 agents and employees, shall be excess only and not contributing with insurance provided
4 under CONTRACTOR'S policies herein; and that this insurance shall not be cancelled or
5 changed without a minimum of thirty (30) days advance, written notice given to COUNTY.

6 In the event CONTRACTOR fails to keep in effect at all times insurance
7 coverage as herein provided, the COUNTY may, in addition to other remedies it may have,
8 immediately suspend or terminate this Agreement upon the occurrence of such event.

9 All policies shall be with admitted insurers licensed to do business in the
10 State of California. Insurance purchased shall be purchased from companies possessing a
11 current A.M. Best, Inc. rating of A FSC VII or better.

12 **X. DISCLOSURE OF SELF-DEALING TRANSACTIONS**

13 This provision is only applicable if the CONTRACTOR is operating as a
14 corporation (a for-profit or non-profit corporation) or if during the term of this agreement, the
15 CONTRACTOR changes its status to operate as a corporation.

16 Members of the CONTRACTOR'S Board of Directors shall disclose any self-
17 dealing transactions that they are a party to while CONTRACTOR is providing goods or
18 performing services under this agreement. A self-dealing transaction shall mean a transaction
19 to which the CONTRACTOR is a party and in which one or more of its directors has a material
20 financial interest. Members of the Board of Directors shall disclose any self-dealing
21 transactions that they are a party to by completing and signing a *Self-Dealing Transaction*
22 *Disclosure Form* (Exhibit F) and submitting it to the COUNTY prior to commencing with the
23 self-dealing transaction or immediately thereafter.

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1 **XI. MODIFICATION**

2 Any matters of this Agreement may be modified from time to time by the written
3 consent of all the parties without, in any way, affecting the remainder.

4 **XII. NON-ASSIGNMENT**

5 Neither party shall assign, transfer or sub-contract this Agreement or their rights
6 or duties under this Agreement without the prior written consent of the other party.

7 **XIII. AUDITS AND INSPECTIONS**

8 The CONTRACTOR shall at any time during business hours, and as often as
9 the COUNTY may deem necessary, make available to the COUNTY for examination all of its
10 records and data with respect to the matters covered by this Agreement. The CONTRACTOR
11 shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all such
12 records and data necessary to ensure CONTRACTOR'S compliance with the terms of this
13 Agreement.

14 If this Agreement exceeds Ten Thousand and No/100 Dollars (\$10,000.00),
15 CONTRACTOR shall be subject to the examination and audit of the Auditor General for a
16 period of three (3) years after final payment under this contract (Govt. Code section 8546.7).

17 **XIV. NOTICES**

18 The persons and their addresses having authority to give and receive notices
19 under this Agreement include the following:

20 COUNTY: Chief Probation Officer
21 Fresno County Probation Department
22 P.O. BOX 453
23 Fresno, California, 93709

24 CONTRACTOR: (Title, i.e., President)
 (Vendor Name)
 (Vendor Address)
 _____, CA _____

1 Any and all notices between the COUNTY and the CONTRACTOR provided for
2 or permitted under this Agreement or by law shall be in writing and shall be deemed duly
3 served when personally delivered to one of the parties, or in lieu of such personal service,
4 when deposited in the United States Mail, postage prepaid, addressed to such party.

5 **XV. GOVERNING LAW**

6 Venue for any action arising out of or relating to this Agreement shall only be in
7 Fresno County, California. The rights and obligations of the parties and all interpretation and
8 performance of this Agreement shall be governed in all respects by the laws of the State of
9 California.

10 **XVI. CONFORMANCE WITH ALL APPLICABLE LAWS**

11 CONTRACTOR shall provide the electronic monitoring equipment and services,
12 as described in this Agreement, in compliance with any applicable standards promulgated by
13 state correctional agencies and bodies, including but not limited to the Corrections Standards
14 Authority, and all statutory provisions and mandates, state and county, as appropriate and
15 applicable to the operation of offender-paid home detention programs and the supervision of
16 sentenced offenders in a home detention program, including but not limited to Penal Code
17 sections 1203.016 and 1208.2.

18 **XVII. ENTIRE AGREEMENT**

19 This Agreement constitutes the entire agreement between the CONTRACTOR
20 and COUNTY with respect to the subject matter hereof and supersedes all previous
21 Agreement negotiations, proposals, commitments, writings, advertisements, publications, and
22 understandings of any nature whatsoever unless expressly included in this Agreement. In the
23 event of any inconsistency in interpreting the documents which constitute this Agreement, the
24 inconsistency shall be resolved by giving precedence in the following order of priority: (1) the

1 text of this Agreement (excluding Exhibits A,through F); (2) Exhibit F; (3) Exhibit E; (4) Exhibit
2 A, B, and C; and (5) Exhibit D.

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SAMPLE

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the
2 day and year first hereinabove written.

3 **(VENDOR NAME)**

COUNTY OF FRESNO

4 _____
5 (Name)
6 President/CEO

Phil Larson
Chairman, Board of Supervisors

7 Date: _____

Date: _____

8 REVIEWED & RECOMMENDED
9 FOR APPROVAL:

10 _____
Linda Penner, Chief Probation Officer

11 APPROVED AS TO LEGAL FORM:
12 Kevin B. Briggs, County Counsel

13 By _____
14 Deputy

15 APPROVED AS TO ACCOUNTING FORM:
16 Vicki Crow, CPA
Auditor-Controller/Treasurer-Tax Collector

17 By _____
18 Deputy