

**ATTACHMENT C**  
**SAMPLE CONTRACT**

**A G R E E M E N T**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the COUNTY OF FRESNO, a Political Subdivision of the State of California, hereinafter referred to as "COUNTY", and each provider listed in ATTACHMENT A, attached hereto and by this reference incorporated herein, collectively hereinafter referred as "CONTRACTOR(S)" and such additional CONTRACTOR(S) as may, from time to time during the term of this AGREEMENT, be added by COUNTY.

W I T N E S S E T H :

WHEREAS COUNTY has a need to contract with multiple vendors to provide computer hardware, software, peripherals, etc. for its Information Technology Services Department (ITSD) and its Sheriff's Department; and

As such, COUNTY issued Request for Proposal No. \_\_\_\_ - \_\_\_\_ (RFP) which solicited proposals from qualified vendors to provide computer hardware, software, peripherals, warranties and maintenance in accordance with specific terms, conditions and requirements. Respondents to that RFP include all CONTRACTORS listed on the above referenced ATTACHMENT A.

WHEREAS COUNTY desires to enter into an agreement with each of the CONTRACTORS listed on ATTACHMENT A; and that such agreement will provide for the provision of the aforementioned products and services; and

WHEREAS each CONTRACTOR individually agrees to enter into such an agreement with COUNTY; it is therefore agreed as follows:

1. PURCHASE OF PRODUCTS

All CONTRACTORS shall provide all products and services in accordance with the specifications, requirements, terms, conditions, etc. of Fresno County RFP No. \_\_\_\_ - \_\_\_\_\_. Additionally, each individual CONTRACTOR'S performance under this Agreement shall be executed in accordance with the proposal

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that he/she submitted in response to COUNTY'S RFP No. \_\_\_ - \_\_\_ and all subsequent amendments thereto; if any. Such condition shall be limited solely to the proposal submitted by the CONTRACTOR and in no way requires a CONTRACTOR to be obligated by any proposal submitted by any other CONTRACTOR.

All products to be supplied by CONTRACTOR shall be F.O.B. destination. Any price changes, additions to or deletions from this AGREEMENT shall be implemented only in accordance with the terms of this Agreement. Purchase contracts, involving the purchase of computer software, shall specify the means of delivery for each software title made available to the COUNTY.

Fresno County Request for Proposal No. \_\_\_ - \_\_\_ and each CONTRACTOR(S)' response to Request for Proposal No. \_\_\_ - \_\_\_ are by reference incorporated herein. The originals of such documents shall be maintained by County's Purchasing Manager at 4525 East Hamilton Avenue, Fresno, California.

#### 2. PARTICIPATING DEPARTMENTS

The County departments authorized to participate in this AGREEMENT are County's Information Technology Department (ITSD) and its Sheriff's Department. Such departments shall be considered separate entities. No other County department is authorized to place orders under this Agreement.

#### 3. ORDERING

COUNTY shall place orders with CONTRACTOR(S) on an as-needed basis. Orders will be placed by designated representatives from either County's ITSD or its Sheriff's Department. The CONTRACTOR(S) and each County department shall agree upon which personnel are authorized to place orders against this Agreement. A list of such County personnel shall be maintained for each department and kept current by both CONTRACTOR(S) and COUNTY for the term of this AGREEMENT. Orders will be placed with the CONTRACTOR deemed to best satisfy COUNTY's specific requirement. Such determination will be based upon COUNTY's evaluation of the quotations submitted by the CONTRACTOR(S) for each COUNTY

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requirement for product or service.

4. LOCAL VENDOR PREFERENCE: COUNTY shall apply its "Local Vendor Preference" policy when evaluating quotations.

5. COMPENSATION

COUNTY shall compensate CONTRACTOR(S) in an amount equal to that offered by the CONTRACTOR in his/her written quotation for each specific COUNTY requirement. Such quotations shall be subject to the terms, conditions, requirements etc. of this AGREEMENT, even if not so stated on the CONTRACTOR(S)' quotation. Terms, conditions, etc. that are stated on the quotation and are in conflict with this AGREEMENT shall not apply even should COUNTY accept the quotation. The terms, conditions etc. of this AGREEMENT shall take priority over any conflicting terms, conditions etc. stated in the CONTRACTOR(S)' quotations except when specifically identified by COUNTY and accepted in writing.

6. INVOICING

CONTRACTOR(S) shall invoice the COUNTY Department, which places the order. Invoices for COUNTY'S ITSD shall be delivered to County of Fresno – ITSD, 2048 N. Fine Avenue, Fresno, California 93727. Invoices for COUNTY'S Sheriff's Department shall be delivered to Fresno County Sheriff, 2200 Tulare Street, Fresno, California 93721. Each invoice shall reference this AGREEMENT by number and include any other identifying information as requested by the COUNTY departments.

7. TERM

This Agreement shall become effective on \_\_\_\_\_, \_\_\_\_\_, 2010 and shall terminate on \_\_\_\_\_, \_\_\_\_\_, 2013.

8. RENEWAL

Agreement shall automatically renew for an additional one (1) year period except when written notice is delivered by either party to the other expressing its intent not to renew. Such notice must be delivered a minimum of sixty (60) days prior to the next expiration date of this Agreement. The maximum number of automatic one (1)

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year renewal periods under this Agreement is two (2).

#### 9. TERMINATION

A. Non-Allocation of Funds - The terms of this Agreement, and the services to be provided thereunder, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated, at any time by giving the CONTRACTOR thirty (30) days advance written notice.

B. Breach of Contract - The COUNTY may immediately suspend or terminate this Agreement in whole or in part, where in the determination of the COUNTY there is:

- 1) An illegal or improper use of funds;
- 2) A failure to comply with any term of this Agreement;
- 3) A substantially incorrect or incomplete report submitted to the COUNTY;
- 4) Improperly performed service.

In no event shall any payment by the COUNTY constitute a waiver by the COUNTY of any breach of this Agreement or any default, which may then exist on the part of the CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of the COUNTY were not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

C. Without Cause - Under circumstances other than those set forth above, this Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written notice of an intention to terminate to CONTRACTOR.

10. INDEPENDENT CONTRACTOR: In performance of the work, duties and obligations assumed by CONTRACTOR under this Agreement, it is mutually

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

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

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

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

12. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this Agreement nor their rights or duties under this Agreement without the prior written consent of the other party.

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13. HOLD HARMLESS: CONTRACTOR(S) agrees to indemnify, save, hold harmless, and at COUNTY'S request, defend the COUNTY, its officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to COUNTY in connection with the performance, or failure to perform, by CONTRACTOR(S), its officers, agents, or employees under this Agreement, and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of CONTRACTOR(S), its officers, agents, or employees under this Agreement.

14. INSURANCE

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

A. Commercial General Liability

Commercial General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars (\$2,000,000). This policy shall be issued on a per occurrence basis. COUNTY may require specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed necessary because of the nature of this contract.

B. Automobile Liability

Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred Thousand Dollars (\$500,000.00) per accident and for property damages of not less than Fifty Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred Thousand Dollars (\$500,000.00). Coverage should include owned and non-owned vehicles used in connection with this Agreement.

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#### **C. Worker's Compensation**

A policy of Worker's Compensation insurance as may be required by the California Labor Code.

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

Within Thirty (30) days from the date CONTRACTOR(S) executes this Agreement, CONTRACTOR(S) shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required herein, to the County of Fresno, Purchasing Manager, stating that such insurance coverage have been obtained and are in full force; that the County of Fresno, its officers, agents and employees will not be responsible for any premiums on the policies; that such Commercial General Liability insurance names the County of Fresno, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees, shall be excess only and not contributing with insurance provided under CONTRACTOR(S)' policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to COUNTY.

In the event CONTRACTOR(S) fails to keep in effect at all times

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insurance coverage as herein provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

15. AUDITS AND INSPECTIONS: The CONTRACTOR(S) shall at any time during business hours, and as often as the COUNTY may deem necessary, make available to the COUNTY for examination all of its records and data with respect to the matters covered by this Agreement. The CONTRACTOR(S) shall, upon request by the COUNTY, permit the COUNTY to audit and inspect all of such records and data necessary to ensure CONTRACTOR(S)' compliance with the terms of this Agreement.

If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under contract (Government Code Section 8546.7).

16. NOTICES

The persons and their addresses having authority to give and receives notices under this AGREEMENT include the following:

<u>COUNTY OF FRESNO:</u>		<u>CONTRACTORS:</u>
ITSD	Sheriff	As indicated on
		ATTACHMENT A
2048 N. Fine Street	2200 Tulare Street	
Fresno, CA 93727	Fresno, CA 93721	

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

17. GOVERNING LAW: Venue for any action arising out of or related to

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this Agreement shall only be in Fresno County, California.

The rights and obligations of the parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California.

18. ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between the CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understanding of any nature whatsoever unless expressly included in this Agreement. In the event of any inconsistency in interpreting the documents which constitute this Agreement, the inconsistency shall be resolved by giving precedence in the following order of priority: (1) the text of this Agreement (excluding Attachment "A", the COUNTY'S Request for Proposal No. \_\_\_-\_\_\_ and the CONTRACTOR(S)' proposal made in response thereto); (2) Attachment "A"; (3) the COUNTY'S Request for Proposal No. \_\_\_-\_\_\_; and (4) the CONTRACTOR(S)' proposal made in response to COUNTY'S Request for Proposal No. \_\_\_-\_\_\_.

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

**CONTRACTOR: (One Page For Each Contractor)**

**COUNTY OF FRESNO**

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_

\_\_\_\_\_  
Mailing Address

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**FOR ACCOUNTING USE ONLY:**

ORG No.: 8905/31102425  
Account No.: 7309/7400  
Requisition No.: