CONTRA COSTA COUNTY EQUIPMENT, SOFTWARE & SERVICES PROCUREMENT AGREEMENT

CONTRA COSTA COUNTY

EQUIPMENT, SOFTWARE & SERVICES PROCUREMENT AGREEMENT

Na	me of Project:	Contract No:				
Contractor:		Effective Date				
	s Agreement is entered into by and between ective as of the date given above.	the Contra Costa County and the above named Contractor, and i				
A.	Contractor will provide the County with the Services and Products described in Exhibit A and Exhibit C accordance with the Project milestones contained in Exhibit D as such exhibits may be modified as provide herein. The Project will be evaluated and accepted by the County pursuant to the tests, procedures, and criteria sufforth in Exhibit E.					
B.	The attached Terms and Conditions are incorporated into and made a part of this Agreement.					
C.	The following provisions shall apply to the attached Terms and Conditions:					
(1)	Authorized Representatives (Sections 4.2, 6.2,	, 6.3):				
For	Contractor	Telephone				
For	County	Telephone				
(2)	Addresses and Fax Numbers for Notices (Sect	tion 21.0):				
County:		Contractor:				
(3)	Fixed Price or Other Pricing Basis (Section 3.	1): \$				
(4)) Reserve Amount for Minor Changes (Section 6.3): \$					
(5)) Minimum Amount for Minor Changes (Section 6.3): \$					
(6)	Liquidated Damages for Unexcused Delay (Se \$per	ection Error! Reference source not found.)				
(7)	Contractor Federal ID #					

"COUNTY"

CONTRA COSTA COUNTY

"CONTRACTOR"

Ву:	By:					
Chairperson, Board of Supervisors/Designee	(Designate Official Business Capacity A)					
Date:	By:					
Attest: Clerk, Board of Supervisors	(Designate Official Business Capacity B)					

Note to Contractor: For corporations (profit or non-profit), the Agreement must be signed by two officers. Signature A must be that of the President or Vice-President and Signature B must be that of the Secretary or Assistant Secretary (Civil Code Sec. 1190.1 and Corporation Code Sec. 313). All signatures must be acknowledged as set forth on the following page.

ACKNOWLEDGMENT

STATE OF CALIFORNIA)					
COUNTY OF CONTRA COSTA)					
On, before me,					
(insert name and title of the officer), personally appeared					
is/are subscribed to the within	instrument and acknowledg hat his/her/their signature(s)	f satisfactory evidence) to be the person(s) whose name(s) ed to me that he/she, they executed the same in his/her, their on the instrument the person(s), or the entity upon behalf of			
WITNESS MY HAND AND	OFFICIAL SEAL				
Signature (Seal)					
Acknowledgment (by Corpora	tion, Partnership or Individu	nal)			

Civil Code Sec. 1189

APPROVALS

RECOMMENDED BY DEPARTMENT		FORM APPROVED COUNTY COUNSEL
BY:	BY:	
<u>APPROVED</u>	o: COUNTY ADM	INISTRATOR
BY:	Designee	

CONTRA COSTA COUNTY

EQUIPMENT, SOFTWARE, AND SERVICES PROCUREMENT AGREEMENT

TERMS AND CONDITIONS

1.0 DEFINITIONS

The following general definitions shall apply for the purposes of this Agreement:

"Agreement" shall mean this agreement.

"Business Day" shall mean Monday through Friday, excluding holidays observed by the County.

"Confidential Information" shall have the meaning set forth in Section 7.1.

"Contractor" shall mean the person or entity identified as Contractor on the first page of this Agreement.

"County" shall mean the Contra Costa County.

"First Productive Use" shall mean that point in time which County processes "live" customer data with any functional portion, or total function, of "named" software.

"Four Digit Year Format" shall mean a format that allows entry or processing of a four-digit-year date, where the first two digits will designate the century and the second two digits will designate the year within the century.

'Disclosing Party' shall have the meaning set forth in Section 7.5.

"Documentation" shall have the meaning set forth in Section 8.4.

"Leap Year" shall mean the year during which an extra day is added to February (February 29). Leap Year occurs in all years evenly divisible by the number four (4), except that a year that is divisible by one hundred (100) is not a Leap Year, unless it is also divisible by four hundred (400).

"Maintenance" shall mean the providing of technical information, assistance, error correction, repair services, and repair parts in the manner specified in Exhibit G.

"Minor Changes" shall have the meaning set forth in Section 6.3.

"Products" shall mean the equipment and software listed in Exhibit C and all other equipment and software to be provided by Contractor pursuant to this Agreement.

"Project" shall mean the task(s) described in Exhibit A.

"Receiving Party" shall have the meaning set forth in Section 7.5.

"Section" shall mean a section of this Agreement.

"Services" shall mean all labor to be provided by Contractor or its subcontractors pursuant to this Agreement.

"Year 2000 Compliant" shall mean dates outside the range of 1900-1998, including the years 1999, 2000 and thereafter, encountered and/or processed by the software/firmware/hardware/equipment/system will be correctly recognized, calculated, sorted, stored, displayed and/or otherwise processed in any level of computer hardware or software, including, but not limited to, microcode, firmware, application programs, system software, utilities, files, databases and network infrastructure devices.

Exhibit A hereto contains additional definitions of technical terms to used with this Agreement and its exhibits.

2.0 EXHIBITS

The following Exhibits hereto are incorporated into and made a part of this Agreement:

Exhibit A Statement of Work

Exhibit B Controlled Access Protection

Exhibit C Equipment and Software Deliverable Items; Pricing for Additional Items

Exhibit D Project Milestones and Special Payment Provisions

Exhibit E Performance, and Acceptance Criteria

Exhibit F Indemnification and Insurance Provisions

Exhibit G Maintenance Agreement

Exhibit H License Agreement

Exhibit I Escrow Agreement

Exhibit J Special Conditions

3.0 PRICING AND PAYMENT

- 3.1. The County will pay Contractor for the Services and the Products in accordance with the pricing set forth in item C(3) of this Agreement, except as otherwise provided in this Agreement.
- 3.2. Except as otherwise provided in this Agreement, Contractor will invoice the County and will be paid in accordance with the provisions of Exhibit D.
- 3.3. All invoices from Contractor will be in a format approved in advance by the County.
- 3.4. Invoices are payable within thirty (30) days after receipt.
- 3.5. If this Agreement is designated as a firm fixed-price contract in item C(3) of page 1 hereof, such price shall include all sales, use, and value-added taxes, freight charges, insurance, licenses, and any other charges related to the sale or licensing of the Products and the providing of the Services to the County; the total amount invoiced to the County for the Project shall not exceed the amount set forth in item C(3) on page 1 hereof, unless changes are approved pursuant to Section 6.0. Sales tax will not apply to any item transmitted to or downloaded by the County.
- 3.6. Should the County require additional Products for the Project, they will be provided under the pricing structure set forth in Exhibit C and shall be considered changes pursuant to Section 6.0, that will require amendment of the Agreement to increase the payment limit and expand the scope of work to be provided by Contractor.

4.0 PERSONNEL AND SUBCONTRACTORS

- 4.1. Contractor shall provide qualified personnel to supply the Services for the Project.
- 4.2. The authorized Representative of Contractor designated on page 1 of this Agreement shall be the County's normal point of contact at Contractor on matters related to Contractor's performance of the Services hereunder. Likewise, the County has designated its Authorized Representative who will be the normal point of contact at the County for Contractor concerning the County's duties and responsibilities hereunder. The Authorized Representatives for a party may be changed upon written notice from the party changing the Authorized Representative to the other party. Upon written request by the County, Contractor will replace Contractor's Authorized Representative.

- 4.3. Prior written consent of the County is required before Contractor may enter into subcontracts for any work contemplated under this agreement, or before Contractor may assign the Agreement or monies due or to become due, by operation of law or otherwise.
- 4.4. Contractor acknowledges that it will be responsible for the performance or non-performance by its subcontractors of the tasks set forth in this Agreement. Contractor shall contractually require all subcontractors performing work on the Project to abide by the following provisions of this Agreement: Sections 4.5, 4.5, 4.6, 4.7, 4.8, 5.3, 5.4, 7.0, 11.0, , 17.0, 18.0 and 21.1 through 21.9.
- 4.5. Immediately upon receipt of written notice from the County that any Contractor employee, or employee of a subcontractor to Contractor, is not performing work on the Project in a satisfactory manner, Contractor will remove such employee and, within a reasonable period of time, replace such employee with a qualified employee.
- 4.6. Contractor and its employees, subcontractors, and subcontractors' employees, are not and shall not be deemed to be, employees of the County. Contractor and its subcontractors will be solely responsible for the payment of their respective employees' compensation, including employee taxes, workers' compensation, and any similar taxes associated with their employment.
- 4.7. This Agreement shall not create any partnership or joint venture between the parties. Nothing contained in this Agreement shall constitute either party as the agent or legal representative of the other for any purpose. No provision of this Agreement grants either party any express or implied right of authority to assume or create any obligation or responsibility on behalf of or in the name of the other party, or to bind the other party in any manner or thing whatsoever.
- 4.8. Neither party will, directly or indirectly, solicit or offer employment to any employee of the other party during the work on the Project by said employee and for one year thereafter.

5.0 ASSISTANCE FROM COUNTY; RULES OF ACCESS AND CHANGE MANAGEMENT

- 5.1. The County will be providing the level of assistance on the Project as indicated in Exhibit A.
- 5.2. While on County's premises in connection with the performance of this Agreement, Contractor personnel will comply with the County's applicable rules with respect to security, conduct and other matters concerning access to County's premises. Such rules may require in some cases background checks and escorts for Contractor and subcontractor personnel. On notice from the County, Contractor will immediately remove any of its personnel assigned to perform work under this Agreement who do not comply with such rules.
- 5.3. Unless otherwise requested in writing by the County, that portion of the Project work to be done on County premises by Contractor and its subcontractors will be performed between the hours of 7 a.m. and 6 p.m. on Business Days.
- 5.4. In performing its duties for the Project, Contractor will comply with the County's standard requirements with respect to technical and operational change management. It is understood by Contractor that changing the County's computers, in particular its mainframes, requires advance notice and compliance with established County procedures.

6.0 CHANGES

- 6.1. The parties acknowledge that additions, deletions, and modifications to the Products and Services specified under this Agreement may be required in the manner set forth in this Section.
- 6.2. No such change, whether major or minor, shall be binding, and Contractor shall not proceed with any change, unless the change is confirmed in writing and formally executed by the Authorized Representatives of both Contractor and the County as set forth on page 1 of this Agreement. A major or material change, as defined in Section 6.4 below, also requires a written amendment of this Agreement that is approved by the County's Board of Supervisors.
- 6.3. Minor Changes may be made by the mutual written agreement of the Authorized Representatives of Contractor and the County without the necessity of a formal proposal and estimates. Minor Changes are those having a price less than the maximum amount for Minor Changes as specified in item C(5) of page 1 of this Agreement, and are changes

which do not affect a material term of this Agreement such as the term or payment limit of the Agreement or the nature and scope of services to be provided. Minor Changes will be funded from a pool reserve in the amount specified in item C(4) of page 1 of this Agreement. Once that fund is depleted, this Minor Change procedure will no longer be available. If the reserve is not entirely depleted during the Project, the balance- will, at the County's option following completion or termination of the Project, either be credited to other work Contractor is performing for the County or be returned to the County.

6.4. For a major material change, a change that affects the contract payment limit, contract term, or nature and general scope of services, the party seeking the change shall inform the other in writing of the details of the contemplated change and any requested terms concerning the change. For a material change of this type requested by Contractor and involving additional or deleted Services, Contractor shall include a written proposal containing the cost of the additional or deleted Services involved in the change, and any impacts upon price, delivery schedule, or other terms. For a change of this type requested by the County, Contractor shall respond with such a proposal within five (5) Business Days after receipt of a written request for the change.

7.0 CONFIDENTIAL INFORMATION

- 7.1. Contractor acknowledges that in the course of performing work on the Project, it and its subcontractors may be exposed to certain Confidential Information, including without limitation medical records, employment records, secret passwords to County computer systems, methods of accessing County computers and data, County personnel data, payroll data, County proprietary software, records and data which are not available to the general public, and documents marked "Confidential" or "Proprietary", Other categories of documents considered Confidential Information by the County shall be specified to Contractor in writing.
- 7.2. The County acknowledges that Contractor may be disclosing Confidential Information to the County in the course of performance of the Project, including documents marked "Confidential" or "Proprietary," provided that the County agrees prior to disclosure that such information is Confidential Information. Such agreement will not be unreasonably withheld.
- 7.3. Information of a proprietary nature which is disclosed orally to a party hereto shall not be treated as Confidential Information unless it is stated at the time of such oral disclosure that such information is Confidential Information and such information is reduced to writing and confirmed as Confidential Information to the Receiving Party (as defined below) within thirty (30) days after the oral disclosure.
- 7.4. Confidential Information does not include (a) information which the party hereto receiving the information (the 'Receiving Party") can prove was known to it at the time of receipt from the party hereto disclosing (the "Disclosing Party") that information to the Receiving Party, (b) information lawfully received by the Receiving Party from a third party that is not under an obligation of confidentiality with respect to such information, (c) information which becomes known to the public other than by a disclosure prohibited by this Agreement, or (d) information which the Receiving Party can prove was independently developed by it without assistance from access to Confidential Information.
- 7.5. The Receiving Party shall use Confidential Information solely for the purposes of the Project and may disclose Confidential Information to others only upon the advance written consent of the Disclosing Party. The Receiving Party shall protect Confidential Information with the same degree of care that it regularly employs to safeguard its own confidential information of like nature from unauthorized disclosure but no less than a reasonable degree of care. If the Receiving Party is required by a governmental agency, court or other quasi-judicial or other regulatory body or by State or Federal law, including but not limited to, the California Public Records Act to disclose Confidential Information received under this Agreement, the Receiving Party shall not be liable for such disclosure provided that the Receiving Party shall, as promptly as reasonably possible, give notice to the Disclosing Party of the requirement to disclose such Confidential Information in order that the Disclosing Party may contest the requirement that Recipient disclose such Confidential Information. Except as provided in Section 8.0 and except as required by law, no other disclosure of Confidential Information is authorized under this Agreement.
- 7.6. Except for Confidential Information contained in documentation prepared for the County by Contractor or its subcontractors hereunder, upon request by the Disclosing Party, the Receiving Party shall return Confidential Information to the Disclosing Party, along with all copies and notes made therefrom.

8.0 RIGHTS IN SOFTWARE AND DOCUMENTATION

- 8.1. All software from third parties to be provided by Contractor hereunder will be licensed to the County pursuant to the terms and conditions of the license agreements provided by the publishers of such software.
- 8.2. Custom software, if any, developed for the County hereunder will be subject to the requirements in Exhibit A.
- 8.3. With respect to software routines, programs, scripts, or diagrams or schematics written or formulated by Contractor or its subcontractors hereunder, Contractor will designate any third-party software tools (e.g., compilers or CAD programs) that were used in the development of such software, diagrams, or schematics. It is the preference of the County that non-proprietary tools be used for the development of such software, diagrams, or schematics, but if proprietary software tools must be used, then Contractor must provide the County with an object-code version, as well as available documentation on the use of such tools. The County may use such proprietary tools solely for the purpose of maintaining and modifying the software, diagrams, or schematics written or formulated by Contractor or its subcontractors for the Project.
- 8.4. All documentation required to be developed for the County pursuant to Exhibit A ("Documentation") will not be based on Contractor Confidential Information, unless there is a compelling need and the County agrees in writing. The County shall own all such Documentation delivered hereunder except for (a) Documentation Contractor can demonstrate was previously developed by or for Contractor and is not in the public domain; or (b) Documentation identified in writing by Contractor and proved to the County's reasonable satisfaction as being developed solely with Contractor resources.
- 8.5. With respect to Documentation which is deemed to belong to Contractor in accordance with Section 8.4, Contractor grants the County a non-exclusive, royalty-free license to use and copy any such Documentation for its own internal use. The County shall have the right to disclose such Documentation to successor vendors, contractors, or computer hardware or software maintenance organizations, provided such entities (a) have a need to know such information for the purposes of modifying, maintaining, or enhancing the County's equipment or software, and (b) agree not to use such information except with respect to work for the County. Such Documentation will not otherwise be disclosed outside County government without the advance written consent of Contractor, which shall not be unreasonably withheld or delayed.

9.0 RISK OF LOSS

Risk of loss or damage for the Products, except for equipment, shall pass to the County when the Project is accepted by the County pursuant to the provisions of Exhibit E. Risk of loss with respect to equipment shall pass to the County upon delivery of the equipment to the County.

10.0 INFRINGEMENT PROTECTION

- 10.1. All royalties or other charges for any patent, copyright, trademark, trade secret, or other proprietary right to be used in the Project shall be considered as included in the price for the Project. Contractor shall defend, indemnify, and hold the County harmless against any and all liabilities, judgments, costs, damages, and expenses including reasonable attorney's fees resulting from a claim or suit against the County for alleged infringement of any patent, copyright, trademark, trade secret, royalty or license agreement, or other proprietary right arising out of the use by the County of the Products or Documentation for the purposes intended hereunder. As a condition of such indemnification, the County shall promptly inform Contractor of any such claim or suit, allow Contractor or its suppliers to control the defense against such suit, and cooperate, at Contractor's expense, in the defense against such suit, provided however, that in no event shall Contractor make any admission of guilt or liability on behalf of County without County's prior written consent.
- 10.2. If the County's use of any portion of the Products or Documentation is enjoined by a court of competent jurisdiction, Contractor shall at its option and expense and within sixty (60) days of the enjoinment:
 - (a) Procure for the County the right to use such infringing portion;
 - (b) Replace such infringing portion with a non-infringing portion providing equivalent functionality; or

- (c) Modify the infringing portion so as to eliminate the infringement while providing equivalent functionality.
- 10.3. Contractor may delegate its responsibilities under Sections 10.1 and 10.2 to the manufacturer of the allegedly infringing Product, provided Contractor has received the advance written consent of the County. Such consent will not be unreasonably withheld or delayed.

11.0 INDEMNIFICATION AND INSURANCE

Contractor shall comply with, and require its subcontractors to comply with, the terms and conditions of Exhibit F related to indemnity and insurance.

12.0 WARRANTIES AND MAINTENANCE

- 12.1. Products to be provided by Contractor hereunder will be subject to the warranties, if any of the manufacturers or suppliers of such Products. Contractor will ensure that such warranties are transferred to the County.
- 12.2. Contractor will provide maintenance or will arrange for maintenance for Products in the manner specified by Exhibit A and Exhibit G.
- 12.3. Contractor represents and warrants to the County that, upon payment of the purchase price specified in this Agreement, the County will have good title to each of the Products, free and clear of all liens, encumbrances, and claims. Unless otherwise agreed to in writing by the County, only new materials shall be used in each of the hardware Products provided by Contractor under this Agreement.
- 12.4. Contractor represents and warrants to the County, that at the time of installation, the software Products will be free of programming that is intentionally and specifically constructed for the purpose of destroying, interrupting, or otherwise adversely affecting the software Product's code or other code or data in a computer, such as by replicating itself or another program many times without any useful purpose.
- 12.5. Contractor warrants to the County that the Services to be performed by it and its subcontractors hereunder (a) will be performed in a competent manner by qualified personnel in conformance with industry standards, and (b) will conform to the performance and acceptance criteria set forth in Exhibit E. This warranty shall remain in effect during the entire term of this Agreement. In order to qualify for remedial action under this warranty, the County must report a warranty failure to Contractor in writing within the warranty period. Contractor shall not be responsible for remedial action under this warranty to the extent the failure to meet the warranty is caused by modification to the Products by the County or anyone other than Contractor or its subcontractors, unless under Contractor's or its subcontractors' direction.
- 12.6. Except as provided in Section 16.0, as Contractor's sole obligation, and the County's exclusive remedy, for failure to meet the warranty in Section 12.5, Contractor will use commercially reasonable efforts to correct the failure, provided the County makes available to Contractor information concerning the failure. If Contractor is unable, by using reasonable efforts, to correct the failure within a reasonable period of time, Contractor will refund to the County an equitable portion of the amounts paid by the County based on the proportion of the Project affected by the failure and the severity of the failure with respect to the objectives of the Project.
- 12.7. Contractor warrants and represents to County that all software/firmware/hardware/equipment/systems developed, distributed, installed or programmed by Contractor pursuant to this Agreement:
 - (a) is Year 2000 Compliant; will operate consistently, predictably and accurately, without interruption or manual intervention, and in accordance with all requirements of this Agreement, including without limitation all specification and/or functionality and performance requirements, in relation to dates it encounters or processes;
 - (b) that all date recognition and processing by the software/firmware/hardware/equipment/system will include the four-digit-year format and will correctly recognize and process the date of February 29, and any related data, during Leap Years; and

- (c) that all date sorting by the software/firmware/hardware/equipment/system that includes a "year category" shall be done based on the four-digit-year format. Upon being notified in writing by County of the failure of any software/firmware/hardware/equipment/systems to comply with this Agreement, Contractor will, within sixty (60) days and at no cost to County, replace or correct the non-complying software/firmware/hardware/equipment/systems with software/firmware/hardware/equipment/systems that does comply with this Agreement.
- 12.8. Other systems: To the extent that the software/firmware/hardware/equipment/system will accept data from other systems and sources that are not Year 2000 compliant, the software/firmware/hardware/equipment/system must properly recognize, calculate, sort, store, output and otherwise process such data in a manner that eliminates any century ambiguity so that the software/firmware/hardware/equipment/system remains Year 2000 compliant.
- 12.9. No Disclaimers: The warranties set forth in sections 12.7 and 12.8 above shall not be subject to any disclaimer or exclusion of warranties or to any limitation of Licensor's liability under this agreement, and shall remain in effect through the Year 2000 until termination of this Agreement.
- 12.10. Contractor warrants that it has the corporate power and authority and the legal right to grant the licenses contemplated under this Agreement and neither has nor will enter into agreements or take or fail to take action which shall restrict Contractor's legal right or ability to grant said licenses.
- 12.11. Contractor represents and warrants that it is aware of no circumstances that would impair its ability to fully perform its obligations under this Agreement.

13.0 DELAYS

- 13.1. Neither party will be liable to the other party by reason of any failure in performance of this Agreement if the failure arises out of acts of God, acts of the other party, acts of non-County governmental authority, fires, strikes, delays in transportation, riots or war, or any cause beyond the reasonable control of that party. If any such event delays performance, the time allowed for such performance will be extended an amount of time equal to the period of such delay.
- 13.2. If performance under this Agreement is postponed or extended pursuant to Section 13.1 for longer than sixty (60) days for a reason other than the acts of the County, then the County may, upon written notice to Contractor given during the postponement or extension, terminate this Agreement. In such case, Contractor shall be paid in accordance with Section 16.2.

14.0 TERMINATION FOR CONVENIENCE

- 14.1. The County may terminate this Agreement for convenience by providing Contractor thirty (30) days advance written notice of such termination. Such notice may direct Contractor to stop work immediately on some portion or all of the Project and may direct Contractor to continue work until the termination date on other portions of the Project.
- 14.2. In the event of termination under this Section 14.0, the County's total payment to Contractor shall be determined in accordance with Section 16.2.

15.0 TERMINATION FOR CAUSE

- 15.1. It is expressly agreed that this Agreement shall be fully discharged only by the completion of all work and obligations contracted for, or with the written consent of the County.
- 15.2. If Contractor fails to begin work on the Project in a timely manner, fails to meet a milestone in Exhibit D by fifteen (15) or more days, or fails to carry out or breaches its obligations hereunder (and such failure or breach is not excused by Section 13.1), the County may terminate this Agreement by giving written notice of intent to terminate to Contractor. If Contractor has not completely cured its breach within thirty (30) days of the receipt of such notice, then the County may terminate this Agreement upon the delivery of a written notice of termination to Contractor.

15.3. In the event of termination under this Section, the County may, at its option, return any or all copies of Documentation to Contractor which was the subject of the breach. The County's total payment to Contractor subsequent to termination shall be determined in accordance with Sections 16.2 and 16.3.

16.0 EFFECT OF TERMINATION

- 16.1. After receipt of notice of termination, Contractor shall (a) comply with the instructions of the County with respect to stopping or continuing work until the termination date; (b) place no further orders or subcontracts for Products or third-party Services, except as otherwise directed by the County; (c) terminate all orders for Products and subcontracts to the extent they relate to the performance of work terminated by the notice of termination; (d) return Products to their suppliers, if requested by the County and permitted by such suppliers, (e) deliver the Documentation and any custom software to the County in the form it is then in and not subject to the delivery acceptance criteria in Exhibit E, and (f) return to the County all County Confidential Information, along with all copies and notes made therefrom and a certificate signed by Contractor's Authorized Representative evidencing compliance with this provision.
- 16.2. After termination pursuant to Section 14.0 or 15.0, the County shall pay Contractor an amount equal to the sum of the following, less any amounts previously paid to Contractor and any additional amounts which the County is entitled to withhold pursuant to Section 16.3:
 - (a) The amount due Contractor for completion by Contractor of the latest Project milestone set forth on Exhibit D, as such amount may be adjusted as provided herein due to the addition or deletion of Products or Services.
 - (b) An amount for Contractor's and its subcontractors' labor utilized on the Project since completion of that last completed milestone, billed at Contractor's and its subcontractors' rates as set forth in Exhibit C. Contractor shall submit a claim for such amount and shall permit the County access to all backup documents which relate to such claim. The County shall have the right to disallow from such claim any unauthorized, excessive, or defective labor.
 - (c) The unpaid balance due for unreturned Products delivered to the County and fees for noncancellable (or noncancelled by the County) third-party Services authorized by the County prior to the effective date of termination, to the extent such Products and Services are not covered by Section 16.2(a).
 - (d) The price to the County permitted under Exhibit C for Products in Contractor's possession which were delivered to Contractor for the Project in the ordinary course of performance of this Agreement and which are not returnable to the supplier (or which the County indicates in writing that it wants); any costs that Contractor must pay due to Project cancellation as a result of loss of quantity discounts for Products used solely in the Project.
- 16.3. If this Agreement is terminated for cause pursuant to Section 15.0, then the County shall be entitled to deduct the following amounts from any monies to be paid Contractor pursuant to Section 16.2:
 - (a) A credit for Documentation returned to Contractor pursuant to Section 15.3, with such credit equal to the amount paid to Contractor for such Documentation prior to termination.
 - (b) An amount equal to the direct damages the County can prove it suffered as a result of breach of this Agreement by Contractor, such as the reasonable costs of having problems created by Contractor corrected by a third party.
- 16.4. Sections 7.0, 8.0, 9.0, 10.0, 11.0, 12.1, 12.3, 12.4 and 17.0 shall survive termination of this Agreement.

17.0 DISPUTES

Except as provided in the Termination provisions herein, Contractor or its Subcontractors shall not stop work on the Project, due to a dispute.

18.0 PUBLICITY

Prior to issuing any press release concerning the Project or otherwise making a public statement about the Project, Contractor shall obtain the County's written approval of the content of such press release or statement. Such approval will not be unreasonably withheld or delayed. Contractor shall impose this same requirement on its subcontractors.

19.0 NOTICES

Any notice under this Agreement will be in writing delivered by hand, by certified mail (return receipt requested), or by other competent and reliable courier service (delivery receipt retained), to the other party at the address indicated in item C(2) of page 1 of this Agreement or to such other address as may be substituted by notice. Notice will be effective on the date of receipt, or if delivery is refused, on the date the attempted delivery was refused.

20.0 NON-APPROPRIATIONS OF FUNDS

In the event no funds or insufficient funds are appropriated and budgeted in any Fiscal Year for payments due under this agreement for the then current or the succeeding Fiscal Year during the term aforesaid, this agreement shall create no obligation on the County as to such current or succeeding fiscal year except as to the portions of payments herein agreed upon for which funds shall have been appropriated and budgeted, and no right of action or damages shall accrue to the benefit of Contractor, its successors or assigns, as to that portion of this Agreement which may so become unenforceable, except County agrees to peaceably surrender possession of the Products which have not been paid for by County to Contractor or its assignee. Contractor or its assignees shall have all rights and remedies to take possession of the Products which have not been paid for by the County.

21.0 GENERAL PROVISIONS

- 21.1. In the performance of duties hereunder, Contractor shall comply, and shall require its subcontractors to comply, with all applicable federal, state, and local laws, rules, and regulations.
- 21.2. Neither party may assign this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld.
- 21.3. If any part or parts of this Agreement are held to be invalid, the remaining parts of this Agreement will continue to be valid and enforceable.
- 21.4. the headings in the Agreement are for reference purposes only; they will not affect the meaning or constructions of the terms of this Agreement.
- 21.5. The provisions of this Agreement are for the sole benefit of the parties, and not for the benefit of any other persons or legal entities.
- 21.6. This Agreement may be executed by the parties in one or more counterparts, each of which when so executed shall be an original. All such counterparts shall constitute one and the same instrument.
- 21.7. Each of the parties to this Agreement represents and warrants that it has the power and authority to enter into this Agreement and perform the action contemplated hereunder, and this Agreement has been duly authorized and is the valid binding and enforceable obligation of such parties.
- 21.8. This Agreement, including its referenced exhibits, contains the complete and exclusive understanding of the parties with respect to the subject matter hereof. Except for any terms or conditions of a Request for Quotes or Request for Proposal that are included by reference in this Agreement, this Agreement supersedes and cancels the terms and conditions contained in any previous Request for Quotes or Request for Proposals of the County, any prior Contractor negotiations, proposals, or other submissions to the County by Contractor, and any prior oral or written agreements or representations between County and Contractor concerning the Project. No waiver, alteration, or modification of any of the provisions hereof will be binding unless in writing and signed by a duly authorized representative of the party to be bound. Neither the course of conduct between the parties nor trade usage will act to modify or alter the provisions of this Agreement.

21.9. This Agreement is entered into and to be performed in the State of California and shall be governed and construed under the laws of the State of California. Any action relating to this Agreement shall be instituted and prosecuted in the courts of Contra Costa County, State of California.

EXHIBIT A

STATEMENT OF WORK

DRAFT

1.0 GENERAL DESCRIPTION OF PROJECT

The Project involves the purchase, installation, testing and maintenance of an automated [name of the project] ("Project") which consists of a complete computer system (including hardware, as well as licensed software and networking software) which is capable of the functionality as described in the RFP dated xx/xx/xx. The project will be implemented at the following sites (list of sites).

2.0 PROJECT PHASES

[The project phases based on the RFP and on the Contractor's proposal would be described here]

3.0 PROJECT CONTROL AND SCHEDULE

Contractor will provide experienced management, administration, and support staff to ensure successful completion of the Project. Contractor support shall include the following functions and services:

3.1. Administrative Control

Contractor will maintain schedule, budget, and cost information appropriate to the successful management of the contract on program status and planned activities. This information includes an ongoing analysis of cost and schedule variances.

3.2. Implementation Schedule

Contractor and the County shall perform their duties and responsibilities hereunder in accordance with the schedule in Exhibit D as modified by the Implementation Plan. Contractor and the County acknowledge that prompt performance of all services hereunder is required. Each party will use its best efforts to meet such deadlines and shall give the other party prompt notice of any anticipated delays in meeting such deadlines.

3.3. Reviews, Reports, and Meetings

During the term of the Project, Contractor will conduct a project status review with the County approximately every two weeks or as otherwise agreed. These reviews will include a discussion on the status of the Project, including details on technical issues, schedules, problems and potential problems, and recommended solutions to such problems. In connection with such meetings, Contractor will draft a report covering the foregoing topics and give it to the County in advance of the meeting. In addition, Contractor will attend such other technical and programming meetings and produce such reports concerning the Project as requested by the County.

4.0 SOFTWARE

4.1. Licensing Terms

The software provided under the Agreement shall be referred to as the "[] Software." The [] Software is licensed to the County pursuant to the terms and conditions of the license agreement(s) attached hereto as Attachment 1 and shall include any Customizations as referred to in Section 14.2 below.

[Attachment 1 will be Contractor's standard end-user license agreement. The County reserves the right to modify such license in contract negotiations to meet the County's needs].

4.2. Customizations to Contractor's Base Software

County and Contractor agree to customizations of the Contractor's base software as detailed in Exhibit C. These customizations shall be considered as part of the Contractor's base software for the purpose of any future upgrade or release of that base software. In particular, Contractor explicitly agrees to support these customizations under its standard licensing and maintenance agreements.

4.3. Source Code Escrow

Promptly after completion of the Project, Contractor will enter into a source code escrow agreement in the form of Attachment 2 and deliver a copy of the source code for the [] Software to a bonded escrow agent approved by the County and Contractor. Thereafter, Contractor will deliver a copy of each revision or update to the [] Software, implemented by the County, to the escrow agent promptly after County implementation of such revision or update.

4.4. Custom Software

Any custom software ("Custom Software") developed for the County pursuant to the Project, apart from the base software customizations referred to in Section 4.2 above, shall belong to the County. Any Custom Software developed by Contractor hereunder shall be considered to be work made for hire under the US Copyright Act and all copyrights and all intellectual property rights contained therein shall automatically be assigned to the County. Upon completion of such software, the Contractor shall deliver fully commented source code for such software to the County, and, except for Contractor Code (as defined below), Contractor shall have no right to use any portion of such Custom Code for other customers without the advance written permission of the County. Contractor Code is defined as software code, which Contractor describes in detail to the County in writing prior to beginning the Project as belonging to Contractor. Those portions of Contractor Code, which are incorporated into Custom Code, shall be licensed to the County pursuant to the terms and conditions of Attachment I hereto.

5.0 SOFTWARE SUPPORT

5.1. Programming Assistance

Contractor shall provide Programming assistance to the County as requested by the County and at the rates specified in Exhibit C.

5.2. Telephone Support

Software telephone support will be provided pursuant to the provisions of Exhibit G.

6.0 DATA CONVERSION

Contractor shall provide programming assistance as specified in Exhibit C.

7.0 TECHNICAL DOCUMENTATION

Contractor shall produce and deliver to the County for review and approval at least six (6) copies of a comprehensive user manual for the Project and at least five (5) copies of any technical manuals provided with the Project (system administration manual, programming manual, and the like). Contractor shall also give the County an electronic version of such documentation in a mutually agreed upon format including a format which can be loaded on a server for Countywide on-line access. Such versions may be reproduced by the County for use only by County personnel and contract workers without further compensation to Contractor. All manuals provided with the hardware provided under the Agreement shall also be provided to the County in both electronic and hard copy media. Updates to the foregoing manuals shall be provided to the County without charge.

8.0 TRAINING

[The verbiage of this section will be based upon the training proposal submitted by the Contractor and accepted by the County. That proposal should include a provision for training at extra cost if the County later requires more training than provided in the Contractor's proposal. The County must have the right to videotape Contractor training for later use in periodic County training only].

9.0 ADDITIONAL CONSULTING

Any consulting requested by the County, which is not covered by the Project, shall be provided at the rates set forth in Exhibit C.

10.0 ACCEPTANCE TESTING

The Project as delivered and installed by Contractor will be tested in accordance with the provisions of Exhibit E.

General Warranties

The Contractor warrants (a) the hardware sold hereunder and all of its parts and components are new and unused, (b) Contractor has good title to that hardware, free from liens and encumbrances, and that good title to the hardware shall pass to County upon payment in full of the purchase price for the Project, and (c) County shall have all the rights of a direct purchaser of the hardware from the manufacturer (e.g., update rights, patent Indemnification, etc.).

11.0 MAINTENANCE

The Project will be maintained pursuant to the terms of Exhibit G. Service and parts will be provided at no cost to the County for twelve (12) months after the acceptance of the Project by the County. Contractor represents and warrants that the hardware sold hereunder qualifies for service under its manufacturer's standard warranty and post-warranty maintenance. Contractor will provide County with all necessary documentation to activate such warranty and post-warranty maintenance.

12.0 RELOCATION OF PROJECT

EXHIBIT B

CONTROLLED ACCESS PROTECTION

Systems or software provided must enforce finely grained discretionary access controls, making users individually accountable for their actions through login procedures, auditing of security-relevant events, and resource isolation. The following are minimal requirements for supplied systems or software:

1.0 SECURITY POLICY

1.1. Discretionary Access Control

The system or software supplied shall define and control access between named users and named objects (e.g., files and programs) in the system. The enforcement mechanism (e.g., self/group/public controls, access control lists) shall allow users to specify and control sharing of those objects by named individuals, or defined groups of individuals, or by both, and shall provide controls to limit propagation of access rights.

The discretionary access control mechanism shall, either by explicit user action or by default, provide that objects are protected from unauthorized access. These access controls shall be capable of including or excluding access to the granularity of a single user. Authorized users shall only assign access permission to an object to users not already possessing access permission.

1.2. Object Reuse

No new or old user shall have access to a deleted users storage space or 'released space'. That deleted information shall not be assessable by non-evasive methods.

2.0 ACCOUNTABILITY

2.1. Identification and Authentication

The system or software shall require users to identify themselves to it before beginning to perform any other actions that the system or software is expected to mediate. Furthermore, the system or software shall use a protected mechanism (e.g., passwords) to authenticate the user's identity. The system or software shall protect authentication data so that it cannot be accessed by any unauthorized user. The system or software shall be able to enforce individual accountability by providing the capability to uniquely identify each individual system user. The system or software shall also provide the capability of associating this identity with all auditable actions taken by that individual.

3.0 AUDIT

The system or software shall be able to create, maintain, and protect from modification or unauthorized access or destruction an audit trail of accesses to the objects it protects. The audit data shall be protected by the system or software so that read access to it is limited to those who are authorized for audit data. The system or software shall be able to record the following types of events: use of identification and authentication mechanisms, introduction or objects into a user's address space (e.g., file open, program initiation), deletion of objects, and actions taken by computer operators and system administrators and/or system security administrators, and other security relevant events. For each recorded event, the audit record shall identify: date and time of the event, user, type of event, and success or failure of the event. For identification/authentication events the origin of request (e.g., terminal ID, IP address) shall be included in the audit record. For events that introduce an object into a user's address space and for object deletion events the audit record shall include the name of the object. The system administrator shall be able to selectively audit the actions of any one or more users based on individual identity.

4.0 ASSURANCE

4.1. Operational Assurance

a. System Architecture

The system or software shall maintain a domain for its own execution that protects it from external interference or tampering (e.g., by modification of its code or data structures). Resources controlled by the system or software may be a defined subset of the subjects and objects in the system. The system or software shall isolate the resources to be protected so that they are subject to the access control and auditing requirements.

b. System Integrity

The vendors solution whether commercial-off-the-shelf (COTS) or Contractor proprietary must supply a means to validate the integrity of the solution (hardware, middleware, and software) from the original install through any fixes or enhancements.

5.0 LIFE-CYCLE ASSURANCE

5.1. Security Testing

The security mechanisms of the system or software shall be tested and found to work as claimed in the system or software documentation. Testing shall be done (initiated by the vendor, but may have collaboration with the County) to assure that there are no obvious ways for an unauthorized user to bypass or otherwise defeat the security protection mechanisms of the system or software. Testing shall also include a search for obvious flaws that would allow violation of resource isolation, or that would permit unauthorized access to the audit or authentication data. Patch management must also be addressed in this section.

6.0 DOCUMENTATION

6.1. Security Features User's Guide

A single summary, chapter, or manual in user documentation shall describe the protection mechanisms provided by the system or software, guidelines on their use, and how they interact with one another.

6.2. Trusted Manual

A manual addressed to the system administrator shall present cautions about functions and privileges that should be controlled when running the supplied solution. The procedures for examining and maintaining the audit files as well as the detailed audit record structure for each type of audit event shall be given.

6.3. Test Documentation

As part of the system or software supplied, a document shall be provided that describes the test plan, test procedures that show how the security mechanisms were tested, and results of the security mechanisms' functional testing.

6.4. Design Documentation

Documentation shall be available that provides a description of the manufacturer's philosophy of protection and an explanation of how this philosophy is translated into the system or software. If the system or software is composed of distinct modules, the interfaces between these modules shall be described.

EXHIBIT C

EQUIPMENT AND SOFTWARE DELIVERABLE ITEMS

PRICING FOR ADDITIONAL ITEMS

DRAFT

1.0 HARDWARE AND SOFTWARE

[This section will provide the following information for each item of hardware and software to be provided: description, quantity, unit price and total price].

2.0 LABOR CHARGES

[This section will provide a labor charge for each milestone identified in Exhibit D].

3.0 HARDWARE AND SOFTWARE MAINTENANCE

[This section will include pricing for support and maintenance for each Item of hardware and software after the expiration of the applicable warranty period].

4.0 ADDITIONAL TRAINING

Training not included in the contract price will be provided by contractor at a rate of \$____ per hour.

5.0 ADDITIONAL CONSULTING

Consulting not included in the contract price will be provided by contractor at a rate of \$____ per hour.

6.0 OTHER - COSTS

[Pricing should also be given for any other costs, such as outside services]

7.0 ADDITIONAL HARDWARE AND SOFTWARE

[This section will contain a formula for adding hardware and software]

8.0 BEST PRICING

Contractor represents and warrants that the license, maintenance, training, consulting, data-conversion, and other fees listed herein and the prices charged for the hardware are the most favorable fees and prices Contractor offers to its customers. The best pricing provisions of this Section shall also apply to future purchases of software licenses, maintenance, training, data-conversion services, hardware and other services and products purchased by the County from Contractor.

9.0 EXPENSES

Contractor's costs and expenses of telephone, travel to the County's office, and other office and travel expenses are included in the costs listed above and are not reimbursable.

EXHIBIT D

PROJECT MILESTONES

AND SPECIAL PAYMENT PROVISIONS

DRAFT

[Project Phases based on the RFP and the selected Contractor's proposal shall be described in detail here].

EXHIBIT E

PERFORMANCE AND ACCEPTANCE CRITERIA

1.0 PERFORMANCE CRITERIA

As indicated in the RFP, the Contractor is expected to submit a proposed acceptance-testing plan for review and approval by the County. The plan should adopt the performance criteria and functionality as set forth in the Technical Specification as accepted by the County and the user manual for the [] software.

2.0 TESTING AND ACCEPTANCE.

The Contractor's proposed acceptance-testing plan must include the following subjects at a minimum:

2.1. Functional Testing

In conjunction with the County, Contractor shall develop tests, which check the compliance of the Project with the functionality and performance described in the performance criteria. Such tests shall be submitted to the County for review and approval. After approval of the tests, Contractor shall run the tests in the presence of County personnel designated by the County.

2.2. Stress Testing

In conjunction with the County, Contractor shall develop tests, for review and approval by the County, which simulate the County's future projected conditions of continuous heavy use of the Project and/or sudden bursts of traffic under different patterns of usage.

2.3. Real-Time Testing

In conjunction with the County, Contractor shall develop tests to evaluate the Project in a real-time environment at the County with all data loaded into the system after successful completion of functional testing and stress testing. Such tests shall last at least thirty (30) days and shall measure Project performance in accordance with the acceptance criteria.

2.4. Recovery Testing

In conjunction with the County, Contractor shall develop tests, for review and approval by the County, which demonstrate recovery of databases and program files.

2.5. Evaluation

At the conclusion of each of the tests described above, the County must promptly inform Contractor in writing if the Project has passed or failed to pass the test. If the Project does not pass all aspects of the test, the County shall provide Contractor detailed information with documented examples concerning the failure to pass the test. If within thirty (30) days after receipt of such written notice, Contractor is not able to remedy the cause of the failure to pass the test, then the County shall have the right to return the Project to Contractor, within ninety (90) days after the date of such written notice to Contractor, for a full refund of the price paid by the County for the Project.

EXHIBIT F

INDEMNITY AND INSURANCE

CONTRA COSTA COUNTY

CONTRACTUAL TERMS AND CONDITIONS

1.0 INDEMNITY

The Contractor shall indemnify, defend, save and hold harmless the Contra Costa County (hereinafter "County") its officers, agents and employees from any and all claims, costs and liability for any damages, sickness, death, or injury to person(s) or property, including without limitation all consequential damages, from any cause whatsoever arising directly or indirectly from or connected with the operations or services of the Contractor or its agents, servants, employees or subcontractors, hereunder, save and except claims or litigation arising through the sole negligence or sole willful misconduct of the County or its officers or employees. Contractor will reimburse the County for any expenditures, including reasonable attorneys' fees, the County may make by reason of the matters that are the subject of this indemnification, and if requested by the County will defend any claims or litigation to which this indemnification provision applies at the sole cost and expense of the Contractor.

2.0 INSURANCE

During the entire term of this Contract and any extension or modification thereof, the Contractor shall keep in effect insurance policies meeting the following insurance requirements unless otherwise expressed in the Special Conditions.

2.1. Liability Insurance

The Contractor shall provide comprehensive liability insurance, including coverage for owned and non-owned automobiles, with a minimum combined single limit coverage of \$500,000 for all damages, including consequential damages, due to bodily injury, sickness, or disease, or death to any person or damage to or destruction of property, including the loss use thereof, arising form each occurrence. Such insurance should be endorsed to include the County and its offices and employees as additional insureds as to all services performed by Contractor under this Agreement. Said policies shall constitute primary insurance as to the County, the State and Federal Governments, and their officers, agents, and employees, so that other insurance policies held by them or their self-insurance program(s) shall not be required to contribute to any loss covered under the Contractor's insurance policies.

2.2. Workers Compensation

The Contractor shall provide workers' compensation insurance coverage for its employees.

2.3. Certificate of Insurance

The Contractor shall provide the County with (a) certificate(s) of insurance evidencing liability and worker's compensation insurance as required herein no later than the effective date of this Contract. If the Contractor should renew the insurance policy(ies) or acquire either a new insurance policy(ies) or amend the coverage afforded through an endorsement to the policy at any time during the term of this Contract, the Contractor shall provide (a) current certificate(s) of insurance.

2.4. Additional Insurance Provisions

The insurance policies provided by the Contractor shall include a provision for thirty (30) days written notice to County before cancellation or material changes of the above-specified coverage.

EXHIBIT G

MAINTENANCE AGREEMENT

DRAFT

This Maintenance Agreement is made this _	day of	20	by	and	between	("Contractor")	8
corporation, and Contra Costa County (the "	County").						

1.0 DEFINITIONS

- 1.1. "System" means description of the system
- 1.2. " Hardware" means the equipment portion of the Project, which is listed on the attached Schedule as it may be amended.
- 1.3. "Vendor Software" means Proprietary Software and Third-Party Software which are part of the Vendor offering(s) and which are listed on the attached Schedule as it may be amended.
- 1.4. "Custom Software" shall have the meaning set forth in Exhibit A to the Agreement of which this Maintenance Agreement is a part.
- 1.5. "Major Malfunction" means the failure of the host computer for the Project to function in accordance with the Project user manual or the failure of all terminals or workstations at a County Project site to function in accordance with the Project user manual in such a manner as to render the Project host or Project site effectively unusable.
- 1.6. "Proprietary Software" means Software, which is developed by or licensed to Contractor and is maintained by Contractor.
- 1.7. "Third-Party Software" means software, such as operating system software which has been developed and which is maintained by a party other than Contractor.
- 1.8. "Workaround" means a recommended change in the standard procedures for use of the vendor software to avoid an error without significantly impairing performance of the vendor software.
- 1.9. "First Productive Use" means that point in time which County processes "live" customer data with any function portion, or total function, of the vendor software.

2.0 COVERAGE AND GENERAL MAINTENANCE RESPONSIBILITIES

- 2.1. In accordance with the terms and conditions of this Maintenance Agreement, Contractor will provide the County with the maintenance services described herein for the [] Hardware and Software listed on the attached Schedule One. Additional [] Hardware and Software may be added upon written notice from the County to Contractor and payment of the applicable fee as calculated in accordance with Section 8.0 hereof [] Hardware and Software may be deleted from coverage under this Maintenance Agreement upon written notice from the County to Contractor.
- 2.2. The County acknowledges that Contractor may be an agent or contractor for the manufacturer of [] Hardware for the repair of that hardware or may arrange for that hardware to be repaired by the manufacturer's authorized repair facilities. Such arrangement shall not relieve Contractor of its obligations for maintenance and support of the entire Project. Contractor represents and warrants that the [] Hardware and Third Party Software qualifies for service under its manufacturer's or publisher's standard warranty and post-warranty maintenance. Contractor will ensure that all necessary documentation is executed to activate such warranty and post-warranty maintenance.

2.3. During the term of the term of this maintenance Agreement, the Contractor will be responsible for ensuring that the Software, when used in accordance with the applicable Documentation, will perform all the functions listed in, and operate substantially in accordance with (a) the Technical Specification and (b) the applicable user manuals provided with the software. Contractor's sole obligation under this warranty will be to repair promptly the software or provide the other remedies set forth in Section 4.0 of this Maintenance Agreement. As part of its obligations hereunder, Contractor shall check for and remove, at least once each thirty (30) days, any "harmful code," defined as programming that is intentionally and specifically constructed for the purpose of destroying, interrupting, or otherwise adversely affecting other code or data in the Project, such as by replicating itself or a another program many times without any useful purpose.

3.0 MAINTENANCE AND SUPPORT SERVICE

- 3.1. Contractor shall provide telephone support to the County concerning the use of the Project.
- 3.2. Contractor shall provide remote diagnostic analysis of software problems via modem and correction of such problems remotely or on-site, if necessary. Contractor will provide without charge all labor and parts for the [] Hardware necessary for keeping the System in good working order.
- 3.3. Contractor shall exercise commercially reasonable efforts to correct any replaceable error in the Proprietary software reported by the County, which causes the Software to fail to operate substantially in accordance with its user manual. Contractor will attempt to correct as soon as possible errors, which cause a Major Malfunction or materially restrict the full use of the Software when used in accordance with its user manual. For such errors, Contractor will use its best efforts to develop a temporary Workaround until a permanent correction can be effected. Temporary workarounds will be made permanent corrections in the next release of the Proprietary software. For other errors in the Proprietary Software, Contractor will use reasonable efforts to include a correction in the next release of the Proprietary Software, which should be issued within six (6) months after discovery of such error. Contractor shall provide all updates, enhancements, and improvements to the Proprietary Software, and installation support without charge. Contractor shall provide release notes and revised documentation therefore.
- 3.4. Contractor will promptly report errors in Third-Party Software of which it is aware to the publisher of the Third-Party Software for correction. Contractor will, without charge, arrange for the County to obtain promptly and will install all updates, enhancements, and improvements to Third-Party Software and engineering changes to [] Hardware which are provided by the third-party publisher or manufacturer. Contractor shall provide the County with release notes and revised documentation therefore, which are provided to it by the publisher or manufacturer.
- 3.5. Any modification to the Custom Software which is required to ensure compatibility with updates, enhancements, and improvements to the Proprietary Software or Third-Party Software shall be accomplished by Contractor as part of maintenance charge to the County. Any resulting necessary revisions to the documentation for the Custom Software will be furnished to the County without charge.

4.0 ESCALATION PROCEDURES; REMEDIES

If Processor cannot pass load test remedies will be spelled out here.

[This Section should be drafted by the Contractor for review and acceptance by the County. It should include procedures for escalating the software problems that cannot be solved within a reasonable time. This Section should include a provision, which allows the County to obtain a copy of Contractor's source code for the Proprietary Software if an error in such software causes a Major Malfunction and such software cannot be fixed within forty-five (45) days. The County would then be able to hire a programmer at Contractor's expense to fix the Proprietary Software. In addition, this Section should include a provision which requires the Contractor to provide hardware upgrades without charge for parts or labor if, during the first year of the Maintenance Agreement, the software does not meet the Technical Specification or otherwise meet the requirements of Section 2.3.]

5.0 SERVICE HOURS AND RESPONSE TIMES

5.1. Except as otherwise provided herein, Contractor shall provide the services set forth in Section 3.0 hereof between the hours of 6:00 a.m. to 6:30 p.m., Pacific Time, Monday through Friday, excluding County holidays.

- 5.2. Contractor will use its best efforts to respond to a request for services within sixty (60) minutes via telephone after receipt of such inquiry. If on-site diagnosis or service is necessary, then Contractor will use its best efforts to arrange for such diagnosis or service to take place by a Contractor authorized representative within two (2) business days after a determination is made that it is necessary.
- 5.3. Contractor shall maintain an emergency capability to respond to Major Malfunctions outside of the hours set forth in Section 5.1 and on weekends and holidays. Contractor shall use its best efforts to respond to a Major Malfunction within thirty (30) minutes via telephone. If on-site diagnosis or service is necessary for a Major Malfunction, then Contractor will use its best efforts to arrange for such diagnosis or service to take place by a Contractor authorized representative within six hours after a determination is made that it is necessary.

6.0 SPARE PARTS

- 6.1. Contractor shall obtain a written commitment from each manufacturer of [] Hardware that parts, maintenance, and manufacturing field support shall be available for [] Hardware for a period of not less than five (5) years from the date of final acceptance by the County of the [].
- 6.2. Each such spare part for [] Hardware shall be available to the County within two (2) hours after the need for such part is identified.

7.0 RESPONSIBILITIES OF THE COUNTY

7.1. The County shall promptly report any problem, which is covered hereunder to Contractor, and provide details concerning such problem. The County shall allow authorized representatives of Contractor access to the software during the County's regular business hours and thereafter, if necessary. The County shall refrain from making repairs or modifications to the software without the advance written approval of Contractor. The County shall provide a telephone line for remote diagnosis of the software by Contractor. It is the responsibility of the County to ensure that all of its electronic files on the software are periodically and adequately duplicated and documented.

8.0 EXCLUDED SERVICES

9.0 CHARGES AND PAYMENT

- 9.1. There shall be no charge to the County for the first year of this Maintenance Agreement after First Productive.
- 9.2. Thereafter, the County shall pay Contractor the applicable fees listed on the attached Schedule. Maintenance fees are billed on an annual basis and such fees may not increase for [] years from the commencement date of this Maintenance Agreement.

(Please note that the County may not be in a position to make payments in advance, as mandated by State law).

- 9.3. Additional hardware and software may be added upon written notice from the County to Contractor and payment of the applicable fee set forth in Exhibit C to the Agreement of which this Maintenance Agreement is a part. If no fee is set forth for the item to be added, then Contractor and the County will negotiate a mutually acceptable fee which is calculated pursuant to the same formula used to calculate the maintenance fees in Exhibit C.
- 9.4. The County shall be responsible for all taxes associated with the services to be provided hereunder, other than taxes based on Contractor's income. The County shall also pay any charges incurred, which are not covered by this Maintenance Agreement. The County's payment shall be due within thirty (30) days of receipt of the Contractor invoice.

10.0 TERM AND TERMINATION

10.1. This Maintenance Agreement shall commence one (1) year after the First Productive Use of the software by the County and shall continue for five (5) years thereafter. It shall automatically be extended thereafter annually for additional one (1) year terms unless terminated as provided herein. The County may terminate this Agreement

without cause upon sixty (60) days advance written notice to Contractor. Contractor may terminate this Maintenance Agreement at the end of the original term or at the end of any renewal term by giving the other party written notice at least thirty (30) days prior to the end of such term.

- 10.2. Either party may terminate this Maintenance Agreement upon written notice to the other party that such party has failed to observe, keep, or perform any material provision of this Maintenance Agreement. Such termination shall be effective thirty (30) days from the receipt of such notice unless the defaulting party has completely cured the default within that thirty-day period.
- 10.3. The County shall be entitled to a pro-rata refund of fees paid in advance in the case of a termination.

11.0 REPRESENTATIONS AND LIMITATION OF LIABILITY

- 11.1. Contractor represents that the maintenance services will be performed in a workman like manner. CONTRACTOR DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, FOR MAINTENANCE UNDER THIS MAINTENANCE AGREEMENT INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANT ABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The foregoing disclaimer shall not affect Contractor's obligations under the Equipment, Software, and Services Procurement Agreement under which the []Software was procured from Contractor. [] Hardware and Third-Party Software are subject to any warranties or limitations of liability stated in documentation provided by such products' manufacturers with such products.
- 11.2. Except for claims for bodily injury or property damage to the extent caused by the proven fault or negligence of Contractor and not arising from use of the software, Contractor's liability for damages under this Maintenance Agreement (regardless of the form of action, whether in contract or tort) shall in no event exceed the amount paid by the County to Contractor for a one-year period. CONTRACTOR WILL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST DATA OR LOST PROFITS, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM AGAINST THE COUNTY BY ANY OTHER PARTY. Contractor shall not be liable for any failure or delay in performance under this Maintenance Agreement due to causes beyond its reasonable control.

12.0 NOTICES

12.1. All notices and demands issued hereunder shall be in writing and shall be delivered in person, by mail, or by delivery service to the party at its address given below or at such different address as may be designated by written notice by one party to the other party.

13.0 ASSIGNMENT, SUBCONTRACTING, AND PROFESSIONAL COMPETENCE

- 13.1. Contractor may not assign this Maintenance Agreement without the advance written consent of the County.
- 13.2. Contractor may utilize subcontractors to provide some of the services required hereunder, provided that the County may, upon written notice to Contractor, require the removal of a subcontractor for unsatisfactory service. Any subcontractor performing services hereunder will be subject to the same terms and conditions as are set forth herein, and Contractor shall remain liable for the performance of any subcontractor.
- 13.3. All work hereunder performed by Contractor or its subcontractors shall be accomplished by competent and reliable professionals who are thoroughly trained for the tasks that they will be performing.

14.0 GENERAL

14.1. Any illegal or unenforceable provision shall be severed from this Maintenance Agreement. The waiver of any default under this Maintenance Agreement shall not waive subsequent defaults of the same or different kind. This Maintenance Agreement shall be governed by the laws of the State of California. Any dispute arising under this Maintenance Agreement shall be adjudicated in the state or federal courts in Contra Costa County, California. This Maintenance Agreement states the entire agreement concerning Contractor's provision of maintenance services to the County and supersedes and cancels and prior agreements, understandings, and negotiations. It may be amended only

by a written amendment executed by authorized representatives of both parties. The County's purchase orders or other ordering document shall not add to or vary the terms of this Maintenance Agreement.

IN WITNESS WHEREOF, the parties have executed this Maintenance Agreement as of the date first set forth above.

CONTRACTOR
Authorized Signature
Print name and title
Address for Notices:
Attn:

EXHIBIT H

SOFTWARE LICENSE AGREEMENT

1.0 DEFINITIONS

- 1.1. "Documentation" means only technical publications relating to the use of the Software, such as reference, user, installation, system administrator and technical guides delivered by Vendor to County.
- 1.2. "Tools" means the underlying architecture from which the Software is designed, and includes software application programming tools and code.
- 1.3. "Software" means all or any portion of the United States version of the binary computer software programs (including corresponding source code) provided by Vendor or made by the County with Vendor's prior written consent, in machine readable form including all listed in Schedule [] and all corrections or updates thereto. Software includes third-party software as identified in Schedule [].
- 1.4. "Server" means a single database or file server, which may be accessed by a network of personal computers.
- 1.5. "Territory" means the United States and Canada.
- 1.6. "Site" means a specific, physical location of County's Server.

2.0 LICENSE

- 2.1. Vendor grants County a perpetual, non-exclusive, nontransferable license to use the licensed number of copies of the software in the Territory, solely for internal data processing operations, on each Server at the Site up to the licensed number of workstations specified in Schedule []. Any third party software products or modules provided by Vendor to County shall be used solely with Vendor's Software. County may use the Software temporarily on a machine other than the Server in the event that the Server is inoperable. County may make a reasonable number of copies of the Software solely for archive or emergency back-up purposes and/or disaster recovery testing purposes. County may modify or merge the Software with other software with the understanding that any modifications, however extensive, shall not diminish Vendor's title or interest in the Software.
- 2.2. Vendor shall provide County with the licensed number of copies of the Software and Documentation as specified on Schedule []. County may make a reasonable number of copies of the Documentation solely for County's internal use with the Software provided all copyright notices are reproduced.

3.0 LICENSE EXCLUSIONS

- 3.1. Except as expressly authorized herein, County shall not:
- 3.2. Copy the Software;
- 3.3. Cause or permit reverse compilation or reverse assembly of all or any portion of the Software;
- 3.4. Distribute, disclose, market, rent, lease or transfer to any third party any portion of the Software or the Documentation, or use the Software or Documentation in any service bureau arrangement, facility, management, or third party training;
- 3.5. Disclose the results of Software performance benchmarks to any third party without the prior written consent of Vendor;
- 3.6. Transfer the Software to a different Server platform without the prior written consent of Vendor (such consent not unreasonably withheld);

- 3.7. Transfer the Software to a different Site without prior written notice to Vendor.
- 3.8. Export the Software in violation U.S. Department of Commerce export administration regulation.
- 3.9. Invoke support libraries other than through documented API calls; and
- 3.10. Use Tools except in conjunction with the licensed Vendor applications.
- 3.11. No license, right, or interest in any Vendor trademark, trade name or service mark is granted hereunder.

4.0 FEES AND PAYMENT TERMS.

- 4.1. County shall pay Vendor the fees specified in Schedule [] and in accordance with the schedule of payments listed in Exhibit D.
- 4.2. Unless County provides Vendor with a valid tax exemption or direct pay certificate, County is responsible for all taxes concerning the Software and or services excluding taxes based on Vendor's income. Overdue payments shall bear interest at the lesser of 12% per annum or the maximum rate allowed under the applicable law.

5.0 TITLE AND PROTECTION.

- 5.1. Vendor (or its third-party providers) retains title to all portions of the Software, any modifications to the Software developed with []Tools, and any copies thereof. Title to the physical media for the Software vests in the County upon delivery. Vendor represents that the Software contains valuable proprietary information and County shall not disclose the Software to anyone other than those of its employees or consultants under nondisclosure obligations who have a need to know for purposes consistent with this Agreement. County shall affix, to each full or partial copy of the Software made by the County, all copyright and proprietary information notices as affixed to the original. The obligations set forth in this paragraph shall survive termination of this Agreement.
- 5.2. The Software may be transferred to the U.S. Government only with the separate prior written consent of Vendor and solely with "Restricted Rights" as the term is defined in F.A.R.52.227-19(c)(2)(or DFAR 252.227-7013(c)(1) if the transfer is to a defense-related agency) or subsequent citation.

6.0 DEFAULT AND TERMINATION

- 6.1. Any of the following shall constitute an event of default:
 - a. County fails to perform any of its obligations under "License Exclusions" or "Title and Protection", or
 - b. Either party fails to perform any material provision of this Agreement and such failure is not cured within thirty (30) days after receipt of written notice thereof.
- 6.2. If an event of default occurs, the non defaulting party, in addition to any other rights available to it under law or equity may terminate this Agreement and all licenses granted hereunder by written notice to the defaulting party.
- 6.3. Within fifteen (15) days after termination of this Agreement County shall certify in writing to Vendor that all copies of the Software in any form, including partial copies within modified versions, have been destroyed or returned to Vendor.

7.0 LIMITED WARRANTY

Vendor warrants that it has title to the Software and the authority to grant license to use the Software. Vendor warrants that the Software will perform substantially in accordance with the Documentation for as long as Vendor continues to support the version of the Vendor Software in use at the County and County subscribes to Vendor's Software Support Services. Vendor's sole obligation is to repair or replace the defective Software, provided County notifies Vendor of the deficiency and provided County has applied all Software updates provided by Vendor's Software Support Services. VENDOR'S DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED

UNDER THIS LICENSE AGREEMENT INCLUDING BUT NOT LIMITED TO THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8.0 LIMITATION OF LIABILITY

EXCLUDING DAMAGES INCURRED UNDER THE "INFRINGEMENT PROTECTION CLAUSE IN THE MAIN AGREEMENT" VENDOR'S LIABILITY FOR DAMAGES UNDER THIS SOFTWARE LICENSE AGREEMENT SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY COUNTY TO VENDOR FOR THE SOFTWARE OR THE SERVICES FROM WHICH THE CLAIM AROSE.

9.0 ON-SITE SUPPORT DAYS

Vendor shall provide County with support at the Site for the Software as set forth in Schedule One. For a period of six (6) months from the Scheduled Effective Date, support days not used during the installation phase may be used for other implementation support.

10.0 TRAINING.

Vendor shall provide County with the number of training units set forth in Schedule [] for use at a Vendor Training Facility. County may use training units for Site training as the parties mutually agree in writing. County must use these training units within one (1) year from the Scheduled Effective Date.

11.0 NONDISCLOSURE OBLIGATION

11.1. County shall protect the Software with at least the same degree of care and confidentiality, which County utilizes for similar County information which it does not wish disclosed to the public. County may provide access to and use of the Software only to those third parties (undertaking similar nondisclosure obligations), providing services concerning County's use of the Software.

12.0 NOTICES

All notices shall be in writing and sent by first class mail, overnight mail, courier, or transmitted by facsimile (if confirmed by such mailing), to the address indicated on the first page of this Agreement, or such other address as either party may indicate by at least ten (10) days prior written notice to the other party. Notices to Vendor shall be sent to the Legal Department.

13.0 ASSIGNMENT

County may not assign this Agreement (by operation of law or otherwise) or sub license the software without the prior written consent of Vendor, and any prohibited assignment or sub license shall be null and void.

EXHIBIT I

ESCROW AGREEMENT

DRAFT

This Escrow Agreement is made this day of	by	and	between	("Contractor') a	corporation,	and
Contra Costa County (the "County") and ("Escrow Agent"), a c	orpo	oratio	n.				

1.0 DEPOSIT

Contractor has concurrently herewith deposited with Escrow Agent a copy of the source code form of the software ("Source Code"), including all relevant commentary, explanations and other documentation of the Source Code (collectively "Commentary"). Contractor also agrees to deposit with Escrow Agent, at such times as they are made, a copy of all revisions of the Source Code or Commentary encompassing all corrections and enhancements made to the Software by Contractor pursuant to the License Agreement or Maintenance Agreement. Promptly after any such revision is deposited with the Escrow Agent, both Contractor and Escrow Agent shall give written notice thereof to the County.

2.0 TERMS

This Escrow Agreement shall remain in effect during the term of the License Agreement and any software Maintenance Contract between Contractor and the County. Termination hereof is automatic upon delivery of the Source Code and Commentary to the County in accordance to the provision hereof.

3.0 DEFAULT

A default by Contractor shall be deemed to have occurred under the Escrow Agreement upon the occurrence of any of the following:

- 3.1. If Contractor has availed itself of, or been subjected to by any third party, a proceeding in bankruptcy in which Contractor is the debtor, an assignment by Contractor for the benefit of its creditors, the appointment of a receiver for Contractor, or any other proceeding involving insolvency or the protection of, or from, creditors and same has not been discharged or terminated without any prejudice to Contractor's rights or interests under the License Agreement within thirty (30) days; or
- 3.2. If Contractor has ceased its on-going business operations, or its licensing, maintenance or other support of the Software
- 3.3. If Contractor fails to pay the annual fee due to Escrow Agent hereunder; or
- 3.4. If any other event or circumstance which demonstrates with reasonable certainty the inability or unwillingness of Contractor to fulfill its obligations to the County under the License Agreement, this Escrow Agreement or any Software Maintenance Agreement between the parties, including, without limitation, the detection of defects in the software.

4.0 NOTICE OF DEFAULT

County shall give written notice to Escrow Agent and Contractor due to the occurrence of a default hereunder, except that Escrow Agent shall give notice of the default to County and Contractor if default is based on failure of Contractor to pay Escrow Agent's annual fee. Unless within seven (7) days thereafter, Contractor files with the Escrow Agent its affidavit executed by a responsible executive officer stating that no such default has occurred or that default has been cured, then the Escrow Agent shall upon the eighth (8th) day deliver to the County the entire Source Code and Commentary with respect to the Software then being held by Escrow Agent.

5.0 COMPENSATION

As compensation for the service to be performed by Escrow Agent hereunder, Contractor shall pay to the Escrow Agent an initial fee of \$_____, payable at the time of execution of this Agreement, and an annual fee in the amount of \$______, to be paid to Escrow Agent in advance on each anniversary date hereafter during the term of this Agreement.

6.0 LIABILITY

Escrow Agent shall not, by reason of its execution of its Agreement, assume any responsibility or liability for any transaction between the Contractor and the County, other than the performance of its obligations, as Escrow Agent, with respect to the Source Code and Commentary held by it in accordance with this Agreement.

7.0 TESTS

Upon written notice to Contractor and Escrow Agent, County shall have the right to conduct tests of the Source Code held in escrow, under the supervisions of Contractor, to confirm that it is current Source Code for the Software running on the Hardware specified in the License Agreement.

8.0 CONFIDENTIALITY

Except as provided in this Agreement, Escrow Agent agrees that it shall not divulge or disclose or otherwise make available to any third person whatsoever, or make any use whatsoever, of the Source Code or Commentary, without the express prior written consent of Contractor.

9.0 ADDRESS

All notices or other communications required or contemplated herein shall be in writing, sent by certified mail, return address requested, addressed to another party at the address indicated herein or as same may be changed from time to time by notice hereby give:

For Contractor					
For County					
For Escrow Agent:					
10.0 ASSIGNMENT					
Neither this Escrow Agreement, nor any rights, liabilit without the prior written consent of the County and Co	ies or obligations hereunder may be assigned by Escrow Agent ntractor.				
N WITNESS WHEREOF, the parties have executed this Maintenance Agreement as of the date first set forth bove.					
CONTRA COSTA COUNTY CONTRACTOR					
Authorized Signature	Authorized Signature				
Print name and title	Print name and title				

EXHIBIT J

SPECIAL CONDITIONS

COUNTY AFFIRMATIVE ACTION REQUIREMENTS

The Contra Costa County Board of Supervisors has adopted a program to help and support Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) by providing opportunities for participation in the performance of County financed Professional and Personal Services' contracts or Consulting Service Agreements.