

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

182



FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS DATE: 6/13/11
Departmental Concurrence

Purchasing: Mark Seiler, Assistant Director

Department Recommendation: Policy Policy
 Consent Consent
Per Executive Office:

FROM: Riverside County Information Technology

SUBMITTAL DATE:
June 13, 2011

SUBJECT: APPROVAL OF THE SOLE SOURCE CONTRACT FOR IBM MAINFRAME UPGRADE SERVICES AGREEMENT WITH JESKELL SYSTEMS LLC

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute agreement for a period of three years, with an option to renew for three additional years with Jeskell Systems LLC for Services in the amount of \$560,000, and;
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to sign amendments, and exercise renewal options provided the cost adjustments do not exceed the CPI rates, and;
3. Direct the Clerk of the Board to retain one original copy, and to return two copies to the Purchasing Office.

BACKGROUND: Continued on page 2

Nathan Colodney
NATHAN COLODNEY
Chief Information Officer

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 560,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0.00	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0.00	For Fiscal Year:	11/12

SOURCE OF FUNDS: FY11/12 service rate for Property System Hosting	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

County Executive Office Signature BY: Serena Chow
Serena Chow

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Buster, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: June 28, 2011
xc: RCIT, Purchasing

Kecia Harper-Ihem
Clerk of the Board
By: [Signature]
Deputy

Prev. Agn. Ref.: District: **Agenda Number:**

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.96

**FORM 11: APPROVAL OF THE SOLE SOURCE CONTRACT FOR IBM MAINFRAME
UPGRADE SERVICES AGREEMENT WITH JESKELL SYSTEMS LLC**

PAGE 2 of 3

BACKGROUND (Continued)

In 2005 the IBM Z890 Enterprise Server was acquired with the intent of supporting the Property System for five years or through 2010. The Z890 Enterprise Server fulfilled this requirement and it must remain in operation until it is replaced by the new Property System being developed through the Crest Project. The Crest Project is scheduled to be completed in FY2013-14. The IBM Z890 Enterprise Server has been in operation for five years and operating and maintenance cost will continue to rise as the hardware ages.

RCIT has been advised by IBM that the Z890 platform will reach end of support in the next two years. However, IBM has not made a formal announcement to end support of the Z890 platform.

To ensure that the Property System remains on a stable and supported platform and that current and future workload requirements can be satisfied, Riverside County Information Technology (RCIT) is proposing to upgrade the existing IBM Z890 Enterprise Server to a Z10 Server at a cost of approximately \$560,000. Cost will be recouped through the rates and amortized over three years or \$187,000 per fiscal year for the next three years. The annual cost of \$187,000 is factored into the FY11/12 service rate for Property System Hosting.

The upgrade to a Z10 Server ensures the Property System remains on a supported hardware platform through 2015 and that it is configured with additional computing capacity that might be required to support the Crest Project.

PRICE REASONABLENESS:

Purchasing released a Request for Proposal ITRAC102, mailing solicitations to thirty two companies and advertising on the County's Internet; with one bid response received by Purchasing. Purchasing inquired as to the lack of responses from potential bidders, and the feedback was that they do not provide these services or are not competitive.

The proposal was reviewed by an evaluation team consisting of personnel from Purchasing and the Information Technology Department. The evaluation team reviewed and scored this proposal based on the bidder's overall responsiveness and general understanding of the RFP requirements, experience and ability, overall cost to the County, technical capability, project methodology, and clarification/exceptions or deviations.

The evaluation team recommends that the award be given to Jeskell Systems LLC as a responsive/responsible vendor, submitting a total project cost that shall not exceed \$560,000. Jeskell is extending to the County of Riverside pricing discounts on the IBM Z10-BC upgrade of 56% of the IBM list price; a 21% discount on maintenance and licensing list pricing; a 17% discount on IBM MLC software; and an 11% discount on the EGO Z/OS software. These discounts represent the deepest non-federal rated customer discounts offered in any County contract.

REVIEW/APPROVAL: Purchasing and County Counsel concurs with this request.



RIVERSIDE
COUNTY
INFORMATION
TECHNOLOGY

We help make Riverside County run.

Matthew W. Frymire
Chief Information Officer

Memorandum

To: Mark Seiler, Assistant Director Purchasing and Fleet Services

Date: June 15, 2011

Via: Rebecca Gibson, Procurement Contract Specialist

From: Nathan Colodney, Chief Information Officer

Subject: Sole Source Procurement for RCIT – Jeskell Systems LLC; IBM Mainframe Upgrade

The below information is provided in support of my Department requesting approval for a sole source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

1. Supply/Service being requested:

To secure a qualified contractor to supply equipment and installation services for an upgrade to the existing IBM Z890 Server to a Z10 Server.

IBM Z890 Server was acquired by RCIT in November 2005. Within the next 3 to 4 years or by 2014 both the application that resides on the IBM Z890 Server and the Z890 Server will be decommissioned. In the meantime the Z890 Server must meet the current workload and be configured to allow for additional capacity. RCIT is seeking to upgrade a Z890 Server to a Z10 Server. The initial desired hardware configuration is usable capacity equal to Z10-BC/D01 at 46 MIPS. To address future workload requirements the Z10 Server should have built-in or shipped capacity equal to Z10-BC /B05 at 123 MIPS.

2. Supplier being requested:

Jeskell Systems LLC

3. Alternative suppliers that can or might be able to provide supply/service:

Bids were solicited from potential bidders with only Jeskell responding. Purchasing inquired as to the lack of response from potential bidders, and the feedback was that they do not provide these services or are not competitive. Jeskell is the only IBM premier Business Partner in this regional area.

4. Extent of market search conducted:

Purchasing released a Request for Proposal ITRAC102, mailing solicitations to thirty two companies and advertising on the County's Internet; with one bid response received by Purchasing.

PAGE 2
SOLE SOURCE PROCUREMENT

5. Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:

The IBM Z890 Enterprise Server has been in operation for five years and operating and maintenance cost will continue to rise as the hardware ages.

6. Reasons why my department requires these unique features and what benefit will accrue to the county:

Mitigate rising operating and maintenance costs. Provide a full functional support hardware platform through 2014 and allow for additional computing capacity required to support the Crest Project.

7. Price Reasonableness:

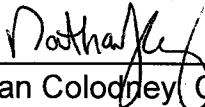
Total project cost that shall not exceed \$560,000. Jeskell is extending to the County of Riverside pricing discounts on the IBM Z10-BC upgrade of 56% of IBM list price, maintenance and licensing is a 21% discount off list pricing, IBM MLC software is at a 17% discount, and the EGO Z/OS software is at 11% discount. These discounts represent the deepest non-federal rated customer discounts offered any County contract.

8. Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source? (Maintenance, support, or upgrades, if so, please explain).

Riverside County Information Technology (RCIT) is proposing to upgrade the existing IBM Z890 Enterprise Server to a Z10 Server at a cost of approximately \$560,000. Cost will be recouped through the rates and amortized over three years or \$187,000 per fiscal year for the next three years. The annual cost of \$187,000 is factored into the FY11/12 service rate for Property System Hosting.

9. Period of Performance:

For a period of three years, with an option to renew for three additional years



Nathan Colodney, Chief Information Officer

Date

Purchasing Department Comments:

Approve

Approve with Condition/s

Disapprove



Mark Seiler, Assistant Director Purchasing and Fleet Services Date

6-15-11

PROFESSIONAL SERVICE AGREEMENT

for

IBM Mainframe Upgrade

between

COUNTY OF RIVERSIDE

and

Jeskell Systems LLC



JUN 28 2011 396

TABLE OF CONTENTS

<u>SECTION HEADING</u>	<u>PAGE NUMBER</u>
1. Description of Services.....	3
2. Period of Performance.....	3
3. Compensation.....	3-4
4. Alteration or Changes to the Agreement	4
5. Termination	4
6. Ownership/Use of Contract Materials and Products	4
7. Conduct of Contractor	5
8. Inspection of Service: Quality Control/Assurance	5
9. Independent Contractor	5
10. Subcontract for Work or Services	5
11. Disputes	5-6
12. Licensing and Permits	6
13. Use by Other Political Entities	6
14. Non-Discrimination	6
15. Records and Documents	6
16. Confidentiality	6
17. Administration/Contract Liaison	7
18. Notices.....	7
19. Force Majeure.....	7
20. EDD Reporting Requirements.....	7
21. Hold Harmless/Indemnification	7-8
22. Insurance	8-9
23. General	9-10
24. Signature.....	11
Exhibit A-Scope of Service	12-16
Exhibit B- Payment Provisions.....	17
Attachment I-HIPAA Business Associate Attachment to the Agreement	18-23

This Agreement, made and entered into this ____ day of May, 2011, by and between Jeskell Systems LLC, (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, consisting of five pages at the prices stated in Exhibit B, Payment Provisions, consisting of one page, and Attachment I, HIPAA Business Associate Attachment to the Agreement, consisting of six pages.

1.2 CONTRACTOR represents that it has the skills, experience and knowledge necessary to fully and adequately perform under this Agreement, and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

2. Period of Performance

2.1 This Agreement shall be effective upon signature of this Agreement by both parties and continue in effect through completion of upgrade and installation services, with Software Licensing and Maintenance for three (3) years, with the option to renew for three (3) additional years, in one year increments by written amendment, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter.

3. Compensation

3.1 The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum total payments by COUNTY to CONTRACTOR under this agreement shall not exceed \$560,000.00 including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.2 No price increases will be permitted during the first year of this Agreement All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity) will automatically be extended to the COUNTY. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas Software and Hardware licensing and maintenance services and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3.3 CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of receipt of the invoice. Payment shall be made to CONTRACTOR only after services have been rendered or delivery of materials or products, and acceptance has been made by COUNTY. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

Riverside County Information Technology
Fiscal Accounting
6147 River Crest Dr., Suite A
Riverside, CA 92507

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number ITARC-20900-002-03/12; quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered monthly in arrears.

3.4 The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated and have no further force and effect.

4. Alteration or Changes to the Agreement

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, make alterations to this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

5. Termination

5.1 COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

5.2 COUNTY may, upon five (5) days written notice, terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress so as to endanger performance and does not immediately cure such failure. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.3 After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products which, if the Agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit B.

5.5 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

6. Ownership/Use of Contract Materials and Products

The CONTRACTOR agrees that all materials, reports or products in any form, including electronic, created by CONTRACTOR for which CONTRACTOR has been compensated by COUNTY pursuant to this Agreement shall be the sole property of the COUNTY; and may be used by the COUNTY for any purpose COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. CONTRACTOR agrees not to release or circulate in whole or part such materials, reports, or products without prior written authorization of the COUNTY.

7. Conduct of Contractor

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR's performance under this Agreement. The CONTRACTOR further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

8. Inspection of Service; Quality Control/Assurance

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

9. Independent Contractor

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

10. Subcontract for Work or Services

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

11. Disputes

11.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement which is not resolved by the parties shall be decided by the COUNTY's Purchasing Department's

Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

11.2 Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

12. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

13. Use By Other Political Entities

The CONTRACTOR agrees to extend the same pricing, terms, and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

14. Non-Discrimination

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

15. Records and Documents

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

16. Confidentiality

16.1 The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

16.2 The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR's obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

17. Administration/Contract Liaison

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

18. Notices

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE
Purchasing and Fleet Services
2980 Washington St.
Riverside, CA 92504

CONTRACTOR
Jeskell System LLC
6201 Chevy Chase Drive
Laurel, MD 20707

19. Force Majeure

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

20. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates required may result in the contract being awarded to another contractor. In the event a contract has been issued, failure of the CONTRACTOR to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

21. Hold Harmless/Indemnification

21.1 CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability, claim, damage or action whatsoever, based or asserted upon any act or omission of CONTRACTOR, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death. CONTRACTOR shall defend, at its sole cost and expense, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any such action or claim. With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at its sole cost, have the right to use counsel of its own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR's indemnification of COUNTY. CONTRACTOR's obligations hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal (or similar document) relieving the COUNTY from any liability for the action or claim involved. The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR's obligations to indemnify and hold harmless the COUNTY.

21.2 In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONTRACTOR from indemnifying the COUNTY to the fullest extent allowed by law.

21.3 CONTRACTOR's indemnification obligations shall also apply to any action or claim regarding actual or alleged intellectual property infringement related to any material or product provided to COUNTY pursuant to this Agreement. In the event of any such action or claim, CONTRACTOR shall provide immediate notice to COUNTY of the action or claim. CONTRACTOR may defend or settle the action or claim as CONTRACTOR deems appropriate; however, CONTRACTOR shall be required to obtain for COUNTY the right to continue to use the material or product (or a similar non-infringing material or product with the same function) on terms identical to those stated in this Agreement.

22. Insurance

22.1 Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

22.2 Workers' Compensation: If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside.

22.3 Commercial General Liability: Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

22.4 Vehicle Liability: If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

22.5 Professional Liability: Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

22.6 General Insurance Provisions - All lines:

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager,

provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

23. General

23.1 CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

23.2 Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

23.3 In the event the CONTRACTOR receives payment under this Agreement which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR.

23.4 CONTRACTOR shall not provide partial delivery or shipment of services or products unless specifically stated in the Agreement.

23.5 CONTRACTOR shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials or products used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

23.6 Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

23.7 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

23.8 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

23.9 CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations which apply to performance under this Agreement.

23.10 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

23.11 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

23.12 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

COUNTY:

Board of Supervisors
Bob Buster, Chairman of the Board

Signature: _____

Print Name: Bob Buster

Title: Chairman of the Board

Dated: _____

CONTRACTOR:

Jeskell Systems LLC
6201 Chevy Chase Drive
Laurel, MD 20707

Signature: *Greg A Leflar*

Print Name: Greg A Leflar

Title: Senior VP of Sales

Dated: April 15, 2011

ATTEST:

KECIA HARPER-IHEM, Clerk

By _____
DEPUTY

FORM APPROVED COUNTY COUNSEL

BY: *Neal R. Kipnis* DATE *04/15/11*
NEAL R. KIPNIS

Exhibit A
Scope of Work

1.0 Service Requirements

1. All supporting hardware and software components (HW/SW) are to be shipped to 4080 Lemon Street 10th Floor, Riverside CA 92501. Estimated delivery of hardware components and proposed installation date shall be coordinated with Riverside County Information Technology. This agreement includes an annual cost for equipment and software components provided, for a maximum period of three years.
2. This agreement includes installation and setup to upgrade IBM Z890 Server and supporting components (HW/SW). Contractor must provide the County with a projected downtime schedule to upgrade the Z890 Server and supporting components (HW/SW), and upon approval of the schedule, the County will rely upon the Contractor to maintain their schedule without any additional down-time.
3. Contractor must package and remove any pre-existing IBM Z890 Server hardware that is considered surplus or no longer required as a result of the upgrade from 4080 Lemon Street 10th Floor, Riverside CA 92501. The removal of surplus IBM Z890 Server hardware is to consist of physical removal of the equipment from the present location to a final location to be determined by County and IBM Corporation.

B. Maintenance Requirements

1. The Contractor must include 36 months of maintenance for IBM Z10 Server and supporting components (HW/SW). Contractor must provide (24 X 7 X 365) service on IBM Enterprise Z10 Server and supporting components (HW/SW).
2. The Contractor must include IBM warranty for IBM Z10 Enterprise Server and supporting components (HW/SW). All provisions of the warranty offered is included in this agreement.

C. Contractor Requirements

1. Contractor's pricing includes, all service requirements and costs for shipping, installation, setup, and configuration. Contractor required to provide a time schedule to perform the installation of equipment and supporting components (HW/SW) and provide it to the County. The time schedule will become an integral part of the performance criteria for the installation services.
2. Contractor will assign a qualified engineer to assist the County on the following Services:
 - a. Planning and Implementation of z10-BC
 - i. Assist in system upgrade maintenance requirements
 - ii. Review and advise for IOCDS input, validation and use of CHPID Mapping Tool
 - iii. Provide support for IPLing initial test systems
 - iv. Provide support for OSA implementation changes as required
 - v. Inform County or designee on change brought about by new environment
 - b. County will verify completion and approve that installation within a week of task order completion. Contractor will provide a summary of work performed to County staff.

3. Contractor must be OEM or an IBM certified business partner authorized to sell and support the IBM Z Enterprise Servers.
4. Contractor's IBM Customer Engineers perform the basic system installation for zSeries installation.
5. Contractor uses Baer Consulting for the "Professional Services" element of our proposal. Contractor will oversee all the work performed by sub-contractor and will be governed by Section 10. Subcontract for Work or Services on page 5 of this agreement.

1.1 Hardware Inventory and Requirements Based on Existing Z890 Platform with Upgrade to Z10-BC/B05

<u>Item</u>	<u>Description</u>	<u>Feature</u>
2098-E10	z10-BC	replace
FC0079	HMC	keep
FC0089	Eth switch	keep
FC0114(2)	Airflow cds	add
FC0157	CEC	add
FC0162(2)	HCA2-C	add
FC0165(4)	MBA airflow	add
FC0326(2)	IFB-MP cds	add
FC0327	STI-A8 cd	add
FC1123	Model E10	replace
FC1642(3)	3X2X4GB mem	add
FC2320(2)	FICON sx 2-pt	keep
FC2323(2)	16-pt Escon	keep
FC2324(7)	28 ESCON	keep
FC2402	8GB enabled	replace
FC2404	8GB additional	add
FC3369(2)	OSA3-2P 1000T	add
FC3759	Lift tool	add
FC3863	CPACF	add
FC4000	I/O drawer	add
FC4001	Frame feature	add
FC5029	1-way D01	add
FC5023	5-way B05	replace
FC6094	17" display	keep
FC6650	IFL	add
FC6659	CP-D	add
FC6153	B05 marker	add
FC8987	14ft 250v 3-ph	keep
FC9000	Multi-order	keep
FC9000	Multi-order	add
FC9001	Multi-order NB	keep
FC9002	Multi-order MES	add
FC9002	Multi-order MES	keep
FC9004(2)	Downgrade	keep

FC9969	Tool kit	add
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1.2 IBM Software Executing on Existing Z890 Platform under Z/OS 1.9

<u>Item</u>	<u>Description</u>
5635-A01	IMS V10 DB Transaction
5637-A01	SLEP V1.7
5648-A25	Cobol
5655-A14	IMS BTS V2
5655-C56	IMS V8 DM
	IMS V8 TM
5655-G53	Cobol AF
5655-M32	PSF V4
5655-P19	AFP2PCL
5655-041	ACF/SSP V4
5668-717	Pascal V1
5685-093	IMS VSAMZAP
5688-190	PPFA
5688-191	OGL
5697-F51	AFP to PCL
5735-XXB	EP V1
5785-BAC	JES PRINT

Base Z/OS 1.9
DSS HSM
DFSORT
GDDM-PGF
HCM
INFOPRINT
RMF
SDSF
SEC SERVER

1.2.1 The above criteria are the minimum requirements for this project.

1.2.2 This project must be complete and all encompassing of equipment, software, labor, shipping and maintenance to make a complete and operational system for the County. The Contractor will be relied upon by the County to be an expert in this field of endeavor, and therefore, no plea of error or omission will be an excuse to derive change orders for additional funding towards the total cost of this project. All equipment, hardware, software and services provided must meet or exceed the IBM Business Partner standard and performed in a like manner.

1.3 Maintenance services to be provided by the contractor must be provided at the performance levels equal to or exceeding the IBM Business Partner standards for performance at all times.

1.3.1 In the event of a default by the contractor and after a reasonable period of time to cure a service related issue by the contractor, the County reserves the right to assign and hire a service provider of its choice to perform as required, and charge the cost of such services to the contractor under the contract.

3.6.2 A reasonable period of time is defined as 30 calendar days. No excuse or delay for weekend labor costs, holidays, vacations or other issues shall relieve the contractor from performing services in a timely manner whether it is routine or emergency in nature.

3.6.3 Operations of the system are critical to the County and Contractor must assume all responsibilities for total operational capability of the system installed. IBM Service response times must be provided by contractor to County, this will be considered a performance criteria.

1.4 Assumptions

1.4.1 An agent of the County Information Technology Department will verify completion and approve the installation within a week of the task order completion. The contractor will provide a summary of work performed.

1. All items (hardware, software, peripherals and network cabling) are required for the installation and are to be ready, prior to the start of the implementation services, unless prior agreement by the County has been made with the Contractor.
2. All work will be performed at an agreed upon time between the County and the Contractor.
3. All work performed will be executed at County of Riverside, 4080 Lemon Street, 10th floor, Riverside, CA. 92501.
4. End user testing will be performed at an agreed upon time between the County and the Contractor.
5. All tasks will be performed over one or two consecutive time frames, unless otherwise agreed to by the County of Riverside and the Contractor.
6. Only IBM or IBM-supported hardware, software and peripherals will be installed and customized, unless otherwise agreed to by the County and the Contractor.
7. The hardware upgrade will be performed on a weekend and an agreed to date and time between the vendor and the County.
8. Hardware warranty period starts after the successful completion of the upgrade and acceptance by RCIT.

1.5 County of Riverside Responsibilities

1.5.1 The County is responsible for ensuring that the following responsibilities are met.

1. The County will designate a representative to be the Project Manager for the hardware upgrade. This representative will be the focal point for coordinating the efforts between the vendor and 3rd party software vendors relative to this project and will have the authority to act on the County's behalf in matters regarding this project, with the exception of Change Orders or the commitment of additional tasks affecting the final price of this project.

2. Provide suitable workspace for the Contractor with telephone access during installation

1.6 Deliverable Materials

1.6.1 Contractor shall produce an Activity Report and Checklist upon completion of work assignment.

1.7 Change Orders

Changes to the scope of work (SOW) require a written Change Order, signed by an Agent of the County. Both the County and the Contractor must mutually accept all changes.

Exhibit B
Payment Provisions

Description	Cost
Z10 Server Configuration based on Z10-BC/D01 usable capacity of 46 MIPS or	
Z10 Server Configuration based on Z10-BC/B05 shipped capacity equal to 123 MIPS	\$192,000.00
Professional Services – to ensure all new and existing components are compatible and integrated into the new server environment	\$19,600.00
Installation Services - physical installation of equipment	\$6,190.00
Hardware Maintenance (24X7X365) for Z10 Server for 3 years including warranty	\$72,869.00
Operational Supply costs	\$0.00
EGO or Z/OS V1.11 and later releases based on Z10-BS/D01 configuration for 3 years	\$230,519.00
Warranty Costs and Warranty Period	\$0.00
Misc. Expenses not otherwise noted (Estimated Applicable Taxes)	\$38,822.00
TOTAL COST	\$560,000.00

Pricing above includes parts, labor, travel and other components and any additional cost of maintenance

Attachment I

HIPAA Business Associate Addendum to the Agreement
Between the County of Riverside
and
Jeskell Systems LLC

This HIPAA Business Associate Agreement Addendum ("Addendum") supplements, and is made part of the Agreement for Services (the "Underlying Agreement") between the COUNTY OF RIVERSIDE ("County") and Jeskell Systems LLC ("Contractor") as of the date of approval by both parties (the "Effective Date").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which Contractor provides services to County, and in conjunction with the provision of such services certain Protected Health Information ("PHI") and/or certain electronic Protected Health Information (ePHI) may be made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 ("HIPAA"), more specifically the regulations found at Title 45, CFR, Parts 160 and 164 (the "Privacy Rule") and/or Part 162 (the "Security Rule"), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI and /or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a Covered Entity, as defined in the Privacy Rule; and,

WHEREAS, Contractor, when a recipient of PHI and/or ePHI from County, is a Business Associate as defined in the Privacy Rule; and,

WHEREAS, the parties agree that any disclosure or use of PHI and/or ePHI be in compliance with the Privacy Rule, Security Rule, or other applicable law;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Addendum, capitalized terms shall have the same meanings as set forth in the Privacy Rule and/or Security Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by Contractor of County Disclosed PHI and/or ePHI
 - A. Contractor shall be permitted to use PHI and/or ePHI disclosed to it by the County:
 - (1) On behalf of the County, or to provide services to the County for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule and/or Security Rule;
 - (2) As necessary to perform any and all of its obligations under the Underlying Agreement.
 - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, Contractor may:
 - (1) Use the PHI and/or ePHI in its possession for its proper management and administration and to fulfill any legal obligations.

- (2) Disclose the PHI and/or ePHI in its possession to a third party for the purpose of Contractor's proper management and administration or to fulfill any legal responsibilities of Contractor. Contractor may disclose PHI and/or ePHI as necessary for Contractor's operations only if:
 - (a) The disclosure is required by law; or
 - (b) Contractor obtains written assurances from any person or organization to which Contractor will disclose such PHI and/or ePHI that the person or organization will:
 - (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose of which Contractor disclosed it to the third party, or as required by law; and,
 - (ii) The third party will notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached.
- (3) Aggregate the PHI and/or ePHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
- (4) Not disclose PHI and/or ePHI disclosed to Contractor by County not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI as authorized in writing by County.
- (5) De-identify any and all PHI and/or ePHI of County received by Contractor under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Contractor agrees that it will neither use nor disclose PHI and/or ePHI it receives from County, or from another business associate of County, except as permitted or required by this Addendum, or as required by law, or as otherwise permitted by law.
- D. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are stricter in their requirements than the provisions of HIPAA and prohibit the disclosure of mental health, and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

3. Obligations of County.

- A. County agrees that it will make its best efforts to promptly notify Contractor in writing of any restrictions on the use and disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- B. County agrees that it will make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.

- C. County agrees to make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use of disclosure of PHI and/or ePHI.
- D. County shall not request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under the Privacy Rule and/or Security Rule.
- E. County will obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Addendum and/or the Underlying Agreement.

4. Obligations of Contractor. In connection with its use of PHI and/or ePHI disclosed by County to Contractor, Contractor agrees to:

- A. Use or disclose PHI and/or ePHI only as permitted or required by this Addendum or as required by law.
- B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.
- C. To the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
- D. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum of which Contractor becomes aware.
- E. Require sub-contractors or agents to whom Contractor provides PHI and/or ePHI to agree to the same restrictions and conditions that apply to Contractor pursuant to this Addendum.
- F. Use appropriate administrative, technical, and physical safeguards to prevent inappropriate use or disclosure of PHI and/or ePHI created or received for or from the County.
- G. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.

5. Access to PHI, Amendment, and Disclosure Accounting. Contractor agrees to:

- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County.
- B. To make any amendment(s) to PHI in a Designated Record Set that the County directs or agrees to at the request of County or an Individual within sixty (60) days of the request of County.
- C. To assist the County in meeting its disclosure accounting under HIPAA:
 - (1) Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (2) Contractor agrees to provide to County or an Individual, within sixty (60) days, information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.

(3) Contractor shall have available for the County the information required by this section for the six (6) years preceding the County's request for information (except the Contractor need have no information for disclosures occurring before April 14, 2003).

- D. Make available to the County, or to the Secretary of Health and Human Services, Contractor's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining Contractor's compliance with the Privacy Rule, subject to any applicable legal restrictions.
- E. Within thirty (30) days of receiving a written request from County, make available any and all information necessary for County to make an accounting of disclosures of County PHI by Contractor.
- F. Within thirty (30) days of receiving a written request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in Contractor's possession constitutes a Designated Record Set.
- G. Not make any disclosure of PHI that County would be prohibited from making.

6. Access to ePHI, Amendment and Disclosure Accounting. In the event contractor needs to create or have access to County ePHI, Contractor agrees to:

- A. Implement and maintain reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality of, the integrity of, the availability of, and authorized persons' accessibility to, County ePHI as applicable under the terms and conditions of the Underlying Agreement. The ePHI shall include that which the Contractor may create, receive, maintain, or transmit on behalf of the County.
- B. Ensure that any agent, including a subcontractor, to whom Contractor provides ePHI agrees to implement reasonable and appropriated safeguards.
- C. Report to County any security incident of which Contractor becomes aware that concerns County ePHI.

7. Term and Termination.

- A. Term – this Addendum shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, except as terminated by County as provided herein.
- B. Termination for Breach – County may terminate this Addendum, effective immediately, without cause, if County, in its sole discretion, determines that Contractor has breached a material provision of this Addendum. Alternatively, County may choose to provide Contractor with notice of the existence of an alleged material breach and afford Contractor with an opportunity to cure the alleged material breach. In the event Contractor fails to cure the breach to the satisfaction of County in a timely manner, County reserves the right to immediately terminate this Addendum.
- C. Effect of Termination – upon termination of this Addendum, for any reason, Contractor shall return or destroy all PHI and/or ePHI received from the County, or created or received by Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which is in possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the PHI and/or ePHI.

- D. Destruction not Feasible – in the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the conditions which make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

1.1.1 8. HOLD HARMLESS/INDEMNIFICATION

Contractor shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum. Contractor shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Addendum.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the Contractor from indemnifying the County to the fullest extent allowed by law.

In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.

9. General Provisions.

- A. Amendment – the parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with the Privacy Rule and HIPAA generally.

- B. Survival – the respective rights and obligations of this Addendum shall survive the termination or expiration of this Addendum.
- C. Regulatory References – a reference in this Addendum to a section in the Privacy Rule means the section as in effect or as amended.
- D. Conflicts – any ambiguity in this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, and HIPAA generally.
- E. Interpretation of Addendum – this Addendum shall be construed to be a part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of HIPAA.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as set forth below:

CONTRACTOR

COUNTY OF RIVERSIDE

By: Greg A Lefelar
GREG A LEFELAR, VP OF SALES

By: Bob Buster

BOB BUSTER

Date: 3/31/2011

CHAIRMAN, BOARD OF SUPERVISORS

Date: JUN 28 2011

ATTEST:

KECIA HARPER-IHEM, Clerk

By: [Signature]
DEPUTY

FORM APPROVED COUNTY COUNSEL

BY: [Signature] DATE

NEAL R. KIPNIS

DATE

JUN 28 2011 3.96