



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
Health System



DATE: June 9, 2011
BOARD MEETING DATE: July 12, 2011
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors

FROM: Jean S. Fraser, Chief, Health System
Lisa Mancini, Director, Aging and Adult Services

SUBJECT: Agreement with CompuTrust Software Corporation

RECOMMENDATION:

Adopt a Resolution:

- A) Waiving the Request for Proposals process and authorizing the President of the Board to execute an Agreement with CompuTrust Software Corporation for the provision of a specialized licensed software database, upgrades and maintenance in the amount of \$121,000 for the term of July 1, 2011 through June 30, 2012; and
- B) Authorizing the Chief of the Health System or designee to execute contract amendments which modify the maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

BACKGROUND:

Aging and Adult Services (AAS) serves frail elderly, physically disabled and mentally disabled residents who are substantially unable to provide for their own personal needs of health, food, clothing, or shelter and/or are unable to manage their financial resources or resist fraud or undue influence.

The Public Guardian (PG) program, acting under the authority and direction of the Superior Court, may be appointed for the person, for the estate, or for both. The general duties of a Conservator of the person include arranging for the person's care and protection, deciding where a person will live, and making arrangements for health care, meals, clothing, personal care, and transportation. The general duties of a Conservator of the estate include managing the person's finances, marshalling and protecting assets, collecting all income due to the person, paying all just debts, making investments as appropriate, and representing or arranging representation in all legal matters. The Representative Payee program manages the assets of clients who receive only public benefits and are unable to handle their financial affairs.

Since 1983 AAS has used the CompuTrust trust accounting database application to support the PG program and the Behavioral Health and Recovery Services and AAS

Representative Payee programs. CompuTrust is the developer and licensor and is the only company that can provide maintenance and upgrades for the application.

There are only two known vendors in California who provide software applications that serve the complex trust accounting, legal and case management requirements of the PG and Representative Payee programs. In 2001 a committee made up of division staff looked at the available products from both vendors and met with representatives from each company. One of these vendors was CompuTrust, which has provided excellent service to AAS since 1983. The committee recommended the CompuTrust application. There continues to be only these two known vendors for this type of application. The assets of an estimated 1,300 clients are successfully managed in CompuTrust. Moving to a new application would create a significant cost to the division for training staff on new software, as well as the potential for unforeseen problems in converting the existing data to a new vendor's software. Waiving the Request for Proposals process is in the best interest of the clients and the County.

DISCUSSION:

Approval of this Agreement would allow CompuTrust to continue to provide maintenance and upgrades to the PG and Representative Payee trust accounting and client database without interruption to the management of the estates of clients (recording inventory, paying bills, receiving income, etc.) and the maintenance of clients' personal information.

The Agreement and Resolution have been reviewed and approved by County Counsel. The Contractors' insurance has been reviewed and approved by Risk Management.

The Contractor assured compliance with the County's Contractor Employee Jury Service Ordinance, as well as all other contract provisions that are required by County ordinance and administrative memoranda, including but not limited to insurance, hold harmless, non-discrimination and equal benefits. This Agreement is on the Continuing Resolution.

This Agreement contributes to the Shared Vision 2025 outcome of a Healthy Community by allowing AAS to continue to provide services that allow at-risk individuals to remain in the least restrictive setting possible. It is anticipated that 95% of at-risk individuals will be maintained in a least restrictive setting through case management.

Performance Measure:

Measure	FY 2010-11 Estimate	FY 2011-12 Projected
Percent of at-risk individuals maintained in a least restrictive setting through case management	95%	95%

FISCAL IMPACT:

The term of this Agreement is July 1, 2011 through June 30, 2012. The maximum fiscal obligation of this Agreement is \$121,000. These funds have been included in the AAS tentatively Adopted FY 2011-12 Budget. Fees generated by the PG program pay for the cost of the application. There is no Net County Cost associated with this Agreement.

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * *

RESOLUTION: A) WAIVING THE REQUEST FOR PROPOSALS PROCESS AND AUTHORIZING THE PRESIDENT OF THE BOARD TO EXECUTE AN AGREEMENT WITH COMPUTRUST SOFTWARE CORPORATION FOR THE PROVISION OF A SPECIALIZED LICENSED SOFTWARE DATABASE, UPGRADES AND MAINTENANCE IN THE AMOUNT OF \$121,000 FOR THE TERM OF JULY 1, 2011 THROUGH JUNE 30, 2012; AND B) AUTHORIZING THE CHIEF OF THE HEALTH SYSTEM OR DESIGNEE TO EXECUTE CONTRACT AMENDMENTS WHICH MODIFY THE MAXIMUM FISCAL OBLIGATION BY NO MORE THAN \$25,000 (IN AGGREGATE), AND/OR MODIFY THE CONTRACT TERM AND/OR SERVICES SO LONG AS THE MODIFIED TERM OR SERVICES IS/ARE WITHIN THE CURRENT OR REVISED FISCAL PROVISIONS

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, Aging and Adult Services (AAS) provides a Public Guardian (PG) program, which serves frail elderly, physically disabled and mentally disabled residents who are substantially unable to provide for their own personal needs of health, food, clothing or shelter and/or are unable to manage financial resources or resist fraud or undue influence; and

WHEREAS, the Representative Payee program manages the assets of clients who receive only public benefits and are unable to handle their financial affairs and;

WHEREAS, since 1983 AAS has used the CompuTrust trust accounting database application to support the PG program and the Behavioral Health and Recovery Services and AAS Representative Payee programs; and

WHEREAS, there are only two known vendors in California who provide software applications that serve the complex trust accounting, legal and case management requirements of the PG program; and

WHEREAS, in 2001 a committee made up of division staff looked at the available products from both vendors and met with representatives from each company, and based on this review and past experience with CompuTrust, the committee recommended continuing to use CompuTrust; and

WHEREAS, Ordinance Code Section 2.83.170 authorizes the Board of Supervisors to waive the Request for Proposals (RFP) process in any situation where the Board of Supervisors determines that the best interest of the County could be served without the necessity of proposals; and

WHEREAS, the Board of Supervisors has determined that it is in the best interest of the County to waive the RFP process; and

WHEREAS, there has been presented to this Board of Supervisors for its consideration and acceptance an Agreement, reference to which is hereby made for further particulars, whereby CompuTrust Software Corporation shall provide software upgrades and maintenance for the AAS client database which is licensed and developed by the CompuTrust Software Corporation; and

WHEREAS both parties now wish to enter into said Agreement for the term of July 1, 2011 through June 30, 2012, for the maximum fiscal obligation of \$121,000; and

WHEREAS, this Board of Supervisors has examined the Agreement and approved it as to both form and content.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the County requirements for the Request for Proposals process for said Agreement is hereby waived.

BE IT FURTHER RESOLVED that the President of the Board is hereby authorized and directed to execute said Agreement for and on behalf of the County of San Mateo, and the Clerk of this Board shall attest the President's signature thereto.

BE IT FURTHER RESOLVED that the Chief of the Health System or designee be authorized to execute contract amendments which modify the maximum fiscal obligation by no more than \$25,000 (in aggregate), and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

* * * * *

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
COMPUTRUST SOFTWARE CORPORATION**

THIS AGREEMENT, entered into this _____ day of _____ ,
20____, by and between the COUNTY OF SAN MATEO, hereinafter called "County,"
and CompuTrust Software Corporation, hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the purpose of providing software upgrades and maintenance for Aging and Adult Services' client database licensed and developed by CompuTrust.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Exhibits and Attachments

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A—Services

Exhibit B—Payments and rates

Attachment H—HIPAA Business Associate requirements

Attachment IP – Intellectual Property

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A," County shall make payment to Contractor based on the rates and in the manner specified in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed ONE HUNDRED TWENTY-ONE THOUSAND DOLLARS (\$121,000).

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 1, 2011 through June 30, 2012.

This Agreement may be terminated by Contractor, the Chief of the Health System or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds, by providing written notice to Contractor as soon as is reasonably possible after the County learns of said unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

In any event, regardless of theory, either party agrees to indemnify, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County, its officers, agents, employees, or servants, resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Neither party shall assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Worker's Compensation and Employer's Liability Insurance** The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and will comply with such provisions before commencing the performance of the work of this Agreement.
- (2) **Liability Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability \$1,000,000
- (b) Motor Vehicle Liability Insurance \$1,000,000
- (c) Professional Liability \$1,000,000

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

10. Compliance with laws; payment of Permits/Licenses

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Federal Regulations promulgated thereunder, as amended, and will comply with the Business Associate requirements set forth in Attachment "H," and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement. Further, Contractor certifies that the Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. Non-Discrimination and Other Requirements

- A. *Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
 - i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation;
 - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

12. Compliance with Contractor Employee Jury Service Ordinance

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the employees' regular pay the fees received for jury service.

13. Retention of Records, Right to Monitor and Audit

(a) CONTRACTOR shall maintain all required records for three (3) years after the COUNTY makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: CONTRACTOR shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the COUNTY.

(c) CONTRACTOR agrees to provide to COUNTY, to any Federal or State department having monitoring or review authority, to COUNTY's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

14. Merger Clause

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

16. Notices

Any notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when both (1) transmitted via facsimile to the telephone number listed below and (2) either deposited in the United State mail, postage prepaid, or when deposited for overnight delivery with an established overnight courier that provides a tracking number showing confirmation of receipt, for transmittal, charges prepaid, addressed to:

In the case of County, to:

Heather Ledesma, Financial Services Manager II
Aging and Adult Services
225 37th Avenue
San Mateo, CA 94403
Phone: (650) 573-3495
Fax: (650) 573-3729

In the case of Contractor, to:

Paula Lomanto, Project Coordinator
CompuTrust Software Corporation
18525 Sutter Blvd., Ste. 280
Morgan Hill, CA 95037
Phone: (409) 782-7470
Fax: (409) 782-0850

In the event that the facsimile transmission is not possible, notice shall be given both by United States mail and an overnight courier as outlined above.

17. Dispute Resolution

In the event a dispute arises between Contractor and County that is not solved via normal channels, such dispute may be escalated as follows:

Level	Negotiating Parties		Maximum Days before Escalation
	County	Contractor	
1	Will Whitlock, Information Technology Analyst	Kristie Garcia, Technician	15
2	Heather Ledesma, Financial Services Manager	Lily Yee, Technology Support Manager	5
3	Lisa Mancini, Director, Aging and Adult Services	Ken Toren, COO	5

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo
County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

COMPUTRUST SOFTWARE CORPORATION

Contractor's Signature

Date: _____

Long Form Agreement/Business Associate v 8/19/08

Exhibit "A"

In consideration of the payments set forth in Exhibit "B", Contractor shall provide the following services:

1. GRANT OF LICENSE

- 1.1 **Grant of License.** County is granted a non exclusive annually renewable right to use the CompuTrust Software application known as "CompuTrust", in object code only, Release 15.102199.54 CompuTrust NT Version release 15.102199.54 (Program) and any Updates (County to update to the CTI CompuTrust Internet version within this fiscal year, see Attachment A) provided to County by CTSC, in machine-readable form, and related materials; **County is not purchasing a perpetual license to the Program.** County receives an annual grant of license to use the Program, Support and Updates included in the Monthly Usage Fees and is tied to the term of the general Agreement and subject to the terms and conditions in this Agreement.
- 1.2 **Object Code.** The Program is provided in, and may be used in, machine-readable object code form only.
- 1.3 **In order to operate the program, County needs Universe database management system provided by Rocket U2 Software.**
- 1.4 **County shall pay CTSC directly for the procurement of additional user licenses for Universe database management system.**
- 1.5 **Back-up Copies.** County may make two (2) copies of the Program in machine-readable, object code form, for nonproductive backup purposes only, provided that County reproduces and includes CTSC's copyright notice and proprietary legend on each backup copy. Each backup copy must be stored in a safe and secure location.
- 1.6 **System Operations.** System shall operate as per user manual from CTSC current revision.
- 1.7 The methods and techniques used to provide services to the County are within the Contractor's discretion, but subject to Aging and Adult Services' policies, guidelines, and requirements. The amount of time, specific hours, and location of the performance of Contractor's services is also left to the Contractor's discretion provided that Contractor coordinates with County departments as needed.

2. PROPRIETARY PROTECTION

- 2.1 Ownership.** CTSC shall have sole and exclusive ownership of all right, title, and interest in and to the Program and User Materials, all copies thereof, and all modifications, and Updates (including ownership of all copyrights and other intellectual property rights pertaining thereto), subject only to the rights and license expressly granted to County under this Agreement. This Agreement does not provide County with title or ownership of the Program, but only a right of limited use.
- 2.2 Limitations on Use, Etc.** County may not use, copy, modify, or distribute the Program (electronically or otherwise), or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by CTSC, under this Agreement. County may not reverse assemble, reverse compile, or otherwise translate the Program. County's license may not be transferred, leased, assigned, or sub-licensed without CTSC's prior written consent, except for a transfer of the Program in its entirety to a successor in interest of the County's entire business who assumes the obligations of this Agreement. County may not install the Program without CTSC's prior written consent (which will not be unreasonably withheld), provided that County may transfer the Program to another location temporarily in the event of an interruption of computer operations at the County's Site. If County uses, copies, or modifies the Licensed Program or if County transfers possession of any copy, adaptation, transcription, or merged portion of the Licensed Program to any other party in any way not expressly authorized by CTSC, County's license is automatically terminated. County acknowledges that, in the event of County's breach of any of the foregoing provisions, CTSC will not have an adequate remedy in money or damages. CTSC shall therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request. CTSC's right to obtain injunctive relief shall not limit its right to seek further remedies.

3. RESTRICTIONS AND LIMITATIONS ON USAGE

County's license of the Program is nonexclusive and nontransferable, and it extends only to County's own installation, execution, and use of the Program on County's computers. County may not assign, transfer, or sublicense this license or County's other rights under this Agreement, whether by operation of law or otherwise, except with CTSC's prior written consent. County may not move the Program to another location, except with CTSC's prior written consent. THE PROGRAM AND USER MATERIALS CONSTITUTE HIGHLY SENSITIVE AND PROPRIETARY TRADE SECRETS AND CONFIDENTIAL INFORMATION OF CTSC. COUNTY MUST STRICTLY OBSERVE ALL RESTRICTIONS IMPOSED BY CTSC WITH RESPECT TO PROPRIETARY PROTECTION OF THE PROGRAM.

4. TRAINING

- 4.1 Training at CTSC Offices.** CTSC offers regularly scheduled training classes, based upon demand, at no charge to County. Such classes are available on a first come, first served basis, and are subject to space availability and a sufficient number of sign ups for the scheduled class. To reserve a place in a training class, contact CTSC.
- 4.2 On Site Training.** At County's request CTSC shall provide training at County's site at a mutually agreed price and time.

5. SUPPORT AND UPDATES

- 5.1 Annual Support Hours.** The annual license fees include telephone Support.
- 5.2 Support.** Support includes:
- a. Telephone Hot-Line Support.** Telephone Hot-Line Support is available Monday through Friday from 8:00 a.m. to 5 p.m. Pacific Standard Time, to report problems or request user assistance in use of the Program.
 - b. Remote Access Diagnostics.** To be eligible for Support using Remote Access Diagnostics, County must have a site-to-site vpn connection to allow for remote assistance, and remote access software installed on the server. Remote Access Diagnostics include: (1) diagnostic or corrective actions necessary to restore proper program operation; (2) diagnostic analysis to assist in determining the cause of the reported problem; (3) correction of data file problems; and (4) down loading Error Corrections or Enhancements.
- 5.3 Latest Version.** County is only eligible for Support, if County installs the most current Update of the Program within Forty Five Days (45) days of delivery of such Update to County. CTSC is not obligated to provide Support for prior versions of the Program after such 45-day period.
- 5.4 Standard Enhancements.** Standard Enhancements are included in Updates of the Program, which are distributed by CTSC from time to time.
- 6.5 Error Reports.** Error Reports to CTSC are not counted towards your annual support hours. County agrees, if requested by CTSC, to submit an Error Report that identifies the problem and describes the steps needed to reproduce the Error ("Error Report"), in addition to a listing of output and any other data that CTSC may require in order to reproduce any Error, and the operating conditions under which the Error occurred or was discovered.

6. MATTERS NOT COVERED BY SUPPORT

6.1 The following matters are not covered as part of County's monthly Usage Fee Support:

- a. Any problem resulting from the misuse, improper use, alteration, or damage of the Program;
- b. Any problem caused by County's modifications to any version of the Program;
- c. Any problem resulting from computer software other than the Program;
- d. Any problem relating to County's computer hardware or peripherals; and
- e. Any problems relating to older unsupported versions.

6.2 CTSC reserves the right to charge additional service fees if County seeks assistance for matters that do not directly relate to the operation of the Program. CTSC does not hold itself out as a professional expert and adviser regarding computer hardware, Third Party Software, computer peripherals or information needs. In particular, CTSC does not support County's printers. CTSC is not responsible for obsolescence of the Program that may result from changes in County's requirements.

7. COUNTY'S RESPONSIBILITIES

7.1 County is responsible for the following:

- a. Procuring, installing, and operating computers, printers and operating systems to run the Program. In addition, County will need Microsoft Windows XP Professional running Remote Desktop, and an office automation package with word processing, spreadsheet and scheduler, such as Microsoft Office 2003 professional.
- b. Provide a Cisco Systems site-to-site compatible VPN connection for remote troubleshooting and support.
- c. Supplying hardware for the installation of CompuTrust that conforms to the following minimum specifications:

Server Requirements:

- (A minimum of 40 GB of disk space for 30 - 60 Users)
- Windows Server 2003 Standard Edition with SP1
- UniVerse Database version 10.2.10 or higher
- Intel Xeon processor running at 3.00 GHz, 2 GB RAM,

- 80 GB hard disk
- CD drive
- 100 MB Network Interface Card (NIC)
- Uninterruptible power supply
- Back up and recovery software

Software Components:

- A server capable of running Windows 2003 Standard Edition R2 SP2 (32 bit preferred) or Windows 2008 64 bit R2
- Server(s) and users in the same domain
- Microsoft SQL Server 2005 or Microsoft SQL Server 2008 Standard Edition (or Higher) with reporting services
- Internet Information Server 5.0, 6.0 or 7.0
- Internet Explorer 7 or 8
- ASP.Net Framework 2.0 SP1 and 3.5

Minimum Server Hardware Requirements to run the software (based on Microsoft Minimum Hardware Requirement for various components)

- Processor: Xeon 299 GHz or faster
- Memory 4 G or more
- 50 GB of disk space (for operating system (OS), SQL & CME/CTI Software)
- CD-ROM Drive
- VGA Display capable of resolution 1024x768 or greater

Work Station Requirements:

- Windows 2003 Professional or later
- 512 meg RAM
- Intel Pentium 4 processor running at 1.3 GHz or better
- 20 GB hard disk
- Terminal Emulator capable of being configured for VT-400
- Internet Explorer 7.0 SP1 or later
- 100 MB Network Interface Card (NIC)
- Standard PS/2 or USB Keyboard and mouse

All Server Configurations: Universe and CT should not be loaded on the boot drive because the boot partition is limited in space to 4 gig by NT. Problems such as not having enough virtual memory could result. The above requirements are ideal for successfully operating this version of CompuTrust. CompuTrust cannot be responsible for any deviation from the recommended requirements.

- d. Providing a proper environment and proper utilities for the computers on which the Program operates, including an uninterrupted power supply and

securing maintenance contracts for the system hardware and operating system, and ensuring that they are operational so that CTSC may successfully support the system.

- e. Selecting and training County personnel so they can operate computers and so they are familiar with the operation of the Program.
- f. Appointing a technically qualified system administrator, who has sufficient computer hardware and software experience and training to enable him/her to assist CTSC in diagnosing reported problems (“System Administrator”).
- g. Nominating a single contact person, to interface with CTSC on all Support calls from County. Such nominated single contact person shall either be the System Administrator or someone who is similarly technically qualified.
- h. Establishing adequate operational back-up provisions in the event of a defect or malfunction that renders the Program or the computer systems on which they run non-operational.

8. WARRANTY

8.1 Limited Warranty. CTSC warrants for a period of ninety (90) days from the date of installation of the Program, for County’s benefit alone, that the Program, when operated with the equipment configuration and in the operating environment specified by CTSC, will perform substantially in accordance with the Documentation for that version of the Program. CTSC does not warrant that the Program will be Error-free in all circumstances. In the event of any material defect or Error covered by such warranty, County agrees to provide CTSC with sufficient detail to allow CTSC to reproduce the defect or Error. The term “Material Defect” shall mean a defect or Error that either prevents use of the Program, or seriously impacts the use of the Program. As County’s exclusive remedy for any Material Defect or Error in the Program covered by such warranty, and as CTSC’s entire liability in contract, tort, or otherwise, CTSC will correct such Error or defect at CTSC’s facility by issuing corrected instructions, a restriction, or a bypass. If CTSC is unable to correct such Material Defect or Error after a reasonable opportunity, at County’s sole option, CTSC will refund the Annual License Fees paid for such Program. However, CTSC is not responsible for any Material Defect caused by County’s modification, misuse, or damage to the Program.

8.2 Limitation of Liability; Exclusion of Consequential Damages. The cumulative liability of CTSC to County for all claims relating to the Program and any services rendered under this Agreement, in contract, tort, or otherwise, shall not exceed the total amount of all Usage Fees paid to CTSC for the Program or services within the prior year. In no event shall either party be liable to the other for any

consequential, indirect, special, or incidental damages, even if such party has been advised of the possibility of such potential loss or damage. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies.

Exhibit "B"

In consideration of the services provided by Contractor in Exhibit "A", County shall pay Contractor based on the following fee schedule:

Annual Usage Fee (Includes Support and Updates). The Annual CompuTrust Usage Fee is \$45,756 for an unlimited number of users. The one-time Service Fee relating to implementing CompuTrust CTI is \$42,000. The one-time Service Fee relating to converting data from Panoramic Software to CTI is \$21,000 and the source code escrow is \$700. The total amount of the annual usage fee is \$109,456.

- A. Responsibility for Monthly Usage Fees.** County agrees to pay the Monthly Usage Fees in the amount of \$3,813 per month for unlimited number of users.
- B. Third Party Software Fees.** In order to operate the program, customer will need Universe database management system from Rocket U2 Software. County must secure these services from Rocket U2 Software. The estimated cost for maintenance to Universe software, and additional licenses for Universe database management is \$7,215 annually.
- C. Per Diem Fees.** CTSC's per diem fees apply to on site training, on site Installation and on site consulting services. Per diem fees are as follows: \$54 per day and \$.51 per mile.
- D. Other Charges.** Usage fees do not include travel and living expenses incurred while providing services to County under this Agreement, shipping charges, or the costs of any recommended hardware. County agrees to pay such fees and costs, when and as the services are rendered and/or such expenses are incurred, upon receipt of invoice from CTSC. CTSC reserves the right to require prepayment or advance deposit for services and/or expenses.
- E. Taxes.** The fees listed in this Agreement do not include taxes. In the event CTSC is required to pay sales, use, property, value added or other taxes based on licenses of services granted to County under this Agreement or on County's use of the Program, Third Party Software or services, then such taxes shall be billed to and paid by County, unless County provides CTSC certification of its tax-exempt status.
- F. Price Increases.** After the Initial Term, CTSC reserves the right to increase or decrease its fees, provided, however, that CTSC shall not adjust its fees more often than once each year after the Initial Term, and CTSC shall provide County with at least ninety (90) days' notice of any proposed adjustment prior to the beginning of a new term Agreement. Any price increase shall not exceed the Cost of Living Index for the Bay Area, Northern California. If CTSC fails to notify County within the time specified above, the maintenance fees for the renewal year will be the same as the prior year.

G. Late Charges. If any fee or cost is not paid within thirty (30) days after it is due, CTSC may, at its option, charge interest at a rate of one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) or, if less, the highest rate allowed by applicable law, from the date such fee or charge first became due.

In any event the total payment to Contractor for services, training, specialized-support, maintenance to the Universe software, and additional licenses for Universe the database management system shall not exceed ONE HUNDRED TWENTY-ONE THOUSAND DOLLARS (\$121,000) for the term of this Agreement.