

AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of July, 2015, by and between the **COUNTY OF SAN JOAQUIN**, a political subdivision of the State of California, through its Information Systems Division, hereinafter referred to as "**COUNTY**" and **CITY OF STOCKTON**, an agency of the Federal Government, hereinafter referred to as "**AGENCY**".

WHEREAS, **COUNTY** provides services and/or equipment listed in Attachment "A" hereinafter referred to as "**COMPUTER SERVICES**" to **AGENCY**; and

WHEREAS, **COUNTY** has certain computer equipment and is able to provide information services which **AGENCY** desires to use in its operations; and,

WHEREAS, **COUNTY'S** Information Systems Division services offered to **AGENCY** under this Agreement differs from that provided in previous years and it is necessary to set out the understanding of the parties as to the extent of services and liability for provision of access to the **COMPUTER SERVICES** for information.

IT IS HEREBY AGREED between the parties as follows:

1. COMPUTER SERVICES FOR ACCESS TO NON-REDUNDANT, NON-FAULT TOLERANT COMPUTER SYSTEMS

The **COUNTY** shall provide to **AGENCY** the **COMPUTER SERVICES** of **COUNTY'S** Information Systems Division. The parties expressly acknowledge that the Information Systems Division computer systems are non-fault tolerant, non-redundant systems which do not provide continuous access seven (7) days a week and twenty-four (24) hours a day. The computer systems may go down and be unable to provide **COMPUTER SERVICES** at any time of day or night for undeterminable periods of time and also must be scheduled to be taken down for maintenance and repairs from time to time. Therefore, **COUNTY** does not represent that the **COMPUTER SERVICES** provided under this Agreement will enable **AGENCY** to receive information from the computer systems within any specific time period. **AGENCY** has considered the express limitations set forth in this Agreement of the **COMPUTER SERVICES**, together with the needs of **AGENCY**, and has determined that **AGENCY'S** business operations require the use of the services set out in this Agreement.

2. COMPENSATION

- a. **COUNTY** will provide the **COMPUTER SERVICES** for the estimated annual amount of compensation as shown in Attachment "A". **COUNTY** shall bill **AGENCY** only for actual **COMPUTER SERVICES** provided, one month after **COMPUTER SERVICES** are provided. **AGENCY** shall provide full payment to **COUNTY** of the billed amount by the fifteenth day of the date of billing. In the event payment is not timely made, **COUNTY** may, at its option, terminate this Agreement in accordance with the provisions of Clause 5.
- b. In the event that the **AGENCY'S** estimated quantities, as indicated in Attachment "A", are exceeded for any reason, **County** may evaluate and, if necessary, increase the quantities indicated in Attachment "A", which may also result in the estimated annual amount of compensation provided herein to be increased. **County** will notify **AGENCY**, in writing, no less than thirty (30) calendar days in advance of any intended increase of estimated annual amount of compensation. **AGENCY** shall be allowed the option to terminate this Agreement in

accordance with the provisions of Clause 5 in the event of an increase in the estimated annual amount of compensation.

- c. In the event that County's cost of COMPUTER SERVICES are increased due to any reason, County may increase the rate of compensation, as indicated in Attachment "A", which may also result in the estimated annual amount of compensation provided herein to be increased. County will notify AGENCY, in writing, no less than thirty (30) calendar days in advance of any intended increase of estimated annual amount of compensation. AGENCY shall be allowed the option to terminate this Agreement in accordance with the provisions of Paragraph 5 in the event of an increase in the estimated annual amount of compensation.
- d. If AGENCY fails to timely compensate COUNTY as provided in this Agreement, AGENCY shall be held liable for the reasonable cost of collecting such compensation including attorney's fees and court costs incurred by COUNTY. In no event shall COUNTY be liable for reimbursing AGENCY for the costs to procure alternative services to those services provided under this Agreement regardless of whether AGENCY or COUNTY initiates termination of the Agreement.

3. OPTIONAL SERVICE AND EQUIPMENT

COMPUTER SERVICES under this Agreement are limited solely to the ongoing services, systems, and equipment listed in Attachment "A" which are in operation on the effective date of this Agreement. Services and/or equipment not covered in this Agreement may be provided to AGENCY at COUNTY'S option subject to the following conditions:

- a. AGENCY must submit a written request for the additional services and/or equipment which has been signed by the appropriate agency official, and
- b. Additional services, and/or equipment shall be provided at the current rates of compensation and shall be billed as additional items over and beyond the total estimated annual amount compensation designated in this Agreement.
- c. All rental equipment in the possession of AGENCY shall be returned to COUNTY in the same condition as it was delivered to AGENCY, less normal wear and tear. COUNTY shall be compensated by contractor for all loss or damage to said equipment which is not the result of a willful or negligent act by COUNTY and which does not constitute normal wear and tear.

Maintenance in connection with the equipment provided under this Agreement is included in the rate of compensation for equipment and will not be billed as an additional charge to AGENCY.

4. TERM

The term of this contract shall start July 1, 2015, and ending June 30, 2016.

5. TERMINATION

- a. This contract may be terminated by either party upon thirty (30) calendar days advance written notice to the other party. Notwithstanding such termination, AGENCY shall compensate COUNTY for the actual COMPUTER SERVICES provided through the date the termination of the Agreement is effective.

6. INDEMNIFICATION AND HOLD HARMLESS

The Parties acknowledge that Title 31, United States Code, Section 1341 and Title 41, United States Code, Section 11 prohibit Federal agencies from entering any agreement that requires a Federal agency to indemnify and/or hold harmless another party where the amount of the Government's liability is indefinite, indeterminate, or potentially unlimited. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF or Agency) is a component of the United States Department of Justice, and as such, it is a self-insured entity supported by the United States Government. Under the Federal Tort Claims Act, Title 28 U.S.C. 1346 et seq., the United States Government accepts liability for the loss or destruction of property or personal injury or death caused by the negligent or wrongful acts or omissions of any employee of the Government while acting within the scope of his or her office or employment.

7. LIMITATIONS OF LIABILITY

In no event shall COUNTY be responsible for any damage, compensatory, consequential, punitive, or special in the event that the AGENCY is unable to access and/or obtain information from COMPUTER SERVICES of COUNTY. This Agreement shall not be construed to be either a representation or a warranty to AGENCY that it will be able to access and obtain information from the COMPUTER SERVICES at any particular time or within any particular response time. COUNTY does not grant any warranty as to the validity, completeness or usefulness of any information received by AGENCY from the COMPUTER SERVICES. COUNTY shall not be responsible nor liable for the costs to AGENCY to procure alternative services to the services provided for under this Agreement or upon termination of this Agreement by either party.

In the event of errors in COMPUTER SERVICES due to the failure of COUNTY'S equipment, software, circumstances beyond the control of COUNTY, or the failure of COUNTY'S employee(s) to operate the equipment in accordance with COUNTY'S standard operating procedures, or COUNTY'S inability to provide COMPUTER SERVICES due to circumstances beyond its control, COUNTY'S liability shall be limited to either subparagraph (a) or (b) below, either of which will be considered to be AGENCY exclusive remedy:

- a. The correction of errors of which COUNTY has received written notice and proof or the performance of the service, whichever is the situation; or
- b. Where such correction or performance of service is not practicable, AGENCY shall be entitled to an equitable credit, not to exceed the charges invoiced to AGENCY for that portion of the service which produced the erroneous result or for that portion of the service which could not be performed, whichever is the situation.

COUNTY shall be liable for the loss, destruction or damage to AGENCY supplied materials only if such loss, destruction, or damages was due to the negligence of COUNTY and AGENCY'S sole remedy shall be COUNTY restoring the same, provided such restoration can be reasonably performed by COUNTY and provided that AGENCY provides COUNTY with all source data necessary for such restoration in similar form to that normally presented to COUNTY under this Agreement.

8. INDEPENDENT CONTRACTOR

The AGENCY, and the agents and employees of AGENCY, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of COUNTY.

9. ASSIGNMENT

Without the written consent of COUNTY, this agreement is not assignable by AGENCY either in whole or in part.

10. TIME OF THE ESSENCE

Time is the essence of this Agreement.

11. MODIFICATIONS

No alteration, variation, or modification of the terms of this contract shall be valid unless made in writing prior to the effective date and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

12. COMPLIANCE WITH LAWS

AGENCY shall comply with the California Fair Employment Practices Act (Labor Code Section 1410, et seq.) and any amendments thereto.

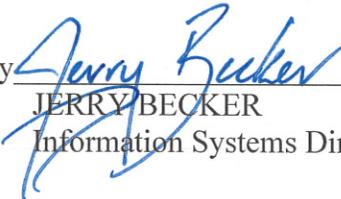
This Agreement may, at the option of COUNTY, be terminated or suspended in whole or in part in the event AGENCY fails to comply with the nondiscrimination clause of the contract. In the event of termination under this clause, COUNTY shall be compensated for goods and services provided to the date of termination. Termination or suspension shall be effective upon receipt of written notice thereof.

13. CONFIDENTIALITY

AGENCY, its employees, officers, and agents shall protect and keep all information and materials obtained through the services of this agreement confidential and from unauthorized use and disclosure. This clause shall not apply to that information which is or becomes a public record subject to the disclosure requirements of the Public Records Act.

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first written above.

COUNTY OF SAN JOAQUIN, a
political subdivision of the State of
California

By 
JERRY BECKER
Information Systems Director

"COUNTY"

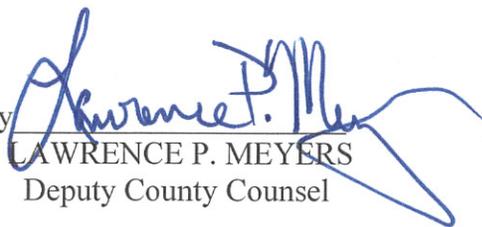
CITY OF STOCKTON

By _____

Title _____

"AGENCY"

APPROVED AS TO FORM:

By 
LAWRENCE P. MEYERS
Deputy County Counsel

**City of Stockton and
San Joaquin County**

Attachment A

**Rate Schedule
Fiscal Year 2015-2016**

Computer Services

Automated Message Switching System Access
CJIS System Access

Service	Estimated Quantity	Type	Estimated Rate	Estimated Annual Cost	Estimated Total
Special Processing Request	8	Hours	\$ 129.80	\$ 1,038.40	
Transactions	930,000	Each	\$ 0.08	\$ 74,400.00	
Total Estimated Annual Cost					\$ 75,438.40