

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS

ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # *R-11

Urgent

Routine

AGENDA DATE June 26, 2012

CEO Concur with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of a Contract with Atomogy Corporation for Integrated Criminal Justice Information System (ICJIS) Development and Support Services through June 30, 2013

STAFF RECOMMENDATIONS:

Authorize the Chief Executive Officer to enter into a contract for ICJIS development and support services with Atomogy Corporation through June 30, 2013 in an amount not to exceed \$250,000.

FISCAL IMPACT:

The amount of this year's requested development and support agreement with Atomogy Corporation is \$250,000 which is consistent with their contract amount in this current year. The total 2012-2013 Adopted Proposed Budget for ICJIS is \$758,700, which included funding for the requested contract amount of \$250,000.

BOARD ACTION AS FOLLOWS:

No. 2012-315

On motion of Supervisor Chiesa, Seconded by Supervisor De Martini
and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

The ICJIS Project

Stanislaus County ICJIS which is an acronym for "Integrated Criminal Justice Information System" is a suite of integrated applications that were developed by the Sheriff, District Attorney (DA), Public Defender and Probation departments. ICJIS plays a major role in the everyday business operations of each of the ICJIS departments. It is the core "line of business" application for each of the ICJIS departments and has replaced many labor intensive manual operations which resulted in productivity gains and other departmental efficiencies. In alignment with one of ICJIS's original goals, ICJIS has become a regional repository for criminal justice data and as such, shares this data with a number of partner agencies within the County.

Each of the ICJIS partners has achieved a broader level of communication with outside agencies through the implementation of ICJIS by providing interconnected interfaces. The increasingly "interconnected" ICJIS applications contribute to an overall safer community by providing local law enforcement, County Departments, and other agencies vital, real-time, criminal justice information.

Contract Services

The ICJIS project continues to enhance the overall integration posture of ICJIS, its features and infrastructure. A significant portion of this year's project plan is dedicated directly to integration. A few of the integration efforts on this year's project plan worth noting, are the Court Minute Order interfaces for DA, Sheriff and Probation, the Warrant interface with Courts and additional interfaces with the Department of Justice (DOJ). The ICJIS team will be working with Atomogy, Strategic Business Technology (SBT), Stanislaus Superior Court and the DOJ to establish these interfaces. These interfaces will enhance the flow of data and reduce a significant amount of 'paper' handling.

Some additional items that Atomogy will be working on to further ICJIS's ongoing goals of increased departmental efficiency and information sharing include:

- Enhancements to the DA's Electronic Document Management System
- The Development of a Complaint Automation system for the DA
- Enhancements to the CAD interface with the Sheriff's Department

Included in this item is a recommendation to authorize the Chief Executive Officer to enter into a contract with Atomogy Corporation for development and maintenance services through June 30, 2013 for a not to exceed amount of \$250,000. The developers that are part of Atomogy Corporation have been very instrumental in the development of the ICJIS system and have provided stellar

support since its inception. Their quality of work has been consistently high. They have been very responsive to feedback from users to make needed adjustments to the system. They have detailed knowledge of the business and system needs of the various ICJIS departments.

The cost of the contractors is consistent with the County's internal costs for software developers when benefits are included. Atomogy developers also work closely with County developers to ensure that departments have an understanding of the system so that the departmental developers can continue to maintain and enhance it.

POLICY ISSUES:

Approval of this Agenda item will support the Board priorities of Efficient Delivery of Public Services, Effective Partnerships and A Safe Community.

STAFFING IMPACTS:

There are no staffing issues associated with this item.

CONTACT PERSON:

Mike Baliel, ICJIS Project Manager. Telephone: 209-342-1737

SOFTWARE DEVELOPMENT AGREEMENT

This Software Development Agreement ("Agreement") is made and entered into by and between the County of Stanislaus, a political subdivision of the State of California (hereinafter "County"), and Atomogy Corporation, a California corporation (hereinafter "Developer"), on July 1, 2012.

RECITALS

WHEREAS, County desires to engage Developer to develop, create, test and deliver as a work made for hire a certain computer program and printed material for the Integrated County Justice Information System (the "System"); and

WHEREAS, the Developer is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, County and Developer, intending to be legally bound, hereby agree as follows:

TERMS AND CONDITIONS

1. DEFINITIONS

When used in this Agreement and in the Scope of Work made a part of this Agreement, the terms listed below shall have the following meanings:

1.1 Code - shall mean computer programming code. If not otherwise specified, Code shall include both Object Code and Source Code. Code shall include any Maintenance Modifications or Basic Enhancements thereto created by Developer from time to time, and shall include Major Enhancements thereto when added to the Code in connection with the Scope of Work or any other agreement and scope of work between the parties.

(a) Object Code - shall mean the machine-readable form of the Code.

(b) Source Code - shall mean the human-readable form of the Code and related system documentation, including all comments and any Code required in the operation of the system.

1.2 Deliverables - shall mean the deliverables as defined in applicable contract documents, including without limitation, the project Request for Proposal ("RFP"), the Developer's proposal or scope of work, and any successive documents, including all Code, Documentation and other materials developed for or delivered to County by Developer under this Agreement.

1.3 Derivative Work - shall mean a work which is based upon one or more preexisting works, such as a revision, modification, translation, abridgement, condensation, expansion, or any other form in which such preexisting works may be recast, transformed, or adapted, and which, if prepared without authorization of the owner of the copyright in such preexisting work, would constitute a

copyright infringement. For purposes hereof, a Derivative Work shall also include any compilation that incorporates such a preexisting work.

1.4 Documentation - shall mean user documentation, whether hard copy of electronic, and other materials that relate to particular Code, including materials useful for design (for example, logic manuals, flow charts, and principles of operation). Documentation shall include any Maintenance Modifications or Basic Enhancements thereto created by Developer from time to time, and shall include Major Enhancements thereto when added to the Documentation in connection with the Scope of Work or any other agreement and scope of work between the parties.

1.5 Enhancements - shall mean changes or additions, other than Maintenance Modifications, to Code and related Documentation, including all new releases, that improve functions, add new functions, or significantly improve performance by changes in system design or coding.

(a) Basic Enhancements - shall mean any Enhancement that is not a Major Enhancement.

(b) Major Enhancements - shall mean changes or additions to Code and related Documentation that (1) have a value and utility separate from the use of the Code and Documentation, (2) as a practical matter, may be priced and offered separately from the Code and Documentation, and (3) are not made available to any of Developer's customers without separate charge.

1.6 Error - shall mean any error, problem, or defect resulting from (1) an incorrect functioning of Code, or (2) an incorrect or incomplete statement or diagram in Documentation, if such error, problem or defect renders the Code inoperable, causes the Code to fail to meet the specifications thereof, causes the Documentation to be inaccurate or incomplete in any material respect, causes incorrect results, or causes incorrect functions to occur when any such materials are used.

1.7 Maintenance Modifications - shall mean any modifications or revisions, other than Enhancements, to Code or Documentation that correct Errors, support new releases of the operating systems with which the Code is designed to operate, support new input/output (I/O) devices, or provide other incidental updates and corrections.

1.8 Project Schedule - shall mean the ICJIS Estimated Annual Work Plan, which is attached to this Agreement and which may be revised from time to time upon submittal by the Developer and approval by the County.

1.9 Scope of Work - shall mean and collectively include (a) the Project Agreement & Commitment (Exhibit A) and the Work Plan Breakdown attached to it, (b) the most recent Project Schedule submitted by the Developer and approved by the County, and (c) any change requests approved by the parties in accordance with the provisions of this Agreement; all of which are incorporated into this Agreement by this reference.

1.10 Project Manager - shall mean the person designated by each respective party who shall be primarily responsible for all administrative matters related to this Agreement for that party.

2. SOFTWARE DEVELOPMENT

2.1 Development Schedule. Developer agrees to develop, create, test and deliver the Deliverables and the System, together with printed material and documentation, as set forth and specified in the Scope of Work and in accordance with the Project Schedule. Developer shall notify the County promptly of any factor, occurrence or event coming to its attention that may affect Developer's ability to meet the requirements of the Scope of Work issued under this Agreement, or that is likely to occasion any material delay in delivery of Deliverables. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure. Developer further agrees to cooperate with County employees or contractors assigned to the ICJIS project.

2.2 Changes. Changes in the Scope of Work or in any of the Specifications or Deliverables under the Scope of Work shall become effective only when a written change request is executed by authorized representatives of both parties.

2.3 Delivery and Acceptance. Developer shall deliver all Deliverables, upon completion, to the respective ICJIS Department's IT Manager for testing and acceptance. The County's ICJIS Project Manager will be notified of the delivery. For each individual Deliverable or group of linked Deliverables identified by tasks, the County shall determine if the deliverable conforms to the specifications and performance standards set forth in the Scope of Work or has any Errors. The Developer shall use reasonable effort to correct any such nonconformance and redeliver the Deliverable to the County as soon as feasible. Upon delivery and acceptance of the final individual Deliverable, acceptance testing shall be performed on the System as a whole in order to determine whether the integration of the Deliverables and any necessary equipment meets the specifications for the system set forth in the RFP, scope of work, or proposal accepted by the County, and operates with internal consistency. Upon satisfactory completion of acceptance testing after delivery of the Deliverables in final form, the County shall issue to Developer written notice of acceptance pertaining to such Deliverables. The Deliverables shall be deemed to have been accepted by the County if the County does not notify the Developer within 30 days after delivery of the Deliverables in final form that the Deliverables do not conform to the specifications and performance standards set forth in the Scope of Work or has any Errors.

3. COMPENSATION

3.1 Payment. Developer will be compensated on a time and materials basis at the rate of \$67.00 per hour for each task as set forth in the ICJIS Work Plan and tasks Scope of Work, not to exceed the total amount of \$250,000 for Fiscal Year 2012-2013, including, without limitation, the cost of any subcontractors,

consultants, experts or investigators retained by the Developer to perform or to assist in the performance of its work under this Agreement. After hours support (6 p.m. to 7 a.m.) will be compensated at a rate double the specified hourly rate. After hours support will only be paid during the specified time frame if the developer has already worked 8 hrs in the given day. All after hours support will be labeled as "AFTER HOURS SUPPORT" on developer invoices. The specified rate is not adjustable for the performance period set forth in this Agreement or during any extended term of this Agreement. The specified hourly rate includes direct salary costs, employee benefits, and overhead, and the Developer shall not be entitled to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

3.2 Expenses. Except as otherwise expressly agreed by County in the Scope of Work, Developer shall bear all of its own expenses arising from its performance of its obligations under this Agreement.

3.3 Invoicing. The Developer shall periodically, or as frequently as required by the County, provide the County with a statement or invoice upon acceptance of Deliverables for payment of work and/or Deliverables provided during the billing period. The statement will generally describe the services performed, reference the applicable Deliverable, the basis for the calculation of fees, and a reasonable itemization of costs. Each invoice shall separately set forth travel expenses (if any) authorized by County for reimbursement. Supporting documentation (such as receipts for air travel, hotel and rental cars) called for by County's standard reimbursement policies shall accompany any such invoice. The Developer will deliver to the ICJIS Project Manager all hours invoiced in the invoice period in a single electronic database format as defined by the County. The electronic database will accompany each invoice sent to the County.

3.4 Tax Liability. County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Developer under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Developer.

4. RECORDS AND AUDIT

Developer shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Developer.

5. REPORTS

5.1 Task Reporting. Developer agrees to provide to County at least monthly a written report of the progress of the work required under Scope of Work, any anticipated problems (resolved or unresolved), and any indication of delay in

fixed or tentative schedules. As these reports may be needed from time to time on a weekly basis, Developer further agrees to provide weekly reports to the County upon request.

5.2 Bug / Issue Reporting. Developer agrees to provide to County at least monthly an electronic export of all bugs and issues generated by the ICJIS project in a mutually agreed upon format.

6. OWNERSHIP AND RIGHTS

6.1 Ownership of Work Product by County. All items contributing to and involved in the Deliverables (i.e., the design, source code and all documentation) shall be owned by County and shall be considered a work made for hire by Developer for County. County shall own all United States and international copyrights in the Deliverables, including the intellectual property rights; provided however, the County shall not have any ownership rights to source code of pre-existing works or software that are independently developed by the Developer or others, but the County shall have a perpetual license for use of such pre-existing work as part of the Deliverables. Developer agrees to assign to the County all Deliverables developed under this contract.

As used in this section, software design does not include ideas, processes or functions, including method of operation, that are part of common use, obvious and pre-determined by the environment, or dictated by the idea itself. The County does not have or retain intellectual property rights in non-application specific libraries or routines incorporated in the software design.

6.2 Pre-existing Works. The parties intend to protect the intellectual property rights of the Developer or others in pre-existing works that are integrated with the Deliverables, and to protect the County's intellectual property rights in the Deliverables that may include pre-existing works integrated with the Deliverable. In accordance with that intent, the parties agree to all of the following provisions.

(a) Prior to integration of any pre-existing work in any Deliverable, the Developer shall notify the County's ICJIS Project Manager in writing of the Developer's intent to use pre-existing works developed by the Developer or others independently of work performed for the County.

(b) The Developer shall obtain for the benefit of the County, the right and license to use, execute, display, perform, and distribute internally or externally, the pre-existing work as an integral part of the Deliverables. The county recognizes that Deliverables may include open source and freeware software, which has its own license that makes it freely available.

(c) The County may convey, license, sell or otherwise transfer its intellectual property rights in the Deliverables, but any such transfer shall not include any rights to pre-existing works integrated with the Deliverable for any commercial purpose except upon prior written approval from or agreement with the Developer or other person or entity that holds intellectual property rights for

such pre-existing work. For purposes of this section, a "commercial purpose" does not include the conveyance, license, sale or other type of transfer by the County to another governmental organization or entity for its own use, whether or not such transfer includes consideration of any kind, including money.

(d) The Developer may convey, license, sell or otherwise transfer its intellectual property rights in any pre-existing work that is integrated with the Deliverables, provided such transfer does not interfere or adversely affect the County's right to use the pre-existing work as an integral part of the Deliverables.

(e) The Developer will use the following agreed upon source code license for any inline source licensing found in Atomogy owned source code. When used, it will be included at the top of the source file.

/**

- * Covers all Atomogy owned source code that Atomogy uses
- * in the ICJIS project.
- *
- * Copyright (c) 2004 Atomogy Corp.
- * All Rights Reserved.
- *
- * Licensor (Atomogy Corp., or its assigns, successors, heirs, or legatees)
- * grants perpetual License to Stanislaus County, California (the Licensee),
- * to use this software for any of its internal processes, and to and any of
- * Stanislaus County's customers for use in conjunction with the ICJIS Software.
- *
- * Licensor disclaims all warranties, either express or implied, including
- * but not limited to implied warranties of merchantability, fitness for
- * a particular purpose and any warranty of non-infringement with respect
- * to the software and accompanying written material (if any).
- *
- * In no event will Licensor be liable to Licensee for damages, including
- * any loss of revenues or profits, lost savings, or other incidental or
- * consequential damages arising out of Licensee's use or inability to
- * use the software.
- *
- * Any additions, deletions, refactoring, or other modifications to the
- * software by Licensee are the sole responsibility of the Licensee.
- *
- * Licensor can create and has created derivative works based on this software,
- * and will continue to do so in the future. Such derivative software is not covered under
- * this License unless used in Licensee systems. However, in no event does Licensor
- * guarantee that such software is or will be compatible with any other software
- * provided to Licensee under this License, even if derived from it.
- *
- * Software distributed under this License must remain in the original packages,
- * and this notice must appear at the top of each source file.
- *
- */

6.3 Patent License. In addition, and except as limited by Section 6.2 herein, Developer hereby grants to County, and its successors and assigns, the royalty-free, nonexclusive right and license under any patents owned by Developer, or with respect to which Developer has a right to grant such rights and licenses, to the extent required by County to exploit the Deliverables and to exercise its full rights in the Deliverables, including (without limitation) the right to make, use and sell products and services based on or incorporating such Deliverables.

6.4 Avoidance of Infringement. In performing services under this Agreement, Developer agrees to avoid designing or developing any items that infringe one or more patents or other intellectual property rights of any third party. If Developer becomes aware of any such possible infringement in the course of performing work under this Agreement, Developer shall immediately notify County in writing.

7. CONFIDENTIAL INFORMATION

Developer acknowledges that, by virtue of the customer/developer relationship established herein, it will have access to certain confidential information relating to the County's clients and activities. Developer agrees that all information relating to the activities and the clients of County shall be deemed confidential and proprietary to County, shall be held in trust by Developer, and shall be safeguarded by Developer to the same extent that Developer safeguards confidential matters relating to its own clients and activities which in no event shall be less than the safeguards that a reasonably prudent person or business would exercise under similar circumstances.

Developer agrees that all employees of Developer shall have a background clearance completed by County prior to being given access to any information or programming relating to the system. Employees include experts, subcontractors, consultants, or investigators hired or enlisted by Developer. At the discretion of the appropriate Department Head, an employee of the Developer may work on that Departmental ICJIS system while a background investigation is in progress.

8. REPRESENTATIONS AND WARRANTIES

Developer makes the following representations and warranties for the benefit of County, as a present and ongoing affirmation of facts in existence at all times when this Agreement is in effect:

8.1 No Conflict. Developer represents and warrants that it has no interest and shall not acquire any interest direct or indirect which would conflict or interfere in any manner or degree with the performance of the work and services under this Agreement.

8.2 Ownership Rights. Developer represents and warrants that (a) except as provided in Section 6 hereof with respect to certain identified preexisting works licensed to County, it has and will have full and sufficient right to assign or grant the rights and/or licenses granted in the Deliverables pursuant to this Agreement, and (b) all Deliverables, including all any preexisting works addressed in Section 6 hereof, do not and will not infringe any patent, copyright, trademark or other intellectual property rights (including trade secrets), privacy or similar rights of any third party, nor has any claim (whether or not embodied in an action, past or present) of such infringement been threatened or asserted, or is such a claim pending, against Developer (or, insofar as Developer is aware, any entity from which Developer has obtained such rights).

8.3 Conformity, Performance and Compliance. Developer represents and warrants (a) that all Deliverables shall be prepared in a workmanlike manner and with professional diligence and skill; (b) that all Deliverables will function on the machines and with operating systems for which they are designed; (c) that all Deliverables will conform to the specifications and functions set forth in the Scope of Work, and to the performance standards set forth in the RFP, if any; and (d) that Developer will perform all work under this Agreement in compliance with applicable law.

8.4 Anti-Virus. Developer represents and warrants that (a) to the best of Developer's knowledge there is no virus, worm or other degenerative computer program in the Developer's computer system used to develop the software and Deliverables under this Agreement; (b) Developer has used its best efforts through its quality assurance procedures to ensure there are no such viruses; (c) none of the Deliverables, nor the System, shall contain any embedded device or code, such as a time bomb, that intentionally or unintentionally obstructs or prevents the County from using the software, Deliverables, or the System, nor will the Developer disable through remote access or otherwise, the County's use of such software, Deliverables or the System.

8.5 Reasonable Efforts. The parties agree to use commercially reasonable effort to perform the tasks assigned and to complete the work specified in the Scope of Work. All services will be rendered in a workmanlike manner by personnel having a level of skill commensurate with their responsibilities.

8.6 Limited Warranty. After acceptance of the Deliverables, Developer warrants for a period of one business cycle (operational or reporting) for each Deliverable, not to exceed one year but not less than 90-days, that the Deliverables, when integrated with the System and operated on the County's computer network, will perform substantially in accordance with the detailed design specifications established for the Deliverables in a Scope of Work. Developer does not warrant that the Deliverables will be error free in all circumstances. In the event of any defect or error covered by such warranty, County agrees to provide Developer with sufficient detail to allow Developer to reproduce the defect or error. If Developer is notified within the warranty period of any defect or error in the Deliverables covered by such warranty, Developer will correct such error or defect at the contract rate. However, Developer is not responsible for any defect or error not reported during the warranty period or for any defect or error in Deliverables that County has altered, misused, or damaged. Developer is not responsible for any defect or error in Deliverables except as delivered for use with internal County ICJIS systems. Specifically, developer is not responsible for any defect or error in Deliverables used for any non-ICJIS County use, any commercial purpose, or any use involving conveyance, license, sale or other type of transfer of Deliverables by the County to another governmental organization or entity for its own use, whether or not such transfer includes consideration of any kind, including money.

FOLLOWING EXPIRATION OF THE WARRANTY PERIOD, DEVELOPER SHALL HAVE NO LIABILITY FOR THE DELIVERABLES OR ANY SERVICES PROVIDED, INCLUDING ANY LIABILITY FOR NEGLIGENCE; AND, EXCEPT

AS PROVIDED IN THIS SECTION, DEVELOPER SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. TERM AND TERMINATION

9.1 Term of Agreement. This Agreement shall be effective upon the date specified at the beginning of this Agreement, and shall remain in force until June 30, 2013. This Agreement may be extended for additional one-year terms upon mutual agreement of the parties, in which case the parties shall execute a document that identifies the scope of work and deliverables contemplated, amount of compensation, and any new or changed terms of this Agreement.

9.2 Termination. Either party may terminate this Agreement for cause, including a material breach of the terms of the Agreement. Either party may, at its sole option, terminate without cause any or all work under this Agreement that is outstanding, or any portion thereof, upon thirty (30) days' written notice. For termination by the County for convenience, Developer shall be paid for all work performed through the date of termination, provided that such payment shall not be greater than the payment that would have become due if the work had been completed.

9.3 Survival. In the event of any termination of this Agreement the provisions of this Agreement shall survive and continue in effect and shall inure to the benefit of and be binding upon the parties and their legal representatives, heirs, successors and assigns.

10. LIABILITY

10.1 Indemnity. Except as otherwise specified or limited in this Agreement, Developer shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Developer or Developer's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use. Notwithstanding the foregoing, Developer's obligation to indemnify the County and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Developer in contributing to such claim, damage, loss and expense, and only for uses involving internal County ICJIS systems.

10.2 Infringement of Intellectual Property Rights. If a third party claims that the Deliverables infringe any patent, copyright, or trade secret, Developer will defend County against that claim at Developer's expense and pay all damages that a court finally awards. If such a claim is made or appears possible, Developer may, at its option, secure for County the right to continue to use the Deliverables, modify or replace them so they are non-infringing, or, if neither of the foregoing options is available in Developer's judgment, require County to

return the Modifications for a credit equal to charges paid for the design and development of the Modifications. However, Developer shall have no obligation to defend the County, or to pay any such costs, damages, and attorney fees for any claim based upon the combination, operation, or use of Deliverables with any programs or data not supplied by Developer if such infringement would have been avoided by the combination, operation, or use of Deliverables without such particular programs or data. Developer shall have no obligation to defend the County, or to pay any such costs, damages, and attorney fees for any claim based upon the use of Deliverables other than on internal County ICJIS systems. THIS SECTION 10.2 STATES DEVELOPER'S ENTIRE OBLIGATION TO COUNTY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT.

10.3 Breach of Developer Warranties. Developer hereby agrees to indemnify and defend the County against any claims relating to any material breach of Developer warranties under Section 8 of this Agreement, or based on material failure by Developer to perform its maintenance and support obligations under this Agreement, and Developer shall pay all costs, damages, and attorney fees arising from or in connection with any such claim; provided however, Developer's liability related to a single incident shall not exceed the amount of insurance required under Section 10.5 of this Agreement. THIS SECTION 10.3 STATES DEVELOPER'S ENTIRE OBLIGATION TO COUNTY WITH RESPECT TO ANY CLAIM OF FOR BREACH OF DEVELOPER'S WARRANTIES.

10.4 Conditions to Indemnification. The foregoing indemnities are conditioned on (1) prompt written notice of any claim or proceeding subject to indemnity; (2) reasonable cooperation by the indemnified party in the defense and settlement of such claim at the expense of the indemnifying party; and (3) prior written approval by the indemnifying party of any settlement, which approval shall not be unreasonably withheld.

10.5 Insurance. Developer shall provide and maintain at its own expense during the term of this Agreement the programs of insurance covering its operations hereunder for commercial general liability in the amount of \$1,000,000, and automobile liability and workers' compensation in amounts satisfactory to the County or as required by law. Such insurance shall be provided through insurer(s) satisfactory to County and certificates evidencing such insurance, along with significant endorsements, shall be delivered to County on or before the effective date of this Agreement, and shall stipulate that the County is to be given at least thirty (30) days written notice in advance of any modification or cancellation of any policy of insurance. All required insurance shall be primary and not contributing with any other insurance maintained by County.

11. DISPUTES AND CLAIMS FOR ADDITIONAL COMPENSATION.

11.1 General Dispute. All disputes, except for claims related to compensation and except as otherwise provided in this Agreement, shall be decided by the County's Project Manager, which decision shall be final and conclusive unless, within fourteen (14) calendar days from the date of receipt of such copy, the Developer mails or otherwise delivers a written appeal to the Assistant CEO who

shall issue a written decision and mail or otherwise furnish a copy thereof to the Developer. The decision of the Assistant CEO shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence.

11.2 Compensation Disputes. The Developer shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the Developer or the County, unless the Developer has given to the County due written notice of claim. It is the intention of this provision that differences between the parties arising under and by virtue of this Agreement be brought to the attention of the County at the earliest possible time in order that such matters be settled, if possible, or other appropriate action promptly taken.

The written notice of claim shall be submitted to the Project Manager within fourteen (14) calendar days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim, and shall set forth the reasons for which the Developer believes additional compensation will or may be due and the nature of the costs involved. Claims filed by the Developer shall be in sufficient detail to enable the County to ascertain the basis and amount of said claims. Failure to submit such information and details to the County will be sufficient cause for denying the claim.

The written notice of claim, and all records and information submitted in support of such claim, shall be submitted under the California False Claims Act (Gov. Code, §§ 12650 - 12655), and shall certify under penalty of perjury that the claim for the additional compensation and time, if any, is a true statement of the actual costs incurred and time sought, and is fully documented and supported or capable of being fully documented and supported under the Agreement between the parties. Failure to submit the notarized certificate will be sufficient cause for denying the claim.

12. MISCELLANEOUS

12.1 Compliance with Laws. Each party shall, in performing its obligations hereunder, comply with all laws, rules, regulations and governmental orders applicable to such party.

12.2 Amendments. This agreement may be amended or supplemented from time to time, but only by a written instrument executed by County and Developer.

12.3 Construction. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

12.4 Assignment. This is an Agreement for the services of Consultant. County has relied upon the skills, knowledge, experience and training of

Consultant and the Consultant's firm, associates and employees as an inducement to enter into this Agreement. Consultant shall not assign or subcontract this Agreement without the express written consent of County. Further, Consultant shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

12.5 Waiver. Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

12.6 Nondiscrimination. During the performance of this Agreement, Developer and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation or sex. Developer and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12.7 Notice. Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Developer or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: ICJIS Project Manager
County of Stanislaus
1010 Tenth Street, Suite 6800
Modesto, CA 95354

To Developer: Atomogy Corporation
2937 Veneman Ave, Suite B155
Modesto, CA 95356

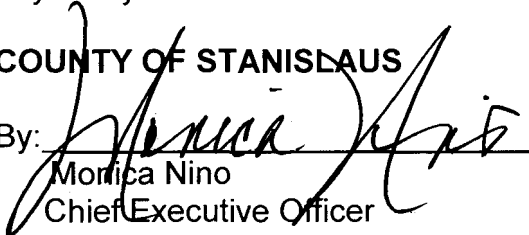
12.8 Advice of Attorney. Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

12.9 Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

12.10 Governing Law and Venue. This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

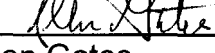
IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

COUNTY OF STANISLAUS

By: 
Monica Nino
Chief Executive Officer

"County"

ATOMOGY CORPORATION

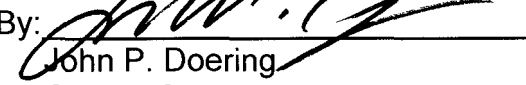
By: 
Allen Gates
President

"Developer"

APPROVED AS TO CONTENT:

By: 
Stan Risen
Assistant Chief Executive Officer

APPROVED AS TO FORM:

By: 
John P. Doering
County Counsel