




OFFICE OF COUNTY COUNSEL
INTER-DEPARTMENT MEMORANDUM

TO: Dustin Bailey
FROM: Judith Kerr, Deputy County Counsel 
DATE: December 4, 2007
RE: Identix, Inc. Contract

This memo is written as a follow up to our conversation of November 29. The contract is being returned to you for modifications to the Term and Compensation provisions of the contract to clarify inconsistencies in the agreement. You indicate that you will be determining whether services have been provided since termination of the previous contract in June of 2007 or whether they will begin from the date of signature by the parties. In addition the compensation provision incorporates Exhibit B that includes payment for work in March of 2007 that was during previous contract term. It is my understanding that these dates and compensation sums will be excluded from the current agreement. In addition, it is not clear what forms the basis of the payment.

The following non standard provisions were included in the previous contract approved by the Board and they remain in the current agreement. Please see the memo from Mike Ciccozzi dated 1/12/2007 that outlines continuing concerns.

1. Services to be performed are set forth in Exhibit A that contains a limited warranty, disclaimer and limitation of liability provision that is discussed in detail in the 1/12/2007 memo.
2. Payment shall be made in one lump sum "annually in advance" for work that has yet to be performed. In addition it includes a not to exceed amount that appears to be inconsistent with the payment of a lump sum. Please clarify.
3. The contract contains a limited mutual indemnification provision that was previously approved by the Board in the last contract, that excludes all warranties with respect to products and services. Liability is also capped for Identix, at the

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amount paid by the County for the agreement. It also excludes "indirect, special, punitive, incidental, consequential or costs of cover damages...".

Encl.

cc: