Contract #: 714-S0810, Amendment IV

CONTRACT ROUTING SHEET

Date Prepared: 12-21-11 **Need Date:** 1-10-12

PROCESSING DEPARTMENT:
Department: Sheriff
Dept. Contact: Sherry Bahlman
Phone #: 621-5690
Department Head Signature: Sherry Jo Bahlman

CONTRACTOR:
Name: TracNet Corporation
Address: 1277 Adobe Lane
Pacific Grove, CA 93950
Phone: 408 827-4675

John D. Hyer

CONTRACTING DEPARTMENT: Sheriff
Service Requested: Software Product License Agreement Damion Export File Interface
Contract Term: 3-25-08 to 6-30-12 Contract Value: Adding $14,000
Compliance with Human Resources requirements? Yes: _____ No: _____
Compliance verified by: _____

EL DORADO COUNTY COUNSEL 2011 DEC 29 PM 5:56

COUNTY COUNSEL: (Must approve all contracts and MOU's)
Approved: ✓ Disapproved: _____ Date: 1/19/12 By: Judith A Kern
Approved: _____ Disapproved: _____ Date: _____ By: _____
Add the words "and as subsequently amended" after "3/25/08" in Article V on pg 1 and on pg. 2 of the amendment after 714-S0811
See 2 versions of pg. 2. – please identify version you want us to review. – SBahlman will be changing pg 2 of 12 and to 2 of 11 and not using the original 2 of 11

Check ma

PLEASE FORWARD TO RISK MANAGEMENT. THANKS!

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)
Approved: ✓ Disapproved: _____ Date: 1/20/12 By: KHer
Approved: _____ Disapproved: _____ Date: _____ By: _____

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).
Departments: _____
Approved: _____ Disapproved: _____ Date: _____ By: _____
Approved: _____ Disapproved: _____ Date: _____ By: _____

12 JAN 19 PM 4:31
RECEIVED
HUMAN RESOURCES DEPT.

EL DORADO COUNTY SHERIFF'S OFFICE
SHERIFF JOHN D'AGOSTINI

MEMORANDUM

TO: County Counsel

FROM: Sherry Bahlman, Administrative Services Officer

SUBJECT: TracNet 714-S0810, Amendment IV

DATE: December 21, 2011

County Counsel,

Attached you will find copies of the approved Blue Route forms from August 25, 2010 (with memo's referenced in your approval) and March 28, 2011. Our office requests another amendment to complete the described services. In June of 2012 we will be processing a new agreement.

If you have any questions, you may contact me at 530 621-5690 or Phil Dold, Technology Manager at 530 621-6044.

Thank you,

Sherry Bahlman

Contract #: 714-S0811, Amendment III

CONTRACT ROUTING SHEET

Date Prepared: 3-28-11 **Need Date:** ASAP

PROCESSING DEPARTMENT:
Department: Sheriff
Dept. Contact: Sherry Bahlman
Phone #: 621-5690
Department Head Signature: Sherry Jo Bahlman John J. Hagan

CONTRACTOR:
Name: TracNet Corporation
Address: 1277 Adobe Lane
Pacific Grove, CA 93950
Phone: 408 378-8005

CONTRACTING DEPARTMENT: Sheriff
Service Requested: Addition of Phase II to Software Product License Agreement
Contract Term: 3-25-08 to 6-30-12 Contract Value: $510,312.37
Compliance with Human Resources requirements? Yes: ____ No: ____
Compliance verified by: ____

COUNTY COUNSEL: (Must approve all contracts and MOU's)
Approved: ✓ as to form Disapproved: ____ Date: 5/11/11 By: Laura Krum
Approved: ____ Disapproved: ____ Date: ____ By: ____

- See memo Are Design Specifications yet to be determined?
- I recommend that you attach and incorporate specific scope of services related to Design Specification and Feature Set
- Clarify whether the costs identified in Article V are one time only costs or annual costs
- It appears you need to also modify Article III to incorporate new software into description of licensed programs under maintenance agreement and annual fees.
- See notes to contract approval of 9/14/10 Comments are incorporated herein 5/13/11 See Phil Dolds memo

PLEASE FORWARD TO RISK MANAGEMENT. THANKS!

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)
Approved: ✓ Disapproved: ____ Date: 5/11/11 By: ____
Approved: ____ Disapproved: ____ Date: ____ By: ____

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).
Departments: ____
Approved: ____ Disapproved: ____ Date: ____ By: ____
Approved: ____ Disapproved: ____ Date: ____ By: ____

RECEIVED

Contract # 714-S0811, Amendment

CONTRACT ROUTING SHEET

Date Prepared: 8-25-10 **Need Date:** ASAP

PROCESSING DEPARTMENT:
Department: Sheriff
Dept. Contact: Sherry Bahlman
Phone #: 621-5690
Department Head Signature: Sherry Jo Bahlman

CONTRACTOR:
Name: TracNet Corporation
Address: 1277 Adobe Lane
Pacific Grove, CA 93950
Phone: 408 378-8005

[signature]

CONTRACTING DEPARTMENT: Sheriff
Service Requested: Software Product License Agreement
Contract Term: 3-25-08 to 6-30-12 Contract Value: 496,812.37
Compliance with Human Resources requirements? Yes: ____ No: ____
Compliance verified by: ____

COUNTY COUNSEL: (Must approve all contracts and MOU's)
Approved: as to form only Disapproved: ____ Date: 9/14/10 By: [signature]
Approved: ____ Disapproved: ____ Date: ____ By: ____

Contract [illegible] increasing the price by $25000.00 b/c Dept is adding software to existing TracNet Contract that was previously approved by Board in 1996, 1999, 2002, 2003, 2005, 2008, 2009. [illegible] Problems in contract are outlined in memos from this office dated Sept 16 1996 and in 1999 and should be reviewed by Co. purchasing agent

2010 [illegible] 12:04 COUNSEL

PLEASE FORWARD TO RISK MANAGEMENT. THANKS!

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)
Approved: ✓ Disapproved: ____ Date: 9/14/10 By: [signature]
Approved: ____ Disapproved: ____ Date: ____ By: ____

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).
Departments: ____
Approved: ____ Disapproved: ____ Date: ____ By: ____
Approved: ____ Disapproved: ____ Date: ____ By: ____

Rev. 12/2000 (GS-GVP)

OFFICE OF THE COUNTY COUNSEL
EL DORADO COUNTY
INTER-OFFICE MEMO

TO: Nancy Egbert, Administration
Sheriff's Department

FROM: Judith M. Kerr JK
Deputy County Counsel

DATE: April 27, 1999

RE: TracNet Corporation

This office has had an opportunity to review the TracNet Inc. contract that amends the current TracNet Records Managment and In Field Report Writing Software Product License Agreement signed by the Board on Septemeber 24, 1996. As you know, we are unable to approve the agreement since the agreement does not meet standard County requirements. We understand that the department will be forwarding this matter to the Board of Supervisors for review and action and as is the standard practice of this office, we recommend that the Board be apprised of any deviations from standard County contract language and any potential liability issues or problems that are reviewed in this memorandum.

This office previously disapproved the original 1996 Agreement with TracNet for the reasons outlined in the September 16, 1996, inter-office memorandum from Judith Kerr, Deputy County Counsel to Nancy Egbert, El Dorado County Sheriff's Department that is attached for your review. It appears that the 1996 agreement was subsequently approved by the Board with the modification of the identification of the contract administrator.

The new 1999 amendment is described as an upgrade to the 1996 agreement. The proposed amendment adds licensing, installation and training of the TracNet Computer Aided Dispatch (CAD) System, CLETS and CJIS interface into the server, integration of CAD-Record Mangement System (RMS) Incident Case, booking enhancement and regional informaation sharing system. Correspondence from TracNet indicates that it is also the intent of the parties to add the

CAD/RMS inquiry interface but as we have pointed out this feature does not appear to be set forth in the current version of the scope of services identified in Exhibit A. It is our understanding that the department will be clarifying this issue. We have also been advised that Information Services has reviewed the amendment and takes the position that the scope of services set forth in Exhibit A accurately identifies the duties, responsibilities and expectations of the parties from a technical perspective.

Since the contract amendment adds new programs to the 1996 License Agreement we will again be disapproving the amendment for the reasons outlined in our 1996 memorandum and for the additional reasons outlined below. Our discussion also includes suggestions for minor changes that may help to clarify provisions of the current proposed amendment.

Amendment One: Paragraph 2 refers to the Amendment "as an attachment to the existing TracNet "Proposal". Amendment One is an amendment to the existing TracNet "contract" previously approved and dated 09-24-96. It is also advisable to attach and incorporate by reference Exhibit A, Scope of Services, and Exhibit B, Payment Schedule, into the body of the amendment.

Amendment One refers to "Five days per year on-site training consecutive days on a mutually agreed date". There is no information in the 1996 contract or the proposed amendment that addresses the issue of training in regard to the software upgrades that are the subject of the amendment.

The level of auto insurance appears to be inadequate since reference is made to "automobile insurance as required by law". Auto insurance requirements are minimally set at $15,000/30,000 and would not provide the County with adequate coverage should the need arise. Other standard insurance provisions are also omitted from the agreement such as professional liability insurance. Risk should address these issues.

Exhibit A, Scope of Services: The "Solution", "Computer Aided Dispatch" refers to a "fully integrated system" and a description of the CAD or other system functions or components appears to follow. However, questions remain. Reference is made to "equivalent dispatch functions" yet it is not clear what this term means. In addition, access to the Automated Criminal Information System Software Licence was obtained under the terms of the 1996

agreement, and the CAD system and other functions and components are being described as an upgrade to the current software licensing agreement. Functions such as "Inquiry, 'I' Cases, Case Number Generation and regional inquiry" are "included" yet this does not appear to be a complete description of the CAD system functions or components that we may be obtaining. If the contract does not contain a full description of all CAD functions and components to be provided by the contractor, we suggest that this information be included in the contract scope of services terms.

Although the parties may intend to address some scope of services issues in Phase One "Final CAD Detailed Modifications Design Specs", it is not clear what expectations are contemplated in regard to Phase One. If specific modifications are envisioned, it is not clear how these modifications will be accomplished and what responsibilities the parties have in accomplishing their goals despite reference to things such as "modifications being made for specific operational requests from the Communication Center" on page 9.

There appear to be no testing provisions in the proposed amendment in regard to the amendment upgrades. We would advise that this be reviewed with IS.

Exhibit B, Payment Schedule. We do not recommend that payment be made upon signing of the contract in the absence of performance of services or delivery of goods. In addition, testing is recommended prior to payment for deliverables as appropriate.

The Payment Schedule does not address the payment schedule for maintenance. In addition, maintenace services are not specifically addressed in Exhibit A, Scope of Services. It is not clear what specific services are provided in maintaining the upgrades nor is it clear how the services will be paid. Will the $18,000 be paid at the end of the contract term or on a monthly or a yearly basis? Will these fees include training costs? The contract terms in regard to maintenance and training are unclear.

We suggest that the "Payable upon receipt of invoice-net 15 days" provision conform to standard County policy of payment within 30 days of invoice.

Finally, Contract/Employee/Self-Employed Status Determination Worksheet and Feasibility Analysis worksheet should be filled out.

JMK/ljb
Attachment

OFFICE OF EL DORADO COUNTY COUNSEL

INTER-OFFICE MEMORANDUM

TO: Nancy Egbert
El Dorado County Sheriffs' Department

FROM: Judith Kerr, Deputy County Counsel JK

RE: TracNet Software Product License Agreement

DATE: September 16, 1996

This memorandum is written as a follow-up to our most recent conversations with you and with Kip Rolle, TracNet Corporation, formerly known as Botog Corporation. As you know we were unable to reach agreement with Mr. Rolle in regard to various contract provisions involving warranty, indemnification and liability issues. The following overview of our continuing concerns is provided to assist you and the Board of Supervisors in determining whether to enter this contract.

We recommend that the contract contain a warranty provision that would enable the county to hold the contractor liable for defects in the product and accountable for problems that may arise in the maintenance agreement. Although the contract now contains a warranty provision, the current proposal provides the county with minimal and incomplete protection should a problem arise.

We have proposed a warranty provision that is tied to the written documents that have been provided to the County by the contractor since they should include the contractors representations about their product and services. The following provision was rejected by the contractor.

> 7.2 Licensor warrants, guarantees and insures that the software programs provided by Licensor are sufficient to operate as described in all TRACNET written documentation provided to Licensee, including but not limited to "Proposed Product Software License" documents, Software Product License contract documents and plans, maintenance and service agreements if applicable, all contract changes issued in accordance with the contract documents which may be delivered or issued after the Effective Date of this Agreement. In case of any conflict between this Agreement and any other contract document, this Agreement shall take precedence.

In no event will Licensor be liable for any damages caused by Licensee's failure to perform their responsibilities.

Section 7. EVALUATION PERIOD, as proposed by TracNet, provides, "This evaluation period is provided in place of any representations or warranties, except as described in Section 8." Section 7 provides a 60 day evaluation period on four laptop computers, four desk top computers and the host system (AS 400). Under section 7, the county is entitled to return the software during the evaluation period and would not be liable for payment of the license fee less a $400.00 charge. However, one time costs for the "installation and training, agency customization and modification, and data conversion are not refundable." In addition, cost for hardware, operating software, communications connections, other third party software and other costs "are not reimbursable by the Licensor." It is our understanding that these one time only costs will exceed $20,000.00.

Section 8. LIMITED WARRANTY, provision appears meaningless given the fact that the only remedy the county has for breach of the warranty is return of the software in the 60 day evaluation period as outlined in section 7. As a result, the limited warranty provides no additional options for the county should problems arise at some point beyond the 60 day evaluation period. The only option with or without the limited warranty provision, is return of the software during the 60 day evaluation period.

One problem with this proposal is that the evaluation period is for the limited period of 60 days. It is our understanding that the system will not be fully operational within 60 days since the test period does not involve the full complement of computers that will be using the system in the future. It is conceivable that problems may arise after the 60 day period. For example, problems associated with the amount of use of the program along with those connected with an increase in the number of computers using the system will not be covered in the 60 day period. In addition, problems associated with third party liability claims due to failure of the system may also arise in the future.

Sections 7 and 8 make it clear that TracNet accepts no responsibility or liability for any problems associated with their product or services that fall outside of the initial test period. In addition section 8 provides that "In no case shall LICENSOR's liability exceed the license fees paid for the right to use the Licensed Program." It is our understanding that the license fee is $85,000.00.

Section 9. FITNESS FOR PURPOSE AND SOFTWARE PERFORMANCE provides, "THE LICENSOR MAKES NO WARRANTIES, (OTHER THAN STATED IN SECTION 8-LIMITED WARRANT(Y)) EITHER EXPRESS OR IMPLIED, WITH RESPECT TO LICENSES SOFTWARE, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE."

As discussed previously, Section 8. LIMITED WARRANTY appears meaningless. As a result, the contract language appears to provide that the county take this product as is without warranty. The option of returning the product is limited to the 60 day evaluation period and as outlined above, with the exception of the license fee less $400.00, the county will responsible for all other costs associated with this product.

Another significant problem that arises involves Section 10. LIMITATION OF LIABILITY AND INDEMNIFICATION. Section 10 provides that the County will forever discharge and release TracNet from any obligation or responsibility related to the contract with the exception of obligations under the Maintenance Service Plan. Again, liability is allegedly limited to the amount of the license fees. However, any potential liability would appear to be offset by the hold harmless and indemnification language in the next paragraph.

The next paragraph in Section 10 provides that the County shall defend indemnify and hold TracNet harmless against all claims etc. in connection with the Software. In contrast, this office has recommended that TracNet provide the County with indemnification. This proposal has been rejected.

One other problem involves section 2.2 under section 2. GRANT OF LICENSE AND LICENSEE'S AGREEMENTS. Section 2.2 refers to payment of "the additional license fees" if the County uses the program on any additional computer systems. It is not clear what number of computers and laptops may utilize the software program since Exhibit A does not have a specific number of computers identified. We recommend that the county be certain to include numbers that will provide for expectations in growth. In addition, although we understand that additional fees will be charged for use of the program on additional computers the parties do not intend to include within the scope of this contract, it is not clear what are "the additional fees".

We recommend that pursuant to the mandatory provisions of Charter section 602, the county contract administrator be identified. We also recommend that standard notice to parties provisions be included.

Although we understand that TracNet may have a long history of successful working relationships with other clients, the contract as proposed subjects the County to considerable potential liability and out-of-pocket expense should problems arise.

JMK:ks
f:botog

EL DORADO COUNTY SHERIFF'S OFFICE
SHERIFF JOHN D'AGOSTINI

MEMORANDUM

TO: Don Ashton

FROM: Phil Dold

SUBJECT: Contract 714-so811 Amendment III

DATE: May 13, 2011

The purpose of this memo is the document responses to concerns raised by County Counsel pertaining to Amendment III of contract 714-SO811, by Judith Kurr dated 5/11/11.

1. "Are the design specifications yet to be determined?" No. A working prototype was presented to the department for review and evaluation. These features were specified during Phase I of the project completed earlier.
2. "I recommend that you attach and incorporate specific scope of services related to Design Specification Feature set." Amendment III specifically outlines 6 functional specifications that must be designed, tested and implemented in production as measurable performance criteria. These 6 functions are listed under the section titled "Scope of Phase II" in this amendment.
3. "Clarify whether the costs identified in Article V are one time only costs or annual costs." The costs are one time only. Item #4 in the cost section indicates that annual maintenance is included until June 30, 2013. At that time the main contact will have expired and annual maintenance for all Tracnet products will have to be renegotiated and a new contract signed. It will be incorporated in that new agreement then.
4. "See notes to contract approvel 9/4/10 – comments are incorporated herein" Comments on 9/14/10 state: "Contract increasing price by $25,000 because dept is adding software to existing Tracnet contract that was previously approved by Board in 1996, 1999, 2002, 2003, 2005, 2008, 2009, legal problems in contract are outlined in memos from this office dated Sept 16, 1999 and should be reviewed by Co. purchasing agent." County had issues with the original TracNet contract from the earliest date. As I understand it the concerns related to

indemnification and similar liability limitations. The contract was taken to BOS and approved not withstanding the legal weaknesses. TracNet would not perform services without County agreement with the contract. TracNet has an excellent performance record with the County extending back to 1996. This Amendment III has measurable milestones with contingent payments associated with each. The financial exposure to the County is minimal when compared to the past track record of the vendor and the proposed feature benefits.