

## **AGREEMENT FOR SERVICES #6368**

**THIS AGREEMENT**, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and TracNet Corporation, a California corporation duly qualified to conduct business in the State of California, whose principal place of business is 1277 Adobe Lane, Pacific Grove, California 93950; (hereinafter referred to as "Consultant");

### **R E C I T A L S**

**WHEREAS**, County has determined that it is necessary to obtain a consultant for certain programs and services relating to automated criminal information additional law enforcement/public safety operations and management; and

**WHEREAS**, Consultant has represented to County that it is specially trained, experienced, expert, and competent to perform the special services described in ARTICLE I Scope of Work; that it is an independent and bona fide business operations, advertises and holds itself as such, is in possession of a valid business license, and is customarily engaged in an independently established business that provides similar services to others; and County relies upon those representations;

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable state and local laws;

**WHEREAS**, County has determined that the provision of such services provided by Consultant are in the public's best interest and that these services are more economically and feasibly performed by outside independent Consultants, in accordance with El Dorado County Ordinance Code, Section 3.13.030(A), by El Dorado County Charter, Section 210(b)(6) and/or Government Code Section 31000;

**NOW, THEREFORE**, County and Consultant mutually agree as follows:

## ARTICLE I

**Scope of Work:** Consultant is engaged in the business of doing the services and tasks required under this Agreement, including those services and tasks that are identified in Exhibit A, incorporated herein and made by reference a part hereof, and those services and tasks that are reasonably necessary for the completion of the work identified in Exhibit A.

Consultant agrees to furnish, at Consultant's own cost and expense, all personnel, equipment, tools, materials, and services necessary to perform the services and tasks required under this Agreement, including those services and tasks that are identified in Exhibit A, and those services and tasks that are reasonably necessary for the completion of the work identified in Exhibit A.

Consultant shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. Consultant is responsible for ensuring that its employees, as well as any subcontractor if applicable, perform the services and tasks required under this Agreement accordingly.

The County and Contractor (together, the "Parties") acknowledge that the agreement for services #437-S1211 (#832) and all amendments thereto previously entered into by the Parties (collectively, the "Prior Agreement") are hereby replaced in their entirety except for the TracNet License Agreement, as amended hereto. The TracNet License Agreement is amended as shown in Exhibit A. This Agreement shall be effective upon the execution of this Agreement by the Parties. Upon such execution, all previous provisions of the Prior Agreement, except for the TracNet License Agreement, are hereby superseded and replaced herein and shall have no further force or effect.

## ARTICLE II

**Term:** This Agreement shall become effective upon final execution by both parties hereto and shall cover the period July 1, 2021, to June 30, 2026.

## ARTICLE III

**Compensation for Services:** For services provided herein, including any deliverables that may be identified herein, County agrees to pay Consultant upon the satisfactory completion and County's acceptance of work, in arrears. Payment shall be made within forty-five (45) days following County's receipt and approval of itemized invoices identifying the services rendered.

Annual Inquiry Only Option & Invoice # 1019 - \$36,362.47

Inquiry Only License 2021-2022 (\$21,817)  
Inquiry Only License 2022-2023 (\$21,817)  
Inquiry Only License 2023-2024 (\$21,817)  
Inquiry Only License 2024-2025 (\$21,817)  
Inquiry Only License 2025-2026 (\$21,817)

Also included is an additional \$50,000 for changes in scope of work as needed.

The total amount of this Agreement shall not exceed \$195,447.47 inclusive of all costs, taxes, and expenses.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices. Invoices shall be mailed to County at the following address:

County of El Dorado  
Sheriff's Office  
200 Industrial Drive  
Placerville, CA 95667  
Attn.: Accounting

or to such other location as County directs.

#### **ARTICLE IV**

**Taxes:** Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County. Consultant agrees that it shall not default on any obligations to County during the term of this Agreement.

#### **ARTICLE V**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

#### **ARTICLE VI**

**Consultant to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Consultant, and Consultant may perform similar work or services for others. However, Consultant shall not enter into any agreement with any other party or provide any information in any manner to any other party, that would conflict with Consultant's responsibilities or hinder Consultant's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

#### **ARTICLE VII**

**Confidentiality:** Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Sheriff's Office for the purpose of,

and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

#### **ARTICLE VIII**

**Assignment and Delegation:** Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

#### **ARTICLE IX**

**Independent Contractor:** The parties intend that an independent contractor relationship will be created by this contract. Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Consultant. Those persons will be entirely and exclusively under the direction, supervision, and control of Consultant.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Consultant performs the work or services for accomplishing the results. Consultant understands and agrees that Consultant lacks the authority to bind County or incur any obligations on behalf of County.

Consultant, including any subcontractor or employees of Consultant, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Consultant shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Consultant. Consultant shall not be subject to the work schedules or vacation periods that apply to County employees.

Consultant shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Consultant provides for its employees.

Consultant acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter and shall not make any agreements or representations on the County's behalf.

#### **ARTICLE X**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that

County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

#### **ARTICLE XI**

**Audit by California State Auditor:** Consultant acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, Consultant shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records, and documentation necessary to demonstrate performance under the Agreement.

#### **ARTICLE XII**

##### **Default, Termination, and Cancellation:**

- A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:
1. The alleged default and the applicable Agreement provision.
  2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may

extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

If County terminates this Agreement, in whole or in part, for default:

1. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Consultant shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Consultant, the excess costs to procure from an alternate source.
2. County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.
3. County may require Consultant to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
  2. A representation or warranty made by Consultant in this Agreement proves to have been false or misleading in any respect.
  3. Consultant fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
  4. A violation of ARTICLE XIX, Conflict of Interest.
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event Consultant ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services

rendered before the effective date of termination, as set forth in the Notice of Termination provided to Consultant, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Agreement. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.

### **ARTICLE XIII**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado  
Sheriff's Office  
200 Industrial Drive  
Placerville, California 95667

Attn.: Tasha Thomspson  
Captain

With a copy to:

County of El Dorado  
Chief Administrative Office  
330 Fair Lane  
Placerville, California 95667

Attn.: Michele Weimer  
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

TracNet Corporation  
1277 Adobe Lane  
Pacific Grove, CA 93950  
Attn.: Kip Rolle, President

or to such other location as Consultant directs.

### **ARTICLE XIV**

**Change of Address:** In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify County in writing as provided in ARTICLE XIII, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

### **ARTICLE XV**

**Indemnity:** The Indemnification contained in Section 9 of Exhibit A, TracNet Corporation Software Product License Agreement, shall control.

### **ARTICLE XVI**

**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County; and
  - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This

provision shall apply to the general liability policy.

- I. Consultant's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers, and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

## **ARTICLE XVII**

**Force Majeure:** Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, “cause that is beyond its control” includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

### **ARTICLE XVIII**

**Waiver:** No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

### **ARTICLE XIX**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and the Political Reform Act of 1974 (Section 87100 et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Consultant and performing work for County and who are considered to be consultant within the meaning of Title 2, California Code of Regulations, Section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County’s Conflict of Interest Code. County’s Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and County’s Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Consultant covenants that during the term of this Agreement neither it, or any officer or employee of Consultant, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Consultant becomes aware of a conflict of interest related to this Agreement, Consultant shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in Article XI, Default, Termination, or Cancellation.

### **ARTICLE XX**

**Nondiscrimination:**

- A. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, genetic information, military or veteran status, marital status, age, gender, gender identity, gender expression, sexual orientation, or sex; Consultant shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 11000 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant's signature executing this Agreement shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Sections 12990 and Title 2, California Code of Regulations, Section 11102.

#### **ARTICLE XXI**

**California Residency (Form 590):** If Consultant is a California resident, Consultant must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has a permanent place of business in California. Consultant will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Consultant during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

#### **ARTICLE XXII**

**Nonresident Withholding:** If Consultant is not a California resident, Consultant shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7%) percent of each payment made to the Consultant during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. Consultant shall indemnify and hold County harmless for any action taken by the California Franchise Tax Board.

### **ARTICLE XXIII**

**County Payee Data Record Form:** All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

### **ARTICLE XXIV**

**Business License:** County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Consultant warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

### **ARTICLE XXV**

**Licenses:** Consultant hereby represents and warrants that Consultant and any of its subconsultants employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Consultant and its subconsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Consultant and its subconsultants shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

### **ARTICLE XXVI**

**California Forum and Law:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

### **ARTICLE XXVII**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Tasha Thompson, Captain, or successor.

### **ARTICLE XXVIII**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

### **ARTICLE XXIX**

**ELECTRONIC SIGNATURES:** Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such

record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

#### **ARTICLE XXX**

**Partial Invalidity:** If any provision, sentence, or phrase of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, sentences, and phrases will continue in full force and effect without being impaired or invalidated in any way.

#### **ARTICLE XXXI**

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

#### **ARTICLE XXXII**

**Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

#### **ARTICLE XXXIII**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates indicated below.

**-- COUNTY OF EL DORADO --**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Board of Supervisors  
"County"

Attest:  
Kim Dawson  
Clerk of the Board of Supervisors

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Deputy Clerk

**-- TRACNET CORPORATION**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Kip Rolle  
President  
"Consultant"

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Name  
Corporate Secretary

EXHIBIT A  
TracNet Corporation  
Software Product License Agreement

This is a Software Product License Agreement between TracNet Corporation, a California Corporation with its principal place of business at 1277 Adobe Lane, Pacific Grove, CA. 93950 (called "LICENSOR") and the El Dorado County Sheriff's Office located at 200 Industrial Drive, Placerville, CA 95667 ("LICENSEE").

## 1. DEFINITIONS OF TERMS USED

1.1 "Computer System" is the specific combination of a computer central processing unit (or units), computer terminals, and other related devices listed in Attachment A, Section 2, to this License in the configuration described. LICENSEE is only licensed to use this Licensed Program on that system. Use on any other system or configuration requires a supplementary license.

1.2 "Licensed Program" is the set of copyrighted, computer programs listed in Attachment A, Section 1, and any additions or enhancements to the programs that LICENSOR may provide from time to time regardless of the form in which LICENSEE may subsequently use them.

1.3 "Documentation" means LICENSOR's Licensed Program manual and any written or printed technical material provided by LICENSOR with the Licensed Program to explain the operation of the Licensed Program and aid in its use.

1.4 "License" means this License Agreement and the rights and obligations which, it creates under the United States Copyright law and other applicable state or federal law.

1.5 "Derivative" means any computer software program which may be developed containing any part of the Licensed Program, regardless of the form of the resulting code, the media it is carried on, or its intended use.

1.6 "Trade Secret" means the program structure, logic, data structures, design, processes, procedures, formula and algorithms contained in the ordered set of instructions which together constitute the Licensed Program.

## 2. GRANT OF LICENSE AND LICENSEE'S AGREEMENTS

2.1 In consideration of LICENSEE's payment of the license fee for this License and of LICENSEE's agreement to abide by the terms and conditions of this License, LICENSOR grants LICENSEE a nonexclusive nontransferable right to use and display the Licensed Program on the computer system identified in Attachment A, so long as LICENSEE complies with the terms of this License. LICENSOR reserves all rights not expressly granted to LICENSEE.

2.2 LICENSEE agrees to pay LICENSOR the additional license fees due if LICENSEE uses the Licensed Program on any additional computer systems. Such additional license fees shall be due and payable within thirty (30) days of the commencement of LICENSEE's use of the Licensed Program on any additional computer systems.

2.3 LICENSEE agrees to take reasonable steps to protect the Licensed Program from theft or from use by others contrary to the terms of this License. Only those persons in LICENSEE's organization having a need to use the Licensed Program in the normal course of their employment are authorized to use the Licensed Program. LICENSEE agrees to take reasonable steps not to disclose or use any Trade Secrets which are provided to LICENSEE except in accordance with the terms of this License. In addition, LICENSEE agrees not to disassemble, decompile or otherwise reverse engineer the Licensed Program. LICENSEE agrees to notify LICENSOR of any misuse and assist in ensuring provisions of this agreement are not violated.

2.4 LICENSEE agrees either to destroy (with written notification to LICENSOR) or return, at the option of LICENSEE, the original and all existing copies of the Licensed Program and Documentation within fifteen (15) days after the effective date of any termination.

### 3. OWNERSHIP OF LICENSED PROGRAM

LICENSEE may be deemed to own the magnetic or other physical media on which the Licensed Program is originally or subsequently recorded or fixed, but an express condition of this License is that copyright owner shall retain ownership of all copies of the Licensed Program recorded on any media. This License is not a sale of the Licensed Program data content recorded on the copies delivered to LICENSEE or any subsequent copy.

### 4. POSSESSION AND COPYING OF THE LICENSED PROGRAM

LICENSEE agrees to make no more than three (3) copies of the Licensed Program for archival or backup purposes only, all of which copies (together with the original) shall be kept in the possession or direct control of LICENSEE. LICENSEE shall label each backup copy of the Licensed Program with the serial number, program name, version number and the copyright notice, in the same form as they appear on the original licensed copy. In addition, LICENSEE shall maintain a record of the location of all such copies and shall make such records available to LICENSOR upon request. LICENSEE shall erase or otherwise destroy any copy of the Licensed Program contained on any media before the media is reused or discarded.

## 5. TRANSFER OR REPRODUCTION OF LICENSED PROGRAM

5.1 LICENSEE is NOT licensed to reproduce the Licensed Program except to the extent necessary to use it as authorized by this License Agreement. LICENSEE may not rent, lease, transfer, network, or distribute the Licensed Program to another agency, except as specifically provided in this agreement.

5.2 The Licensed Program may only be used on the Computer System(s) listed on "Attachment A", Section 2, and any subsequent amendments thereto.

## 6. DERIVATIVES OR MODIFICATIONS TO THE LICENSED PROGRAM

LICENSEE is prohibited from making any modifications to the Licensed Program and from creating any Derivative of the Licensed Program except as described herein.

## 7. LIMITED WARRANTY

TracNet warrants the version of software which is initially delivered is sufficient to operate as described in the written Proposal, Software Product License Agreement and Maintenance Service Plan, if applicable, and to be free of software "bugs" for a period of 30 days from the date of software installation on the Licensee's CPU. To evoke this warranty, the LICENSEE must, within the warranty period, notify TracNet in writing of the problems encountered. TracNet will, within a reasonable time after notification by the LICENSEE, affect change in the software. The sole remedy for LICENSEE, should LICENSEE determine the software is not sufficient to operate as described in the written proposal or a "bug" is not fixed in LICENSEE's opinion, is to return the software to TracNet within 30 days of installation. In case of any conflict between this Agreement and this Section and any other contract document or contract section, this Agreement and Section shall take precedence. In no event will Licensor be liable for any damages caused by Licensee's failure to perform their responsibilities. In no case shall LICENSOR's liability exceed the license fees paid for the right to use the Licensed Program.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY OTHER WARRANTIES WHETHER ORAL OR IMPLIED. THE AGENTS AND EMPLOYEES OF TracNet ARE NOT AUTHORIZED TO WARRANT THE SOFTWARE AND TECHNICAL INFORMATION LICENSED HERewith. ACCORDINGLY, ANY SUCH STATEMENTS WHETHER ORAL OR WRITTEN SHOULD NOT BE RELIED UPON. THIS WARRANTY IS NULL AND VOID IF THE VERSION OF THE CODE HAS BEEN MODIFIED BY THE LICENSEE OR ANY OF HIS AGENTS IN ANY MANNER FROM ITS ORIGINAL CONTENT, OR, IF ANY HARDWARE OR THIRD PARTY SOFTWARE OTHER THAN RECOMMENDED AND APPROVED IN WRITING BY TracNet ARE USED IN CONJUNCTION WITH THE LICENSED SOFTWARE.

## 8. FITNESS FOR PURPOSE AND SOFTWARE PERFORMANCE

LICENSEE agrees to assume the entire responsibility for the evaluation of the Licensed Program and LICENSEE's determination that the Licensed Program is suited to LICENSEE's needs and performs to LICENSEE's satisfaction. LICENSOR MAKES NO WARRANTIES, (OTHER THAN STATED IN SECTION 7 - LIMITED WARRANTY) EITHER EXPRESS OR IMPLIED, WITH RESPECT TO LICENSED SOFTWARE, IT MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. The entire risk as to quality and performance of Licensed Software is with LICENSEE, and LICENSEE assumes the cost of any and all incidental or consequential damages. LICENSEE assumes the entire cost of all necessary servicing, repairs or corrections, except as provided under Section 7 - Limited Warranty, or as may be covered in a separate Maintenance Service Plan, if purchased.

## 9. LIMITATION OF LIABILITY AND INDEMNIFICATION

LICENSEE shall defend, indemnify and hold harmless TracNet Corporation and its officers, agents and employees from and against any and all claims, liabilities, suits, damages, liability for damages of every kind and description and any losses whatsoever, (including damages to property and injuries to or death of persons, court costs, and reasonable attorney fees and costs) occurring or resulting to any and all persons, firms or corporations on account of damages, injuries to or death of any person, including but not limited to workers, employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with LICENSEE'S use or non-use of Licensed Software Programs or any derivative under this agreement, regardless of the existence or degree of fault or negligence on the part of TracNet Officers, subcontractor(s) and employee(s) of any of these, except for the active negligence of the TracNet Corporation, its officers and employees.

In no event will LICENSOR be liable for any special, indirect or consequential damages or any damages whatsoever resulting from loss of use, data or profits, whether in an action of contract, negligence, or other tort action arising out of or in connection with the use or performance of the Licensed Software Programs, whether or not its use is under this Software License. LICENSEE forever discharges and releases LICENSOR, its successors and assigns from any losses that may result from its use. Except as provided under Section 7 - Limited Warranty 30 day period, LICENSEE forever discharges and releases LICENSOR, its successors and assigns from any obligation or responsibility to correct problems or errors in the Licensed Program, except as may be provided for under the Maintenance Service Plan. In no case shall LICENSOR's liability exceed the license fees paid for the right to use the Licensed Program.

## 10. MAINTENANCE AND SUPPORT OF THE LICENSED PROGRAM.

Should LICENSEE desire any maintenance, support, or modifications to the Licensed Program not covered under a current MSP agreement with TracNet Corporation, LICENSEE may request such services from LICENSOR, and LICENSOR may, but need not, provide the requested services. Any such services will be provided at LICENSOR's then prevailing rates, currently \$125.00 per hour, for the desired services or as otherwise agreed in writing between the parties. Any additions or modifications to the Licensed Program that may be provided by LICENSOR to LICENSEE shall be subject to the same terms, conditions and restrictions as the original copy of the Licensed Program delivered under this Agreement.

## 11. TERM AND TERMINATION.

11.1 This License shall last as long as LICENSEE continues to use the Licensed Program.

11.2 LICENSOR, its successors, or assigns may terminate this License Agreement on thirty (30) day's written notice should LICENSEE violate any of the provisions of this License and fail to cure them. Prior to issuance of the termination notice, Licensor shall provide ten (10) days written notice of intent to terminate, enumerating the reasons for termination. LICENSEE shall have sixty (60) days to cure the enumerated violations. Such termination shall be effective upon receipt by LICENSEE of a final notice of termination following the expiration of the cure period.

11.3 LICENSEE may terminate this License Agreement at any time for its convenience by giving thirty (30) days written notice of termination to LICENSOR, its successors, or assigns and destroying (with written certification of destruction) or returning all copies of the Licensed Program and Documentation.

11.4 The parties to this agreement recognize and acknowledge that LICENSEE is a political subdivision of the State of California. As such, LICENSEE is subject to the provisions of Article XVI, Section 18, of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of business, LICENSEE will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year. Notwithstanding any other provisions of this agreement to the contrary, LICENSEE shall give notice of cancellation of this agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this agreement. Upon the effective date of such notice, this agreement shall be automatically terminated and LICENSEE released from any further liability hereunder. In addition to the above, should the Governing Board, during the course of a given year for financial reasons, reduce or order a reduction in the budget for any Department for which services were

contracted to be performed, pursuant to this paragraph in the sole discretion of the Board, this agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## 12. TAXES

LICENSEE shall pay all taxes relating to the transfer of Licensed Program from LICENSOR to LICENSEE. The prices stated are exclusive of any federal, state, municipal or other governmental taxes, duties, excise taxes or tariffs now or hereinafter imposed on the licensing, production, storage, sale, transportation, import, export or use of the Licensed Program. Such charges shall be paid by LICENSEE, or in lieu thereof, LICENSEE shall provide an exemption certificate acceptable to LICENSOR and the applicable taxing authority. Should an audit of either party by governmental authorities result in a claim that any such charges are due, LICENSEE shall pay such charges, together with interest, penalties and other costs, on demand by LICENSOR.

## 13. DISPUTE RESOLUTION

13.1 Both parties agree to meet and attempt to resolve any controversy or claim arising out of, relating to, or connected with this Agreement, or the breach thereof, prior to pursuing legal action. Should resolution not be achieved and legal action required, both parties agree to discuss and explore various legal remedies to determine the best procedure to settle the controversy.

13.2 Should resolution not be achieved and legal action required, both parties agree to discuss and explore other various remedies, including mediation and arbitration or other various legal remedies, prior to filing a lawsuit to determine the best procedure to settle the controversy.

13.3 Venue – Should legal proceedings be required, both parties agree litigation will occur in the Monterey County, California, venue.

## 14. GENERAL PROVISIONS

14.1 This Agreement shall in all respects be interpreted, construed in accordance with, and governed by the internal laws of the State of California, without regard to the rules on conflict of laws. The place of making and the place of performance for all purposes shall be Pacific Grove, California, regardless of the actual place of execution or performance. In the event of any litigation between the parties, the parties stipulate that the sole and exclusive jurisdiction for such action shall be in the Municipal or Superior Courts for the County of Monterey, California or the United States District Court for Monterey, District of California. Both parties agree that the above referenced courts shall have personal and exclusive jurisdiction over the parties for any dispute arising out of this Agreement that is not covered by the Arbitration provision.

14.2 This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and merges all prior discussions between them. LICENSEE acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by both parties to this Agreement.

14.3 Any notice required or permitted by this Agreement shall be in writing and shall be hand delivered, sent by prepaid, registered air mail, or by courier, addressed to the other party at the address shown at the beginning of this Agreement or at such other address for which such party gives notice hereunder. Such notice shall be deemed to have been given on the earlier of the date of actual delivery or five (5) days after deposit in the mail.

14.4 Nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

14.5 If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

14.6 Paragraph headings are for convenience only and shall not be considered in the interpretation of this Agreement.

14.7 LICENSOR and LICENSEE are not representatives or agents of the other and neither party shall have any power to assume any obligations on behalf of the other.

14.8 This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

14.9 All the referenced Attachments are included by reference in this Agreement.