

ORIGINAL

AGREEMENT FOR SERVICES # 568-S0711

THIS AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Jeskell, Inc., a California Corporation, a Premier IBM Business Partner, duly qualified to conduct business in the State of California, whose principal place of business is 155 S Moffett Park Drive, Suite 104, Sunnyvale, CA 94089, (hereinafter referred to as "Contractor");

WITNESSETH

WHEREAS, County has determined that it is necessary to obtain a Contractor to provide on-going maintenance for the IBM software products used with the IBM z9 zServer for the Information Technologies Department; and

WHEREAS, Contractor has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

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

WHEREAS, County has determined that the provision of these services provided by Contractor is in the public's best interest, and that these services are more economically and feasibly performed by outside independent contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, County and Contractor mutually agree as follows:

ARTICLE I

Scope of Services: Contractor, by virtue of being a Premier IBM Business Partner and authorized to represent IBM in software maintenance, agrees to perform services necessary to provide on-going maintenance for the IBM software products used with the IBM z9 zServer for the Information Technologies Department. The software maintained shall include, but not be limited to, Security Server, SDSF, RMF, GDDM-PGF, DFSORT, DFDSShsm, C++, and z/OS Base. Services shall include, but not be limited to, software upgrades; software problem reporting and resolution; downloads of software fixes; access to IBM knowledgebase; and 24 hour a day, seven day a week, and 365 day a year access to the IBM ResourceLink technical support system.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall cover the period of February 1, 2007 through January 31, 2010.

ARTICLE III

Compensation for Services: For services provided herein, County agrees to pay Contractor annually. For the purposes of this Agreement, the billing rate shall be in accordance with Exhibit "A", marked "Fee Schedule", incorporated herein and made by reference a part hereof, and payments shall be rendered as follows:

- For the period of February 1, 2007 through June 30, 2007, County agrees to pay Contractor the sum of \$32,904.17 upon execution of this Agreement, and within (30) days following the County's receipt and approval of itemized invoice(s) identifying services rendered.
- For the period of July 1, 2007 through June, 30 2008, County agrees to pay Contractor the sum of \$83,554.17, effective July 1, 2007, and within (30) days following the County's receipt and approval of itemized invoice(s) identifying services rendered.
- For the period of July 1, 2008 through June, 30 2009, County agrees to pay Contractor the sum of \$89,972.00, effective July 1, 2008, and within (30) days following the County's receipt and approval of itemized invoice(s) identifying services rendered
- For the period of July 1, 2009 through January 31, 2010, County agrees to pay Contractor the sum of \$52,483.67, effective July 1, 2009, and within (30) days following the County's receipt and approval of itemized invoice(s) identifying services rendered.

Total amount of this Agreement shall not exceed \$258,914.00.

ARTICLE IV

Confidentiality

All data, together with any knowledge otherwise acquired by Contractor during the performance of services provided pursuant to this Agreement, shall be treated by Contractor and Contractor's staff as confidential information. Contractor shall not disclose or use, directly or indirectly, at any time, any such confidential information. If the Contractor receives any individually identifiable health information ("Protected Health Information" or "PHI"), the Contractor shall maintain the security and confidentiality of such PHI as required by applicable laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder.

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

Contractor 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 agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

ARTICLE VII

Assignment and Delegation: Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor 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 VIII

Independent Contractor/Liability: Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

ARTICLE IX

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado 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 the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE X

Default, Termination, and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. 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 on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Contractor 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 upon seven (7) calendar days written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to

the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor 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 XI

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 addressed as follows:

COUNTY OF EL DORADO
INFORMATION TECHNOLOGIES DEPARTMENT
360 FAIR LANE
PLACERVILLE, CA 95667
ATTN: STEVE FEATHERSTON

or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

JESKELL, INC.
155 A MOFFETT PARK DRIVE
SUITE 104
SUNNYVALE, CA 94089

or to such other location as the Contractor directs.

ARTICLE XI

Indemnity: The Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County 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 the Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XII

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Contractor agrees that the insurance required above 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, Contractor 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 the 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 Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor 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, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor 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 the 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. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor 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. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for the protection of the County.

ARTICLE XIII

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XIV

Interest of Contractor: Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XV

California Residency (Form 590): All independent Contractors providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XVI

Taxpayer Identification Number (Form W-9): All independent Contractors or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XVII

County Business License: 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 Code Section 5.08.070.

ARTICLE XVIII

Administrator: The County Officer or employee with responsibility for administering this Agreement is Steve Featherston, Assistant Director, Information Technologies Department, or successor.

ARTICLE XIX

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 to the obligations set forth herein.

ARTICLE XX

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

ARTICLE XXI

Venue: 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 XXII

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.

REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:

By: Steve Featherston Dated: 2-14-2007
Steve Featherston
Assistant Director
Information Technologies Department

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: Jacqueline Nilius Dated: 2/14/07
Jacqueline Nilius
Director
Information Technologies Department

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

**Chairman
Board of Supervisors
"County"**

**ATTEST:
Cindy Keck, Clerk
of the Board of Supervisors**

By: _____ **Date:** _____

Deputy Clerk

-- CONTRACTOR --

Dated: _____

**JESKELL, INC.
A CALIFORNIA CORPORATION**

By: _____

**Javed Khan
President and CEO
"Contractor"**

By: _____

Corporate Secretary

Dated: _____

Exhibit "A"
Fee Schedule

IBM Operating Software Maintenance

Item	Description	2007	2008	2009	Total Agreement
5694-A01	Security Server	\$3,375.53	\$3,845.80	\$3,845.80	\$11,067.13
5694-A01	SDSF	\$2,634.17	\$3,001.16	\$3,001.16	\$8,636.50
5694-A01	RMF	\$2,153.08	\$2,453.05	\$2,453.05	\$7,059.18
5694-A01	GDDM-PGF	\$2,034.78	\$2,318.26	\$2,318.26	\$6,671.31
5694-A01	DFSORT	\$2,437.00	\$2,776.53	\$2,776.53	\$7,990.06
5694-A01	DFDSShsm	\$8,478.25	\$9,659.43	\$9,659.43	\$27,797.12
5694-A01	C++	\$5,331.44	\$6,074.21	\$6,074.21	\$17,479.86
5694-A01	z/OS Base	\$52,525.74	\$59,843.56	\$59,843.56	\$172,212.85
Total		\$78,970.00	\$89,972.00	\$89,972.00	\$258,914.00

Payments Adjusted by Fiscal Year

FY 06/07	FY 07/08	FY 08/09	FY 09/10	Total Agreement
\$32,904.17	\$83,554.17	\$89,972.00	\$52,483.67	\$258,914.00