

ORIGINAL

**AMENDMENT 2
OF THE
MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN
THE CALIFORNIA STATEWIDE AUTOMATED WELFARE SYSTEM
CONSORTIUM IV AND THE COUNTY OF El Dorado**

INTRODUCTION

The purpose of this Amendment of the MOU is to delineate the areas of understanding and agreement between the Consortium and the County with regard to transfer of property. The parties to this MOU wish to make provisions for the transfer of Local Equipment from the Consortium to the County and to provide a mechanism whereby the County can transfer Impaired Devices to Consortium in exchange for operable equipment from Consortium. Additionally, this Amendment delineates the areas of understanding and agreement between the Consortium and the County with regard to the budgeting, accounting, claiming, and procurement procedures for Hardware and Software (HW/SW) and Separate Services during migration Development and Implementation (D&I) and C-IV Maintenance and Operations (M&O). This Amendment is conditioned on the Consortium entering into the same Amendment with other migrating member counties.

NOW THEREFORE, the MOU is amended as follows, effective as of the date of the signature by County below:

I. DEFINITIONS

Section I is amended to include the following definitions:

- 1.19 **“Local Equipment”**: Work station equipment, including monitors, keyboards, mice and printers which were obtained by County and contributed to Consortium for System use.
- 1.20 **“Impaired Device”**: Any equipment that is used by County for System use which has become, whether by damage or other reason, incapable of performing its intended System purpose.
- 1.21 **“Separate Services”**: Services which are related to the System, obtained by Counties from Accenture.

II. COUNTY

Section II is amended to include:

2.5 Claiming During Migration Development and Implementation (D&I) and C-IV Maintenance and Operations (M&O).

- 2.5.1 The County will be responsible for the costs of HW/SW for new County Sites or the expansion of existing Sites, refresh of existing local HW/SW (as deemed necessary by the County) and Separate Services requested by the County. The County will prepare and submit Advance Planning Documents (APDs) to the State for approval of these items.
- 2.5.2 The Consortium's Controller shall act as fiscal agent for the Consortium and perform accounts payable functions that relate to vendor billings and overall project costs, including Separate Services and HW/SW purchased by the County. The Consortium will invoice each County monthly for the County specific costs incurred in accordance herewith.
- 2.5.3 The Consortium M&O Project costs will be budgeted in the California Department of Social Services (CDSS) Local Assistance item for Automation Projects. The budget will be based on costs included in the most current approved C-IV M&O Implementation Advance Planning Document Update (IAPDU). The budget will reflect total costs for the Consortium, not costs for each County.
- 2.5.4 Each of the C-IV Counties will be required to pay its applicable share of the Migration D&I Budget and the C-IV M&O Project Budget, in accordance with Section 2.7 hereof and Section 5.02 of the Joint Exercise of Powers Agreement, at the time and in the manner specified by the Consortium. Such County Project Costs, excluding specific County-incurred costs, will be paid to the Consortium.
- 2.5.5 The Consortium Migration D&I Project costs will be budgeted in the California Department of Social Services (CDSS) Local Assistance item for Automation Projects. The budget will be based on costs included in the most current approved Migration D&I IAPDU. The budget will reflect total costs for the Consortium, not costs for each County.
- 2.5.6 If, during the term of this MOU, the County is unable to appropriate sufficient funds to meet its obligations hereunder, and there are no other legal procedures or available funds by or with which such obligations

can be met, County shall have the right to terminate this MOU and withdraw its membership from the Consortium effective as of the end of that fiscal year by adoption of a resolution of withdrawal by County's Board of Supervisors, provided that a copy of said resolution has been served on all other county members of the Consortium by May 31st of that fiscal year. Withdrawal under this subsection shall not relieve the County of any financial obligations or liabilities arising prior to the effective date of the withdrawal.

2.6 Hardware/Software (HW/SW).

- 2.6.1 The County will prepare and submit to the Consortium a change order to request a cost estimate for additional HW/SW. This request will identify the number of additional HW/SW anticipated for each County Site. The request will specify any special needs or considerations for the items requested. These special needs may include, but are not limited to, monitor sizes, configurations, ergonomics, specialized software, or color printers. The request will also identify whether the County will install all, some, or none of the items requested.
- 2.6.2 Once the applicable APD is approved, the County will be responsible for providing written approval, from the State, of the cost estimate to the Consortium. The Consortium will not take any steps to authorize the procurement of the HW/SW until such written authorization is provided. Any increases in the cost estimate must also be approved in writing by the County.
- 2.6.3 The parties recognize that all HW/SW procured in accordance with this MOU will become County property.
- 2.6.4 The County will be responsible for the installation of all electrical and data cabling to support the necessary HW/SW at the County Site(s). Electrical cabling will be installed in compliance with the County's current practices for such installations. Data cabling will be installed and tested per the standards identified in the C-IV System Operations and Support Plan (SOSP). Data cabling test results will be provided to the Consortium for their review.
- 2.6.5 The County will be responsible for the costs associated with the ordering and installation of data circuits between the local County Site(s) and the C-IV Production Data Center. The County will work with Accenture

Staff to ensure that the data circuit is of appropriate bandwidth in accordance with C-IV specifications.

2.6.6 Following the receipt, installation and acceptance of the additional HW/SW, the County will transfer to the Consortium an amount sufficient to satisfy the Consortium's actual expenditures for the HW/SW based on invoice documentation provided by the Consortium.

2.8 Separate Services.

2.8.1 County may prepare and submit to the Consortium a change order to request Separate Services to be performed by Accenture. This request will identify the type(s) of Separate Services sought for each County Site and specify any special needs or considerations for the requested Separate Services.

2.8.2 The County will ensure that such Separate Services are performed in a timely manner and in compliance with the cost estimate provided by Accenture. The County will communicate with the Consortium regarding the progress of the Separate Services and any issues that may affect the Consortium or the C-IV System.

III. CONSORTIUM

Section III is amended to include:

3.7 Hardware/Software (HW/SW).

3.7.1 Upon receiving a change order request from the County for HW/SW, the Consortium will forward the change order to Accenture for a cost estimate that will be provided in accordance with the procedures in the Consortium agreement with Accenture, including estimates with all appropriate costs for the items specified in the request as well as all other HW/SW that is necessary to ensure compliance with C-IV specifications. Such other HW/SW may include, but is not limited to, network switches, routers, and servers. The Consortium Staff will forward the estimate to the appropriate County Staff following receipt of the estimate from Accenture Staff.

3.7.2 The Consortium Staff will authorize the purchase of the HW/SW after approval of the cost estimate from the County. The Project Staff will ensure that the requested items are being ordered in a timely manner and

in compliance with the approved cost estimate.

3.7.3 All HW/SW procured under this MOU will become County property. The County will track and manage such property in accordance with mutually agreed upon inventory and accounting practices and procedures. Consortium shall retain the right to operational management of all HW/SW in accordance with Consortium procedures.

3.7.4 Except as otherwise mutually agreed upon in writing, the Consortium is responsible for all on-going maintenance and licensing of all HW/SW procured or otherwise obtained under this MOU. The Consortium will budget such additional costs in its annual expenditures.

3.9 Separate Services.

3.9.1 Upon receiving a change order request from the County for Separate Services, the Consortium will forward the change order to Accenture for a cost estimate that will be provided in accordance with the procedures in the Consortium agreement with Accenture, including estimates with all appropriate costs for the services specified in the request. The Consortium will also ensure that such services are appropriately related to the C-IV System. Once the Consortium receives the cost estimate from Accenture, the Consortium will forward the estimate to the County.

3.9.2 The Consortium will work with the County to ensure that such Separate Services are performed in a timely manner and in compliance with the cost estimate provided by Accenture.

IV. MUTUAL RESPONSIBILITES

Section IV is amended to include:

4.7 Claiming During Development and Implementation (D&I) and Maintenance and Operations (M&O). The Consortium will allocate the project budget to each County in accordance with Section 2.7 hereof and Section 5.02 of the Joint Exercise of Powers Agreement so that individual Counties may be responsible for tracking budget to actual variance during the fiscal year. The Consortium will continue to evaluate total Project expenditures and budget variances. The annual budget requests and IAPD updates will be prepared by the C-IV Project along with County Personnel.

4.8 Transfer of Local Equipment and Transfer of Impaired Devices.

4.8.1. Transfer of Local Equipment.

- A. Transfer of Local Equipment. Consortium conveys, assigns and transfers to County, and County hereby accepts from Consortium, all right, title and interest of Consortium in and to all of the Local Equipment on the terms and conditions set forth herein.
- B. Liability for Local Equipment. County shall be responsible for any liabilities or obligations associated with or related to the Local Equipment that occur after the Local Equipment Transfer Date (as defined below in section 4.8.3).

4.8.2. Transfer of Impaired Devices.

- A. Transfer of Impaired Devices. County conveys, assigns and transfers to Consortium, and Consortium hereby accepts from County, all right, title and interest of County in and to all of the Impaired Devices on the terms and conditions set forth herein.
- B. Liability for Impaired Devices. Consortium shall be responsible for any liabilities or obligations associated with or related to the Impaired Devices that occur after the Impaired Device Transfer Date (as defined below in section 4.8.3).

4.8.3. Transfer Events.

- A. Consortium to County. The transfer of Local Equipment from Consortium to County shall be effective as follows (the "Local Device Transfer Date"):
 - i. On execution by Consortium's Board of the order authorizing such transfer for the 35 migration Counties in the Consortium, currently scheduled for JUNE 2010
_____, and;
 - ii. On an ongoing basis, when Consortium delivers a new Local Equipment device and when Consortium and County execute an Equipment Transfer.
- B. County to Consortium. The transfer of each Impaired Device

from County to Consortium shall be effective on an ongoing basis, when Consortium and County execute an Equipment Transfer.

4.8.4. Disclaimers of Representations and Warranties.

- A. CONSORTIUM. CONSORTIUM IS TRANSFERRING, ASSIGNING AND CONVEYING ALL LOCAL EQUIPMENT ON AN "AS-IS" BASIS TO COUNTY. CONSORTIUM MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESSED OR IMPLIED, REGARDING THE LOCAL EQUIPMENT AND EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE FOR THE LOCAL EQUIPMENT, AS WELL AS ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE. CONSORTIUM DOES NOT REPRESENT OR WARRANT THAT THE LOCAL EQUIPMENT WILL MEET COUNTY'S REQUIREMENTS, OR THAT THE LOCAL EQUIPMENT WILL BE FREE FROM DEFECTS, DEFICIENCIES, PROBLEMS OR ERRORS.

- B. COUNTY. COUNTY IS TRANSFERRING, ASSIGNING AND CONVEYING THE IMPAIRED DEVICES ON AN "AS IS" BASIS TO CONSORTIUM. COUNTY MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, REGARDING THE IMPAIRED DEVICES AND EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE FOR THE IMPAIRED DEVICES, AS WELL AS ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE. COUNTY DOES NOT REPRESENT OR WARRANT THAT THE IMPAIRED DEVICES WILL MEET CONSORTIUM'S REQUIREMENTS, OR THAT THE IMPAIRED DEVICES WILL BE FREE FROM DEFECTS, DEFICIENCIES, PROBLEMS OR ERRORS.

- C. **Manufacturer's Warranties.** The disclaimers in Sections 4.8.4(a) and 4.8.4(b) above notwithstanding, each party assigns to the other party all of the manufacturer's warranties and indemnities relating to the Local Equipment and Impaired Devices transferred pursuant to the provisions set forth herein. Such assignment shall take effect upon the applicable Transfer Date and is subject to all of the terms and conditions imposed by the manufacturers.

4.8.5. **Limitations of Liability and Exclusive Remedies.**

- A. **Limitations and Disclaimers of Liability.** In no event shall County, Consortium, the counties comprising Consortium, or their contractors, agents, officers, directors, or employees be liable for any losses, expenses, claims or damages of any kind or nature including, but not limited to, direct, indirect, consequential, special or incidental damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of business opportunity, loss of business information, or other pecuniary loss) arising out of the use or inability to use the Local Equipment or Impaired Devices, any breach of this property transfer by either party, or any other matter hereunder, even if a party has been advised of the possibility of such damages.
- B. **Exclusive Remedy of County.** County acknowledges that Consortium is providing the Local Equipment under applicable state policy and County agrees that County's sole and exclusive remedy for any inability to use a Local Equipment device or any other matter under this property transfer shall be that the Consortium shall, in Consortium's discretion, repair or replace the Local Equipment device.
- C. **Exclusive Remedy of Consortium.** Consortium acknowledges that County is providing the Impaired Devices as required under applicable state policy and Consortium agrees that Consortium's sole and exclusive remedy for any inability to use an Impaired Device or any other matter under this property transfer shall be that Consortium shall pursue any remedy that has been transferred or assigned by County from the Impaired Device's manufacturer.

4.8.6. Responsibility for Software Licenses.

- A. County. County hereby appoints Consortium as County's agent for the sole purpose of removing any software contained on any and all Impaired Devices County transfers to Consortium. County shall retain all rights and obligations associated with any license to software contained on any Impaired Device that County transfers to Consortium. County acknowledges and accepts that the Local Equipment that Consortium transfers to the County pursuant to the provisions herein will contain no software licenses.
- B. Consortium. Consortium shall, acting as agent of the County, remove any and all software from Impaired Devices that Consortium receives from County. Consortium shall not acquire any rights or obligations associated with any license to software contained on any Impaired Device that Consortium receives from County.

4.8.7. Expenses. Each party shall pay their own expenses and fees incidental to the preparation and execution of this property transfer and the obtaining of necessary approvals thereof, including fees and expenses of its counsel, accountants and other experts.

All other terms and conditions of the MOU and amendments shall remain in full force and effect as originally approved.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed and attested by their proper officers thereunto duly authorized, and their official seal to be affixed, as of the day and year written.

Dated: 01/30/09

Consortium:

California Statewide Automated Welfare System Consortium IV

By: *Ana Pagan*
Ana Pagan, Chair
C-IV Board of Directors

Dated: 3/24/09

County:

County of El Dorado

By: *Ron Briggs*
RON BRIGGS, Chairman

ATTEST: SUZANNE ALLEN de SANCHEZ,
Clerk of the Board of Supervisors

By: *Marcie MacLeland*
DEPUTY