



cityofnovi.org

# CITY of NOVI CITY COUNCIL

Agenda Item F  
June 23, 2008

**SUBJECT:** Approval of Addendum to the original agreement to include printer language in the Live Scan Agreement with Oakland County for the use and maintenance of Live Scan equipment and printer for submission and exchange of fingerprint information.

**SUBMITTING DEPARTMENT:** Police Department

**CITY MANAGER APPROVAL:** 

**BACKGROUND INFORMATION:**

An agreement with Oakland County for the use and maintenance of Live Scan equipment for submission and exchange of fingerprint information was approved by City Council at the April 7, 2008 City Council Meeting. This addendum to the original agreement includes language for the use of a Live Scan printer.

Per the original agreement, the City of Novi agreed to pay \$3,313 in fees annually to the County for four (4) years for maintenance and preventive service. The obligation to pay maintenance fees will begin on May 1, 2009. This addendum includes an increase in that amount by \$210 annually for the use of the Live Scan Printer. The new annual amount will be \$3,523.

We are seeking Novi City Council's approval on this agreement with Oakland County. The original agreement was reviewed and approved by Novi's Corporate Counsel. Oakland County is specifically requiring a certified resolution from the Novi City Council.

**RECOMMENDED ACTION:** Approval to Addendum to the original agreement to include printer language in the Live Scan Agreement with Oakland County for the use and maintenance of Live Scan equipment and printer for submission and exchange of fingerprint information.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Capello				
Council Member Crawford				
Council Member Gatt				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

**INTERLOCAL AGREEMENT FOR MUNICIPALITIES RECEIVING  
NEW PALM SCAN DEVICE(S) ONLY  
LIVE SCAN AGREEMENT  
BETWEEN  
OAKLAND COUNTY  
AND  
CITY OF NOVI**

---

This Agreement is made between Oakland County, a Constitutional Corporation, 1200 North Telegraph, Pontiac, Michigan 48341 and City of Novi, 45175 W. Ten Mile Road, Novi, MI 48375-3024. In this Agreement, the County and the Political Subdivision may also be referred to individually as "Party" or jointly as "Parties."

**PURPOSE OF AGREEMENT.** Pursuant to the Urban Cooperation Act of 1967, 1967 PA 7, MCL 124.501, *et seq.*, the County and the Political Subdivision enter into this Agreement. The purpose of this Agreement is to delineate the responsibilities and obligations of the Parties regarding use and maintenance of Live Scan Equipment for submission and exchange of Fingerprint Information.

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

1. **DEFINITIONS.** The following words and expressions used throughout this Agreement, whether used in the singular or plural, within or without quotation marks, or possessive or nonpossessive, shall be defined, read, and interpreted as follows:
  - 1.1. **Agreement** means the terms and conditions of this Agreement, the Exhibits attached hereto, and any other mutually agreed to written and executed modification or amendment.
  - 1.2. **Claim** means any alleged loss, claim, complaint, demand for relief or damages, cause of action, proceeding, judgment, deficiency, liability, penalty, fine, litigation, cost, or expense, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, or amounts paid in settlement, which are imposed on, incurred by, or asserted against the County or Political Subdivision, its employees or agents, whether such Claim is brought in law, equity, tort, contract, or otherwise.
  - 1.3. **Contractor** means the vendor selected by the County, pursuant to County purchasing policies and procedures, to provide the Live Scan Equipment and the maintenance services for the Live Scan Equipment.
  - 1.4. **County** means Oakland County, a Municipal and Constitutional Corporation including, but not limited to, all departments, divisions, the County Board of Commissioners, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, or any such persons' successors.
  - 1.5. **Courts and Law Enforcement Management Information System ("CLEMIS")** means the computer system which provides access to and entry of public safety and law enforcement data and facilitates the exchange of such data between public safety and law enforcement agencies. CLEMIS also provides access to other criminal justice databases. CLEMIS is interfaced to state and federal law enforcement computers systems which

maintain records and files essential to the needs of the public safety and law enforcement community.

- 1.6. **Courts and Law Enforcement Management Information System Division ("CLEMIS Division")** means a division of the Oakland County Department of Information Technology that supports CLEMIS users. The CLEMIS Division provides services such as training for CLEMIS, a help desk, technical support, application development, liaison with the State on technology matters, vendor liaison, CLEMIS administration, project management, and a CLEMIS application backup site.
  - 1.7. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.
  - 1.8. **Exhibit** means all of the following documents which are fully incorporated into this Agreement:
    - 1.8.1. **Exhibit I**: Software License
    - 1.8.2. **Exhibit II**: Maintenance Agreement
  - 1.9. **Fingerprint Information** means the fingerprint impressions and associated data that is entered into the Live Scan Equipment by the Political Subdivision.
  - 1.10. **Live Scan Equipment (or Equipment)** means cabinet or desktop style handscanner systems including hardware, software, demographic interfaces and software customization as delivered by the Contractor.
  - 1.11. **Maintenance Fees** means the amount of money paid by the Political Subdivision to the County to maintain the Live Scan Equipment pursuant to Section 4 of this Agreement. Maintenance Fees do not include costs for maintenance services not covered by the Maintenance Agreement.
  - 1.12. **Political Subdivision** means City of Novi, including, but not limited to, its Council, departments, divisions, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, or any such persons' successors.
  - 1.13. **System Manager** means the individual or individuals designated by the Political Subdivision who is the authorized point of contact between the County and the Contractor for receiving/sending of material or Live Scan Equipment related to this Agreement or other issues related to this Agreement.
2. **COUNTY RESPONSIBILITIES**. Subject to the terms and conditions contained in this Agreement, and applicable changes in law, the County shall carry out the following:
- 2.1. The County shall provide Live Scan Equipment, specifically one (1) cabinet style handscanner system, to the Political Subdivision for its use. The County purchased most of the Live Scan Equipment with grant funds; thus, the County shall remain the owner of the Live Scan Equipment, even though it is located at the Political Subdivision.
  - 2.2. In an effort to reduce costs to the Political Subdivision and the County, the County negotiated and executed a single Software License Agreement, Exhibit I, and Maintenance Agreement, Exhibit II, for all Live Scan Equipment purchased by the County.
  - 2.3. The Contractor shall provide the maintenance services for the Live Scan Equipment, not the County, as set forth in the Maintenance Agreement attached as Exhibit II.
  - 2.4. Once the Political Subdivision enters and submits the Fingerprint Information into the Live Scan Equipment, the County will submit the Fingerprint Information to the State of Michigan, pursuant to law. The County shall also

store all Fingerprint Information entered and submitted into the Live Scan Equipment at the County.

3. **POLITICAL SUBDIVISION'S RESPONSIBILITIES.**

- 3.1. The Political Subdivision shall use and operate the Live Scan Equipment properly and according to this Agreement and applicable law.
- 3.2. The Political Subdivision shall comply with the Software License, attached as Exhibit I, and the Maintenance Agreement, attached as Exhibit II.
- 3.3. In exchange for the use of the Live Scan Equipment, the Political Subdivision shall pay for the maintenance services provided by the Contractor. The Maintenance Fees and the manner of payment are set forth in Section 4 of this Agreement. The Political Subdivision shall be solely responsible to pay for any maintenance services not covered by the Maintenance Agreement, Exhibit II.
- 3.4. Each Political Subdivision shall identify a System Manager and alternative and notify the County in writing of the System Manager and alternative. The Political Subdivision must notify the County in writing of any changes to the System Manager and alternative within five (5) Days of any change.
- 3.5. The System Manager shall be the first point of contact for the Political Subdivision when problems occur with the Live Scan Equipment. The System Manager shall be the sole individual responsible for relaying problems with the Live Scan Equipment to the Contractor and/or communicating the need for maintenance to the Contractor.
- 3.6. The Political Subdivision shall send its employees or agents to training classes regarding Live Scan Equipment as required by the County. The training classes shall be provided to the Political Subdivision at no charge.
- 3.7. The Political Subdivision shall require that all users of Live Scan Equipment report any problem or unusual activity to the System Manager to enable proper maintenance of the Live Scan Equipment.
- 3.8. The Political Subdivision shall be solely responsible for entering Fingerprint Information into the Live Scan Equipment for its jurisdiction.
- 3.9. The Political Subdivision shall be solely responsible for ensuring that the Fingerprint Information entered into Live Scan Equipment is accurate, complete, updated, and/or purged as required by law.
- 3.10. The Fingerprint Information entered into the Live Scan Equipment shall be and remain the data of the Political Subdivision.
- 3.11. The Political Subdivision shall replace or repair the Live Scan Equipment which is willfully or negligently lost, stolen, damaged, or destroyed and shall be responsible for the costs associated with such replacement or repair, normal wear and tear excepted.
- 3.12. The Political Subdivision shall not move (from the facility where it is located) the Live Scan Equipment until written notice is given to the County. The Political Subdivision shall not dispose of the Live Scan Equipment without first getting written permission of the County.
- 3.13. Except as otherwise provided by this Agreement, the Political Subdivision shall be solely responsible for all costs, fines, and fees associated with the use and misuse of the Live Scan Equipment.

4. **FINANCIAL RESPONSIBILITIES.**

- 4.1. The County shall pay the Maintenance Fees to the Contractor annually for the Maintenance Agreement and invoice the Political Subdivision for the amount and in the manner set forth in this section.
- 4.2. The Political Subdivision shall pay Three Thousand, Five Hundred and Twenty-Three **\$3,523.00** Dollars in Maintenance Fees annually to the

County for four (4) years, for maintenance and preventative services for each cabinet style handscanner system provided to the Political Subdivision by the County, including the Political Subdivision printer. The obligation to pay Maintenance Fees shall begin on **May 1, 2009**.

- 4.3. The County shall invoice the Political Subdivision quarterly for the Maintenance Fees. The Maintenance Fees become due to the County upon receipt of such invoice and the Political Subdivision agrees to pay the invoice within forty-five (45) Days of receipt.
  - 4.4. Except as provided in this Agreement, the County is not responsible for any cost, fee, fine or penalty incurred by the Political Subdivision in connection with this Agreement.
  - 4.5. To the maximum extent provided by law, if there is any amount past due under this Agreement, the County, in its sole discretion, has the right to set off that amount from any amount due to the Political Subdivision from the County, including, but not limited to, distributions from the Delinquent Tax Revolving Fund (DTRF).
5. **DURATION OF INTERLOCAL AGREEMENT.**
- 5.1. The Agreement and any amendments hereto shall be effective when executed by both Parties, with resolutions passed by the governing bodies of each Party, and when the Agreement is filed according to MCL 124.510. The approval and terms of this Agreement and any amendments hereto shall be entered in the official minutes of the governing bodies of each Party.
  - 5.2. This Agreement shall remain in effect until December 31, 2013 or until cancelled or terminated by either Party pursuant to Section 7.
6. **ASSURANCES.**
- 6.1. Each Party shall be responsible for its own acts and the acts of its employees, agents, and subcontractors, the costs associated with those acts, and the defense of those acts.
  - 6.2. Except as otherwise provided by law, the Political Subdivision shall be responsible for Claims that arise out of its use of the Live Scan Equipment
  - 6.3. Neither Party shall be liable to the other Party for any consequential, incidental, indirect, or special damages of any kind in connection with this Agreement.
7. **TERMINATION OR CANCELLATION OF AGREEMENT.**
- 7.1. Either Party may terminate or cancel this Agreement for any reason upon thirty (30) days notice. The effective date for termination or cancellation shall be clearly stated in the notice.
  - 7.2. Notwithstanding any other provision of this Agreement, if the Political Subdivision ceases to be a member of CLEMIS, this Agreement shall terminate, as of the date the Political Subdivision ceases to be a member of CLEMIS, with no notice required by either Party.
  - 7.3. The Political Subdivision shall not be responsible for payment of Maintenance Fees after the effective date of termination or cancellation of this Agreement.
  - 7.4. Within thirty (30) Days of the effective date of termination or cancellation of this Agreement, the Political Subdivision shall return the Live Scan Equipment to the County.
  - 7.5. The Parties shall not be obligated to pay a cancellation or termination fee, if this Agreement is cancelled or terminated as provided herein.

8. **SUSPENSION OF SERVICES.**
  - 8.1. Upon notice to the Political Subdivision of the County's determination that the Political Subdivision has failed to comply with federal, state, or local law or the requirements contained in this Agreement, the County may immediately suspend this Agreement, provided the notice contains a detailed description of the basis for the determination.
  - 8.2. Upon submission of a written plan or statement by the Political Subdivision to the County addressing each basis listed in the County's notice and the County agrees to such written plan or statement (such agreement shall not be unreasonably withheld), then the Political Subdivision shall be entitled to an immediate reinstatement of the Agreement.
  - 8.3. The right to suspend this Agreement is in addition to the right to terminate or cancel this Agreement contained in Section 7.
  - 8.4. The County shall not incur penalty, expense, or liability if services are suspended under this Section, unless the Agreement is not immediately reinstated as provided in this Section or the County wrongfully suspended the Agreement under this Section.
9. **NO THIRD PARTY BENEFICIARIES.** Except as expressly provided in this Agreement, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation, and/or any other right, in favor of any other person or entity.
10. **COMPLIANCE WITH LAWS.** Each Party shall comply with all federal, state, and local laws, statutes, ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement and applicable to the operation of the Live Scan Equipment.
11. **DISCRIMINATION.** The Parties shall not discriminate against their employees, agents, applicants for employment, or other persons or entities with respect to hire, tenure, terms, conditions, and privileges of employment, or any matter directly or indirectly related to employment in violation of any federal, state or local law.
12. **RESERVATION OF RIGHTS.** This Agreement does not, and is not intended to, impair, divest, delegate, or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties.
13. **FORCE MAJEURE.** Each Party shall be excused from any obligations under this Agreement during the time and to the extent that a Party is prevented from performing due to causes beyond such Party's control, including, but not limited to, an act of God, war, fire, strike, labor disputes, civil disturbances, reduction of power source, or any other circumstances beyond the reasonable control of the affected Party. Reasonable notice shall be given to the affected Party of any such event.
14. **IN-KIND SERVICES.** This Agreement does not authorize any in-kind services, unless previously agreed to by the Parties and specifically listed herein.
15. **DELEGATION/SUBCONTRACT/ASSIGNMENT.** A Party shall not delegate, subcontract, and/or assign any obligations or rights under this Agreement without the prior written consent of the other Party.
16. **NO IMPLIED WAIVER.** Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances, shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement. No waiver by either Party shall subsequently effect its right to require strict performance of this Agreement.

17. **SEVERABILITY.** If a court of competent jurisdiction finds a term or condition of this Agreement to be illegal or invalid, then the term or condition shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force.
18. **CAPTIONS.** The section and subsection numbers, captions, and any index to such sections and subsections contained in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers, captions, and indexes shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural number, any reference to the male, female, or neuter genders, and any possessive or nonpossessive use in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.
19. **NOTICES.** Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

19.1. If Notice is set to the County, it shall be addressed and sent to:

Oakland County Department of Information Technology,  
Manager of CLEMIS Division,  
1200 North Telegraph Road, Building #49 West,  
Pontiac, Michigan, 48341  
and  
Chairperson of the Oakland County Board of Commissioners,  
1200 North Telegraph,  
Pontiac, Michigan 48341

19.2. If Notice is sent to the Political Subdivision, it shall be addressed to:

David E. Molloy, Chief of Police  
City of Novi Police Department  
45125 W. Ten Mile Road  
Novi, MI 48375  
and  
Clay Pearson, Manager  
City of Novi  
48175 W. Ten Mile Road  
Novi, MI 48375

19.3. Either Party may change the address and/or individual to which Notice is sent by notifying the other Party in writing of the change.

20. **GOVERNING LAW/CONSENT TO JURISDICTION AND VENUE.** This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Agreement shall be brought in the 6th Judicial Circuit Court of the State of Michigan, the 50th District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable

jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.

21. **AGREEMENT MODIFICATIONS OR AMENDMENTS**. Any modifications, amendments, rescissions, waivers, or releases to this Agreement must be in writing and agreed to by both Parties. Unless otherwise agreed, the modification, amendment, rescission, waiver, or release shall be signed by the same persons who signed the Agreement or other persons as authorized by the Parties' governing bodies.
22. **RESCISSION OF PREVIOUS INTERLOCAL AGREEMENT**. This Agreement hereby rescinds and supersedes the Live Scan Maintenance Agreement previously entered into between the County and Political Subdivision and this Agreement shall control all matters contemplated therein.
23. **ENTIRE AGREEMENT**. This Agreement represents the entire Agreement and understanding between the Parties. This Agreement supersedes all other oral or written Agreements between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not construed strictly for or against any Party.

The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.

IN WITNESS WHEREOF, David B. Landry - Mayor hereby acknowledges that he has been authorized by a resolution of the City Council, a certified copy of which is attached, to execute this Agreement on behalf of the Political Subdivision and hereby accepts and binds the Political Subdivision to the terms and conditions of this Agreement.

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_  
David B. Landry, Mayor

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Maryanne Cornelius, City Clerk

IN WITNESS WHEREOF, Bill Bullard, Jr., Chairperson, Oakland County Board of Commissioners, hereby acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners, a certified copy of which is attached, to execute this Agreement on behalf of Oakland County and hereby accepts and binds Oakland County to the terms and conditions of this Agreement.

EXECUTED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Bill Bullard, Jr., Chairperson  
Oakland County Board of Commissioners

WITNESSED: \_\_\_\_\_ DATE: \_\_\_\_\_  
Ruth Johnson, Clerk Register of Deeds  
County of Oakland



**EXHIBIT II**  
**SYSTEM MAINTENANCE TERMS AND CONDITIONS**

**I. GENERAL SCOPE OF COVERAGE**

Subject to payment in full of the applicable maintenance fees for the System described in Contractor's Maintenance Agreement Addendum ("Addendum") with the County, Contractor, or its authorized agents or subcontractors, shall provide the System maintenance services ("Services") set forth and in accordance with the terms herein (this "Agreement") and the Addendum to the County and the Sites. The terms of the Addendum are hereby incorporated into this Agreement by this reference.

**II. MAINTENANCE SERVICES**

The Services provided by Contractor are those services selected by the County from one or more of the following maintenance services programs:

A. Included With All Remedial Maintenance Services. *Included With All Remedial Maintenance Services* are as follows:

- Unlimited 24/7 telephone technical support for System hardware and software from the Contractor TouchCare Support Center via Contractor toll free telephone number.
- TouchCare Support Center managed problem escalation, as required, to Contractor technical support staff to resolve problems.
- Contractor shall furnish all parts and components necessary for the service and maintenance of the System and to ensure that the System operates according to Exhibits I, VIII, IX, X, and XI of the Contract. Replacement parts shall be sent by Contractor to the County or Site at no cost to the County or Site. All replaced defective parts shall become Contractor's property. Contractor shall determine if a replacement part is necessary. Replacement parts and components may be new or refurbished so long as the System operates according to Exhibits I, VIII, IX, X, and XI of the Contract.
- System disconnect/reconnect services, as long as a Contractor field service engineer does not have to be dispatched to the County or the Sites.
- Contractor shall make available to County and Site one copy (in electronic or other standard form) of each Update (defined herein) for those System components that are developed by Contractor and for which Contractor, in its sole discretion, elects to develop and generally make

available to the customers whose Systems are under warranty or under a current Contractor Maintenance Agreement Addendum. The County and Site shall provide Contractor with continuous network or dial-up access to the System (whether stand alone or connected to a central site), and Contractor shall deliver the Update via this remote means of delivery. In the event continuous network or dial-up access is not available for *24/7 Maintenance Services* and *9/5 Maintenance Services*, then Contractor shall install the Update during any subsequently scheduled on-site visit by Contractor for service of the System. An "Update" means a new release of Software that is developed by Contractor which contains (i) bug fixes, corrections, or a work-around of previously identified errors with such Software, or (ii) minor enhancements, improvements, or revisions with substantially similar (but not new) functionality to the Software.

- Contractor and the County will specify the hardware and third party software requirements for any Updates pursuant to Exhibit VIII of the Contract.

B. 24/7 Maintenance Customer Services. Contractor's *24/7 Maintenance Services* are as follows:

- The County or the Site will receive a telephone response to service calls within one (1) hour from the time the County or the Site places a service call with Contractor's Help Desk.
- Contractor's Help Desk will attempt problem resolution via telephonic verbal and dial-in troubleshooting prior to dispatching a Contractor field service engineer to the County's or Site's facility for on-site service.
- If on-site service is necessary, such service shall be provided 24/7, including holidays. Contractor shall use its best efforts to have a Contractor's field service engineer at the County or Site's facility within four (4) hours from the time the engineer is dispatched by Contractor's Help Desk, but no more than five (5) hours after the call was placed by the County or the Site.
- At no additional charge, during each consecutive twelve (12) month period during the term of the Contract, Contractor will provide the County with up to four (4) County -requested type of transaction changes to existing type of transaction applications and up to two (2)

changes to type of transaction applications that are mandated by the applicable State government agency for state-wide or interstate implementation. State mandated changes, and software and table updates will be applied to all live scan units listed in the Addendum within forty-five (45) Days of notification to proceed from the County. Contractor shall immediately notify the County, if the Contractor reasonably determines and the County reasonably concurs that any such changes and updates are not capable of being developed and delivered within such forty-five (45) Day period due to the scope and complexity of such change. If such determination is made and consensus reached, the Contractor and County shall immediately meet and mutually agree upon an acceptable development and delivery schedule. Table updates are treated as Updates and will be made available to the County in accordance with Sections II.A and II.B of this Agreement. Table updates will be applied pursuant to Exhibit VIII to the Contract.

C. 9/5 Maintenance Services. Contractor's 9/5 Maintenance Services are as follows:

- Twenty-four (24) hours per day, seven (7) days per week, the County or the Site will receive a telephone response to service calls within one (1) hour from the time the County or the Site places a service call with Contractor's Help Desk.
- Twenty-four (24) hours per day, seven (7) days per week, Contractor's Help Desk will attempt problem resolution via telephonic verbal and dial-in troubleshooting prior to dispatching a Contractor field service engineer to a County's or Site's facility for on-site service.
- If on-site service is necessary, such service shall be provided nine (9) business hours (that is, 8:00 a.m. to 5:00 p.m. eastern standard time) per day, five (5) business days per week. Contractor shall use its best efforts to have a Contractor field service engineer at the County's or the Site's facility within eight (8) working hours from the time the engineer is dispatched by Contractor's Help Desk, but no more than nine (9) hours after the call was placed by the County or the Site.
- Upon Contractor's acceptance of the County's or the Site's request for after-hours service, the County or the Site shall pay for such after-hours

service on a time and materials basis at Contractor's then current rates.

- At no additional charge, during each consecutive twelve (12) month period during the term of the Contract, Contractor will provide the County with up to four (4) County-requested type of transaction changes to existing type of transaction applications and up to two (2) changes to type of transaction applications that are mandated by the applicable State government agency for state-wide or interstate implementation. State mandated changes, and software and table updates will be applied to all live scan units listed in the Addendum within forty-five (45) Days of notification to proceed from the County. Contractor shall immediately notify the County, if the Contractor reasonably determines and the County reasonably concurs that any such changes and updates are not capable of being developed and delivered within such forty-five (45) Day period due to the scope and complexity of such change. If such determination is made and consensus reached, the Contractor and the County shall immediately meet and mutually agree upon an acceptable development and delivery schedule. Table updates are treated as Updates and will be made available to the County in accordance with Sections II.A. and IIC. of this Agreement. Table updates will be applied pursuant to Exhibit VIII to the Contract.

D. Preventive Maintenance Services. Contractor's Preventive Maintenance Services are as follows:

- Preventive maintenance service calls consist of System cleaning, verification of calibration, and verification of proper System configuration and operation in accordance with Exhibits I, VIII, IX, X, and XI to the Contract and with Contractor's specifications for such System. Contractor and the County or the Site will seek to agree upon the scheduling of the preventive maintenance service call promptly after commencement of the term of this Agreement and the commencement of any renewal term. Up to four (4) preventative maintenance visits (quarterly) for the System are included in the price of Services and will be provided at no additional cost to the County or the Sites.

### III. EXCLUSIONS FROM SERVICES

A. Exclusions. The Services do not include any of the following:

- System disconnect/reconnect services (for System moves) if a Contractor field service engineer is required at the County's or the Site's facility.
- Additional training beyond that amount or level of training originally ordered by the County.
- Maintenance support or troubleshooting for County or Site provided communication networks.
- Maintenance required to the System or its parts arising out of misuse, abuse, negligence, attachment of unauthorized components (including software), or use of unauthorized accessories or parts.
- Unless authorized by Contractor, maintenance required due to the System being modified, damaged, altered, or serviced by personnel other than Contractor's authorized service representatives, or if parts, accessories, or components not authorized by Contractor are fitted to the System.
- Maintenance required due to moving the System.
- Unless authorized by the Contractor, Maintenance required due to failures caused by the County's or Site's software or other software, hardware or products not licensed by Contractor to County.
- Providing or installing updates or upgrades to any third party (i.e., Microsoft, Oracle, etc.) software.
- Maintenance required due to failures resulting from software viruses, worms, Trojans, and any other forms of destructive or interruptive means introduced into the System.
- Maintenance required to the System due to installation of third party software by the County or Site without the Contractor's approval or direction.
- Providing consumable parts and components (i.e., platens, toner cartridges, etc.); such items are replaced at the County's or Site's expense.
- Maintenance required due to failures caused by County's or Site's facility issues such as inadequate power sources and protection or use of the System in environmental conditions outside of those conditions specified in Contractor's System documentation.

B. Availability of Additional Services. At the County's or Site's request, Contractor may agree to perform the excluded services described immediately above in accordance with Contractor's then current rates. Other excluded services that may be agreed to be performed by Contractor shall require Contractor's receipt of a County or Site P.O.

C. Non-Registered System Components. Any System components not registered in the Addendum for which Services are requested by the County or the Site may be

required to have a pre-maintenance inspection by Contractor before being added to the Addendum and this Agreement. This inspection will also be required if this Agreement has expired by more than thirty (30) Days. Contractor's inspection will be billed at Contractor's current inspection rate plus travel expenses and parts (if any required).

#### IV. SERVICE CALLS

The County or the Site may contact Contractor's TouchCare Support Center by calling 1-888-HELP-IDX (888-435-7439). Service calls under this Agreement will be made at the installation address identified in the Addendum or as otherwise agreed to in writing.

#### V. TERM AND TERMINATION

This term of this Agreement shall commence upon Contractor's receipt of the annual maintenance fee reflected in the Addendum and shall continue for a period of one (1) year. This Agreement may be renewed for three (3) additional one (1) year terms, with the fees listed in the Addendum at the same rate, upon the County's execution of an updated Addendum and Contractor's receipt of the applicable annual maintenance fee reflected in the updated Addendum. The Parties acknowledge that the County, in its discretion, shall determine which Sites to purchase Services for. The number of Sites for which the County may purchase Services for may vary from year to year, but shall be set forth in the Addendum executed each year by the Parties.

#### VI. FEES FOR SERVICES

A. Fees. The initial fee for Services under this Agreement shall be the amount set forth in the Addendum, which shall be consistent with the pricing set forth in Exhibit IV to the Contract. The County agrees to pay the total of all charges for Services annually in advance within thirty (30) Days of the date of Contractor's invoice for such charges. If the County purchases additional Hardware and/or Software from Contractor, the Addendum shall be amended to reflect the additional Hardware and/or Software and the increase in the fees for Service. The additional fees for Services for the additional Hardware and/or Software shall be consistent with the fees contained in the current Addendum.

B. Failure to Pay Fees. If the County does not pay Contractors' fees for Services or parts as provided

hereunder within ninety (90) Days when due Contractor may, at its discretion, either suspend performance of its Services until such time as the account is brought current or provide the Services at current "non contract/per call" rates on a COD basis.

**VII. LIMITED WARRANTY / DISCLAIMER / LIMITATION OF LIABILITY**

Contractor shall provide the Services hereunder in a professional and workmanlike manner by duly qualified personnel. EXCEPT FOR THIS LIMITED WARRANTY, CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE IN REGARD TO THE SERVICES, SOFTWARE, AND ANY OTHER GOODS PROVIDED HEREUNDER.

**Exhibit I**  
**Software License Agreement**

This License Agreement ("Agreement") is between the County and Contractor for the Software identified in Exhibit IV of the Contract which includes any associated media and the printed, online, or electronic documentation created by Contractor ("Documentation").

The Software and Documentation are protected by United States Copyright Laws and international Copyright treaties, as well as other intellectual property laws. The Software is licensed, not sold.

**1. GRANT OF LICENSE.** In consideration of payment in full of the applicable purchase price for the System or other fees due Contractor as well as other consideration recited herein, Contractor grants to the County and the Sites, listed in Exhibit IV, a revocable nonexclusive license to use the Software on the System within which the Software is installed and to use the Documentation solely in connection with such use of the System. Contractor reserves all rights to the Software and Documentation that have not been expressly granted to the County in this Agreement.

**2. LICENSE LIMITATIONS.** Except as expressly provided in this Agreement and except for making a reasonable number of copies of the Software and Documentation for disaster recovery purposes only, the County may not copy, distribute copies, modify or prepare derivative works based on the Software or Documentation. The County may not reverse engineer, decompile, or disassemble the Software except and only to the extent that such activity is expressly permitted by applicable law. Except as provided in this Agreement, the County may not sublicense, rent or lease the Software. The County may permanently transfer all of County's rights under this Agreement by transferring the System to a third party; provided that the County retains no copies of the Software and Documentation (including all component parts, the media and printed materials, any upgrades and this Agreement), and the recipient agrees to the terms of this Agreement. If the Software is an upgrade, any transfer must include all prior versions of the Software. Upon termination of the Contract, the County shall destroy any and all copies of the Software and Documentation in its possession or control.

**3. OWNERSHIP RIGHTS.** All right, title and interest in and to the Software and Documentation, including all rights in Copyright, and any copies of the Software and Documentation, are owned exclusively by Contractor. Any third party software provided by Contractor in connection with the System is licensed to the County under the terms of the third party's software license agreement and other documentation that accompanies the System. Contractor shall provide the County with copies of such License Agreements.

**4. LIMITED WARRANTY / DISCLAIMER OF WARRANTIES / LIMITATION OF LIABILITY.** The Contractor warrants that the Software will perform in accordance with the Documentation, and Contractor's written specifications contained in Exhibit I for a period of one (1) year from the date the Acceptance Test Plan is executed by both Parties. Contractor's sole obligations and the County's exclusive remedy under this warranty are limited to, at Contractor's option, repairing, replacing, providing credit for or refunding the net purchase price of the System which shall be returned to the factory of origin prior to expiration of the warranty period, transportation charges prepaid by Contractor. **CONTRACTOR DOES NOT WARRANT THAT THE SOFTWARE EMBEDDED, INSTALLED IN OR USED IN CONNECTION WITH THE SYSTEM IS ERROR FREE OR THAT USE OF SUCH SOFTWARE WILL BE UNINTERRUPTED. EXCEPT AS PROVIDED IN THIS CONTRACT, CONTRACTOR**

SPECIFICALLY DISCLAIMS ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES CONCERNING THE SOFTWARE EMBEDDED OR INSTALLED THEREIN OR USED IN CONNECTION THEREWITH, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. This warranty shall not apply to any Software which has been installed, repaired, modified or altered in any way, except by Contractor, or which was authorized by Contractor, or which has been subjected to misuse, negligence, or accident. The aforementioned provisions do not extend the original warranty period of any System that has either been repaired or replaced by Contractor.

**5. WARRANTY SERVICE CALLS.** You may contact Contractor's TouchCare Support Center by calling 1-888-HELP-IDX (888-435-7439).

**6. U.S. GOVERNMENT RESTRICTED RIGHTS.** The Software and Documentation provided therewith are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the United States Government is subject to the restrictions as set forth in Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation 227.7202 for military agencies.

**Exhibit I**  
**Software License Agreement**

This License Agreement ("Agreement") is between the County and Contractor for the Software identified in Exhibit IV of the Contract which includes any associated media and the printed, online, or electronic documentation created by Contractor ("Documentation").

The Software and Documentation are protected by United States Copyright Laws and international Copyright treaties, as well as other intellectual property laws. The Software is licensed, not sold.

**1. GRANT OF LICENSE.** In consideration of payment in full of the applicable purchase price for the System or other fees due Contractor as well as other consideration recited herein, Contractor grants to the County and the Sites, listed in Exhibit IV, a revocable nonexclusive license to use the Software on the System within which the Software is installed and to use the Documentation solely in connection with such use of the System. Contractor reserves all rights to the Software and Documentation that have not been expressly granted to the County in this Agreement.

**2. LICENSE LIMITATIONS.** Except as expressly provided in this Agreement and except for making a reasonable number of copies of the Software and Documentation for disaster recovery purposes only, the County may not copy, distribute copies, modify or prepare derivative works based on the Software or Documentation. The County may not reverse engineer, decompile, or disassemble the Software except and only to the extent that such activity is expressly permitted by applicable law. Except as provided in this Agreement, the County may not sublicense, rent or lease the Software. The County may permanently transfer all of County's rights under this Agreement by transferring the System to a third party; provided that the County retains no copies of the Software and Documentation (including all component parts, the media and printed materials, any upgrades and this Agreement), and the recipient agrees to the terms of this Agreement. If the Software is an upgrade, any transfer must include all prior versions of the Software. Upon termination of the Contract, the County shall destroy any and all copies of the Software and Documentation in its possession or control.

**3. OWNERSHIP RIGHTS.** All right, title and interest in and to the Software and Documentation, including all rights in Copyright, and any copies of the Software and Documentation, are owned exclusively by Contractor. Any third party software provided by Contractor in connection with the System is licensed to the County under the terms of the third party's software license agreement and other documentation that accompanies the System. Contractor shall provide the County with copies of such License Agreements.

**4. LIMITED WARRANTY / DISCLAIMER OF WARRANTIES / LIMITATION OF LIABILITY.** The Contractor warrants that the Software will perform in accordance with the Documentation, and Contractor's written specifications contained in Exhibit I for a period of one (1) year from the date the Acceptance Test Plan is executed by both Parties. Contractor's sole obligations and the County's exclusive remedy under this warranty are limited to, at Contractor's option, repairing, replacing, providing credit for or refunding the net purchase price of the System which shall be returned to the factory of origin prior to expiration of the warranty period, transportation charges prepaid by Contractor. **CONTRACTOR DOES NOT WARRANT THAT THE SOFTWARE EMBEDDED, INSTALLED IN OR USED IN CONNECTION WITH THE SYSTEM IS ERROR FREE OR THAT USE OF SUCH SOFTWARE WILL BE UNINTERRUPTED. EXCEPT AS PROVIDED IN THIS CONTRACT, CONTRACTOR**

SPECIFICALLY DISCLAIMS ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES CONCERNING THE SOFTWARE EMBEDDED OR INSTALLED THEREIN OR USED IN CONNECTION THEREWITH, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. This warranty shall not apply to any Software which has been installed, repaired, modified or altered in any way, except by Contractor, or which was authorized by Contractor, or which has been subjected to misuse, negligence, or accident. The aforementioned provisions do not extend the original warranty period of any System that has either been repaired or replaced by Contractor.

**5. WARRANTY SERVICE CALLS.** You may contact Contractor's TouchCare Support Center by calling 1-888-HELP-IDX (888-435-7439).

**6. U.S. GOVERNMENT RESTRICTED RIGHTS.** The Software and Documentation provided therewith are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the United States Government is subject to the restrictions as set forth in Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation 227.7202 for military agencies.