



Revision to ASR and/or Exhibits/Attachments

Date: September 17, 2008

To: Darlene J. Bloom, Clerk of the Board of Supervisors

CC: County Executive Office

From: Lisa Bohan-Johnston, Director, District Attorney Administrative Services

RE: Agenda Item(s) # 6 for the September 23, 2008 Board Meeting

ASR Control #(s): ASR 08-001443

Subject: Approve PA# N1000009935 with Forensic Science Service, Ltd.

2008 SEP 18 PM 1:42
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

RECEIVED

Explanation:

1) To change the contract effective and expiration dates and monetary limit. Current Year Cost changes from \$300,000 to \$250,000

2) To attach the revised PA# N1000009935.

Revised Recommended Action(s)

Authorize the Purchasing Agent, or designee, to execute Price Agreement # N1000009935 with Forensic Science Service, Ltd. for forensic software maintenance, DNA sample collection kits, and DNA sample analysis and storage for a one-year period commencing on September 24, 2008 through and including September 23, 2009 in an amount not to exceed \$250,000.

Make modifications to the:

Subject

Background Information

Summary

Revised Summary:

The Office of the District Attorney requests authorization for the Purchasing Agent, or designee, to issue and execute sole source Price Agreement # N1000009935 with Forensic Science Service, Ltd. for forensic software maintenance, DNA sample collection kits, and DNA sample analysis and storage for a one-year period commencing on September 24, 2008 through and including September 23, 2009 in an amount not to exceed \$250,000.

Revised Background Information:

By Minute Order dated January 23, 2007, your Honorable Board approved Price Agreement # N1000008404 with Forensic Science Service, Ltd. for the purchase of forensic software licensing and maintenance, DNA sample collection kits, DNA sample analysis and data upload to a County of Orange DNA database.

The Office requests your Honorable Board authorize the issuance and execution of sole source Price Agreement # N1000009935 with Forensic Science Service, Ltd. for software maintenance support, DNA sample collection kits, and DNA analysis and storage for a one-year period commencing on September 24, 2008 through and including September 23, 2009 as referenced in Recommended Action.

Revised Exhibits/Attachments (attached)

Revised Price Agreement # N1000009935 is attached.

Additional Information and/or Correspondence (attached)



**FORENSIC SOFTWARE MAINTENANCE
AND SUPPLY OF DNA PROCESSING SERVICES AND KITS
CONTRACT N1000009935
BETWEEN
COUNTY OF ORANGE
FOR THE OFFICE OF THE DISTRICT ATTORNEY
AND
FORENSIC SCIENCE SERVICE LTD.**



**FORENSIC SOFTWARE MAINTENANCE AND SUPPLY OF
DNA PROCESSING SERVICES AND KITS
CONTRACT N1000009935
BETWEEN
COUNTY OF ORANGE
FOR THE OFFICE OF THE DISTRICT ATTORNEY
AND FORENSIC SCIENCE SERVICE LTD.**

This Contract for Forensic Software Maintenance, and Supply of DNA Processing Services and Kits (hereinafter "Contract") is made and entered into as of the date fully executed by and between Forensic Science Service Ltd., with its principal place of business at Trident Court, 2920 Solihull Parkway, Birmingham Business Park, Birmingham B37 7YN (hereinafter "Contractor"), and the County of Orange, a political subdivision of the State of California (hereinafter "County"), which may also be referred to individually as "Party" or collectively as "Parties."

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by this reference:

Attachment A – Scope of Work

Attachment B – Compensation and Payment

RECITALS

WHEREAS, County licensed certain software products from Contractor pursuant to the terms of that certain Forensic Software Licensing and Maintenance Contract, entered into on or around February 1, 2007 (the "Perpetual License Agreement");

WHEREAS, County desires to obtain continued maintenance and support for such software products; and

WHEREAS, County desires to enter into a Contract with Contractor to obtain Forensic Software Maintenance, and the Supply of DNA Processing Services and Kits for the Office of the District Attorney; and

WHEREAS, Contractor is willing to provide said services to County, as specified in Attachment A, in accordance with the Terms and Conditions of this Contract; and

WHEREAS, County Board of Supervisors has authorized the Purchasing Agent or his designee to enter into this Contract to obtain Forensic Software Maintenance, DNA Processing Services and Kits;

NOW, THEREFORE, the Parties mutually agree as follows:



ARTICLES

1. Interpretation:

- a. **Bug Fixes:** means the Contractor's correction of a error, bug or undesirable behavior in the Software Product which, upon the mutual agreement of both Contractor and County, is identified as a bug and corrected by the Contractor in accordance with the Bug Classification Schema;
- b. **Bug Classification Schema:** means below table for the Contractor's assessment of any bugs in the Software Products that the Contractor identifies and accepts for correction in connection with this Contract:

Classification	Criteria
Critical error	Customer unable to use software as direct result.
Medium error	Aspect of software unusable but issue is self contained allowing application to be used with known limitations.
Minor error	Avoidable error because a work around exists.

- c. **New Modules:** means the addition of a new feature added to the Software Product by releasing a new version of the Software Product.
 - d. **Software Maintenance:** means all Bug Fixes made commercially available by the Contractor or created in accordance with the terms of this Contract
2. **Scope of Contract:** Under the terms of this Contract, County and the Contractor agree that the Contractor shall provide the services as more particularly set out below:
- a. Forensic Software Maintenance of FSS-iD ;
 - b. DNA Processing Services; and
 - c. DNA Sample Collection Kits

as more particularly described herein and on Attachment A, Scope of Work. This is an exhaustive list and, subject to clause 4, constitutes the entire Scope of Contract as agreed between the Parties with regard to certain forensic software (herein referred to as "Software Product(s)") licensed to County under the terms of the Perpetual License Agreement which granted a perpetual license to County for the use of the Software Products.

The provisions of this Contract shall supersede and replace any contract terms in the Perpetual License Agreement which relate solely to the maintenance, support or training of such Software Products.



3. **Contract Term:** This Contract shall be effective September 24, 2008 and continue in effect through and including September 23, 2009, unless otherwise terminated by County or the Contractor. Contract may be renewed for two additional one-year terms with the written agreement of both Parties. County does not have to give reason if it elects not to renew or extend this Contract.

4. **Compensation:** Contractor agrees to accept the specified compensation as further set forth in Attachment B, Compensation and Payment, as full remuneration for providing the products and performing all services required to satisfactorily perform its duties and obligations hereunder.

County shall be invoiced and will pay the Maintenance and Support Fee as more particularly set out in Attachment B upon signature of this Contract. The Parties agree that payment for the DNA Sample Collection Kits from Scenesafe, will be invoiced monthly in arrears. The Parties agree that DNA Processing as more particularly set out in Attachment A, Scope of Work, work will be invoiced by the Contractor monthly in arrears. County will pay all sums due within 30 days of receipt of an invoice submitted by Contractor. Without prejudice to any other right or remedy that it may have, if County fails to pay Contractor on the due date, Contractor may suspend all goods and services until payment has been made in full.

Time for payment shall be of the essence in this Contract. Under the provisions of this Contract, County's maximum obligation will not exceed \$250,000.00 annually. In the event that the maximum annual obligation is reached prior to the end of the Contract term, the County and Contractor may mutually agree to increase the maximum obligation subject to the prior approval of the County's Board of Supervisors, pursuant to the provision of the County's Contract Policy Manual.

5. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify, subject to written notification to Contractor, this Contract without penalty. However, nothing in this Article shall relieve County of its obligations to pay Contractor for services already received under this Contract.

6. **Adjustments to Scope of Work:** No adjustments made to the Scope of Work will be authorized or paid for without prior written approval of County's assigned buyer.

7. **Interpretation of Contract:** In the event of a conflict or question involving the provisions of any part of this Contract, interpretation and clarification as necessary shall be determined by County's assigned buyer. If disagreement exists between Contractor and County's assigned buyer in interpreting the provision(s), final interpretation and clarification shall be determined by County's Purchasing Agent or his designee.

2



8. **Precedence:** The Contract consists of this agreement, the terms and conditions incorporated in to the agreement, and Attachment A, Scope of Work, and Attachment B, Compensation and Payment. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract; the terms and conditions; and then the Attachments.
9. **Validity:** The invalidity in whole or in part of any provision of this Contract shall not void or affect the validity of any other provision of the Contract.
10. **Software Maintenance:** Software Maintenance will be performed by the Contractor without additional charge for the duration of this Contract, as defined in Article 1.d. Suspected errors discovered by the County in the Software Products will be reported to the Contractor and handled in accordance with the Bug Classification Schema:

In dealing with a suspected error requiring Bug Fix, the Contractor will require the following information to be provided by County:

- a. the Software Product version;
- b. the Operating system of servers used at County;
- c. the client browser name and version;
- d. the error identified as string text;
- e. a description of the method of use of the Software Product at the time that the error occurred;
- f. if appropriate, a screen shot of the error;
- g. if appropriate, the input data; and
- h. if appropriate, the server log file(s)

As soon as the Contractor suspects the issue is not a Bug, the Contractor will immediately cease work on the issue and notify the County. The County reserves the right to instruct the Contractor to continue work as agreed between the parties upon a time and materials basis or to cease work on the issue before any costs are incurred. Additional requests for services or deliverables requested outside the Scope of Contract will be charged on a time and materials basis.

The Contractor will be available to assist the County in isolating and correcting error conditions caused by the County's particular hardware or operating system at the rates set forth on Attachment B. If the Contractor is called upon by the state to correct an error caused by the County's negligence, modification by the County, County-supplied data, or machine or operator failure or due to any other cause not inherent in the original software products, the Contractor reserves the right to charge the County for such service on a time and material basis at rates in accordance with Attachment B.



11. **Protection of Confidential Information:** The County agrees that all data, materials, and information disclosed to the County, whether oral or written, may contain confidential and protected data; therefore, County promises and assures that data, material, and information gathered, based upon or disclosed to it for the purpose of this Contract will not be disclosed to others or discussed with other parties without the prior written consent of Contractor. All proprietary data shall remain the property of the Contractor. County agrees to take all reasonable steps to ensure that such data are not disclosed to others without prior written consent of the Contractor. The County will ensure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.

The County agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to software products and/or other proprietary information to satisfy its obligations under this Contract with respect to use, copying, modification and protection and security of software products and other proprietary information.

12. **County Project Manager:** County shall appoint a project manager to act as liaison between County and Contractor during the term of this Contract. County's project manager shall coordinate the activities of County staff assigned to work with Contractor.

County Project Manager: Debora Lloyd

13. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a project manager to direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. Contractor's project manager and key personnel shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who report directly to Contractor's project manager.
14. **Contractor Personnel:** Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
15. **Contingent Fees:** Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of Contractor or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, County shall have the right to terminate this Contract in accordance with the termination clause and at its sole discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from Contractor.
16. **Conflict of Interest – Contractor's Personnel:** Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of County. This obligation shall apply to: Contractor; Contractor's





employees, agents, and relatives; sub-tier Contractors; and third parties associated with accomplishing work and services hereunder. Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of County.

17. **Conflict of Interest – County Personnel:** County of Orange Board of Supervisors' policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
18. **Gratuities:** Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, County shall have the right to terminate the Contract immediately, either in whole or in part, and any loss or damage sustained by County in procuring on the open market any goods or services which Contractor agreed to supply shall be borne and paid for by Contractor. The rights and remedies of County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.
19. **Breach of Contract:** Except as other wise set forth in Paragraph K, the failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event, County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract (except that the Parties shall be entitled to the notice and cure period set forth in Paragraph K):
 1. Afford Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 2. Discontinue payment to Contractor for and during the period in which Contractor is in breach; and
 3. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the above.
20. **Waivers:** The failure of County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.
21. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as prior to submission to County. Contractor agrees that County review is discretionary and Contractor shall not assume that County will discover errors and/or omissions. If County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should County or others discover errors or





omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between County and Contractor, and the reports, files or documents will be returned to Contractor for correction without no additional costs to County.

22. **News/Information Release:** Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from County through County's project manager.
23. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' project managers' routine exchange of information and cooperation during the term of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than five (5) business days after being sent by internationally-recognized overnight commercial courier or fax, in each case with proof of transmission. All communications shall be addressed to the appropriate Party at the addresses stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: Office of the District Attorney
Name: Anna Ly
Address: 401 Civic Center Drive West

Santa Ana, CA 92701

Email: Anna.Ly@da.ocgov.com
Phone: 714-347-8427
Fax: 714-796-8007

Contractor: Forensic Science Service Limited
Name: Ms Ayodele Ajose
Address: Trident Court
2920 Solihull Parkway,
Birmingham Business Park
Birmingham B37 7YN
United Kingdom
Email: Ayo.Ajose@FSS.pnn.police.uk
Phone: +44 121 329 4377
Fax: +44 121 329 8408

24. **County of Orange Child Support Enforcement:** In order to comply with the child support enforcement requirements of County of Orange, within ten (10) days of notification of selection of award of contract but prior to official award of contract, the selected Contractor agrees to furnish to the contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent if so requested:
- A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address;
 - B. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity;
 - C. A certification that Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and

①



- D. A certification that Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of Contractor to timely submit the data and/or certifications required may result in the contract being awarded to another Contractor. In the event a contract has been issued, failure of Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the contract. Failure to cure such breach within 60 calendar days of notice from County shall constitute grounds for termination of the contract.

25. **Equal Employment Opportunity:** Contractor shall comply with U.S. Executive Order 11426 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

26. **Americans with Disabilities Act (ADA):** Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22; California Government Code, Sections 11135, et seq; and other federal and state laws and executive orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities.





County General Terms and Conditions

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
- B. **Entire Contract:** This Contract, when accepted by Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or his designee, hereinafter "Purchasing Agent."
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County or Contractor unless authorized in writing.

Contractor shall make no changes to this Contract without County's written consent. In the event that there are new or unforeseen requirements, County, with Contractor's concurrence, has the discretion to request official changes at any time without changing the intent of this Contract.

If County-initiated changes or changes in laws or government regulations affect this Contract, County shall notify Contractor, and Contractor shall give County written notice no later than seven (7) calendar days from the latter of (a) the date County advises Contractor of such change or (b) the date the law or regulation went into effect if such change will affect the prices set forth herein, Contractor's ability to deliver services, or the products delivered hereunder. Such changes shall be agreed to in writing and incorporated into a contract amendment. Said amendment shall be issued by the County-assigned buyer, shall require the mutual consent of all Parties, and may be subject to approval by the County Board of Supervisors. Nothing herein shall prohibit Contractor from proceeding with the work as set forth in this Contract.

- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax
- E. **Delivery:** Time of delivery of goods and/or services is of the essence in this Contract as agreed from time to time by the parties hereto. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to

2



Contractor's published specifications or software documentation or services that do not conform to the prescribed Scope of Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Overshipments and undershipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted by County in accordance with the terms of this Contract.

- F. **Acceptance/Payment for Products:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless and until all the goods/services (other than software products and maintenance thereof which are governed by Sections 9 above), have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranties:** Contractor expressly warrants that the goods and/or services covered by this Contract are 1) free of liens or encumbrances and 2) merchantable and good for the ordinary purposes for which they are used. Acceptance of this Contract shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees as identified in paragraph "P" below, and as more fully described in and subject to paragraph "P," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County from third-party actions as a direct result of the failure of the goods/services to conform to such warranties, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law. EXCEPT FOR THOSE WARRANTIES STATED HEREIN, CONTRACTOR EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SOFTWARE PRODUCTS, SERVICES OR OTHER PRODUCTS PROVIDED HEREUNDER INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES IMPLIED FROM ANY COURSE OF DEALING OR USAGE OF TRADE AND NO REPRESENTATIVE OF CONTRACTOR IS AUTHORIZED TO GIVE ANY ADDITIONAL WARRANTY.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with and subject to the more specific requirement contained in paragraph "P" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all third-party claims arising directly from this warranty and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, reasonable attorney's fees, costs and expenses.
- I. **Assignment or Subcontracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or subcontracted by Contractor without the express



written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

In the event that Contractor is authorized by County to subcontract, this Contract shall prevail and the terms of the subcontract shall incorporate by reference and not conflict with the terms of this Contract. In the manner in which County expects to receive services, County shall look to Contractor for performance and not deal directly with any subcontractor. All matters related to this Contract shall be handled by Contractor with County; County will have no direct contact with the subcontractor in matters related to the performance of this Contract. All work must meet the approval of County.

- J. **Non-discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any Sub-Contractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to terminate this Contract without penalty immediately with cause or after 90 days' written notice without cause unless otherwise specified. In addition to any other remedies or rights it may have by law, Contractor has the right to terminate this Contract without penalty after 30 days' written notice without cause and Contractor has the right to terminate this Contract and the license granted herein without penalty immediately with cause. Cause shall be defined as any material breach of contract, which (a) the breaching party has failed to cure within 10 days of written notice of a monetary breach, (b) County has failed to cure within 10 days of written notice of a breach of the terms of the license granted herein, (c) Contractor has failed to cure within 10 business days of written notice of a breach of any of the representations and warranties of Contractor contained in this Contract with regard to the software products and (d) the breaching party has failed to cure within 30 days of written notice of any other non-monetary breaches, or any misrepresentation or fraud on the part of Contractor or County, as the case may be. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations; provided that County shall remain obligated to pay Contractor for products, software products and services already received under the Contract.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.

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- N. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- O. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform all services in a good and workman-like manner and solely in accordance with the specifications set forth on Attachment A; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the services; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.
- P. **Indemnification and Insurance:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability from third-party actions of any kind or nature, including but not limited to personal injury or property damage, to the extent directly caused by Contractor's performance of the services, or the software products or other products provided by Contractor pursuant to this Contract.

County agrees to indemnify, defend with counsel approved in writing by Contractor, and hold Contractor, its officers, directors, employees, and agents ("Contractor Indemnitees") harmless from any claims, demands or liability from third-party actions of any kind or nature, including but not limited to personal injury or property damage, to the extent directly caused by County's performance hereunder, or the use of the software products or other products provided by Contractor pursuant to this Contract.

If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees or Contractor and Contractor Indemnitees (as the case maybe), Contractor and County agree that liability will be apportioned as determined by the court. Neither Party shall request a jury apportionment.

IN NO EVENT SHALL EITHER PARTY HERETO HAVE ANY LIABILITY OR RESPONSIBILITY FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES ARISING FROM LOSS OF PROFITS OR DATA), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTOR'S LIABILITY HEREUNDER SHALL NOT EXCEED THE MINIMUM LIMITS OF INSURANCE COVERAGE AS SET OUT IN THIS PARAGRAPH P.

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INSURANCE PROVISIONS

Prior to the provision of services under this contract, Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

All insurance policies required by this Contract shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by County Executive Office (CEO)/Office of Risk Management. Contractor shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.

If Contractor fails to maintain insurance acceptable to County for the full term of this Contract, County may terminate this Contract.

Qualified Insurer:

Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure Best's Rating) and VIII (Financial Size Category).

If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by Contractor shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability with broad form property damage and contractual liability	\$1,000,000 combined single limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence

All liability insurance, except Professional Liability, required by this contract shall be at least \$1,000,000 combined single limit per occurrence. Professional Liability may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.



County of Orange shall be added as an additional insured on Contractor's Employer's Liability (which includes worker's compensation coverage) and Commercial General Liability policies required by this Contract with respect to work done by Contractor under the terms of this Contract. An endorsement evidencing that the County of Orange is a named additional insured as to such policies shall accompany the Certificate of Insurance.

All insurance policies required by this Contract shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that Contractor's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability.

Contractor will mail 30 days written notice to County in the event of the cancellation of the above described policies before the expiration date thereof.

If Contractor's Professional Liability policy is a "claims made" policy, Contractor shall agree to maintain professional liability coverage for two years following completion of Contract.

The Commercial General Liability policy shall contain a severability of interests clause.

Contractor is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. Contractor will comply with such provisions and shall furnish the County satisfactory evidence that Contractor has secured, for the period of this Contract, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If Contractor fails to provide the insurance certificates and endorsements within seven days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract.



- Q. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "P" above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses directly caused thereby.
- R. **Changes:** Contractor shall make no changes in the work or perform any additional work without County's specific written approval.
- S. **Changes of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.
- T. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- U. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, subcontractors, agents and employees.
- V. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "P" above, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all third-party actions for liability, damages, costs and expenses directly caused by a violation of such laws.
- W. **Freight:** Freight (F.O.B. Destination): For items sent to County by Contractor, the Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract. For items sent to the Contractor by the County, the County assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract. Contractor will charge the County for freight costs to return all evidences to its point of origin.
- X. **Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury.

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and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and/or any other claim of injury or damage.

- Y. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- Z. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- AA. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- BB. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- CC. **Attorneys Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.
- DD. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.
- EE. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- FF. **Employee Eligibility Verification:** Where applicable, the Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as

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they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

SIGNATURE PAGE FOLLOWS

(a)

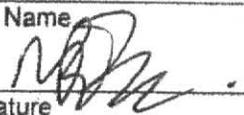


SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Contract the day and year set forth opposite their signatures. Contractor shall provide two signatures as follows: 1) the first signature must be either the Chairman of the Board, President, or any Vice President; 2) the second signature must be that of the secretary, an assistant secretary, the Chief Financial Officer, or any assistant treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

Contractor: Forensic Science Service Ltd.

Mark Turner

Print Name


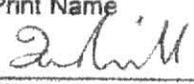
Signature

Business Development Director

Title (President equivalent)
September 17, 2008

Date

Ian Revill

Print Name


Signature

Finance Director

Title (Chief Financial Officer equivalent)
September 17, 2008

Date

County of Orange, a political subdivision of the State of California

Purchasing Agent/Designee Authorized Signature:

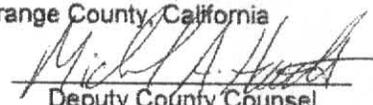
Print Name

Signature

Title

Date

Approved as to Form
Office of the County Counsel
Orange County, California

By: 
Title: Deputy County Counsel
Date: 8/17/08





ATTACHMENT A
SCOPE OF WORK

DNA Sample Collection Kits from Scenesafe™

Description

DNA Sample Collection Field Elimination Kit (Revision K551)

	Item Description	Quantity
1	DNA Form (11" x 8.5" US size) White card with green artwork	1
2	Instruction sheets (11" x 8.5" US size) Green Form with black text	1
3	Tube, Sterile 1.5ml microcentrifuge tube, with open Push Cap	2
4	Sheet of barcode Labels – 9***** series	1 sheet
5	Scenesafe Outer Kit Label – Printed with kit name, expiration date	1
6	Sterile Buccal Comb	2
7	Ink Fingerprint Strips	1
8	Alcohol Wipes	1
9	Outer bag with TRackRS logo applied	1
10	Storage Bag	1
11	DNA Sample Bag	1
12	Polythene Disposable Gloves - Large	2

Revisions to the Kit specification will be discussed and agreed in writing between the Parties.
County shall pay for shipping of Scenesafe kits.

Database Administration

Description

Contractor will continue to host FSS-ID software on behalf of the County until data is migrated to the County production system or until October 31, 2008 whichever is the earlier, after which date the Contractor will cease to host FSS-ID on behalf of County. During the hosting period the Contractor will upload field elimination samples to the database and report any matches that arise from this data. Notwithstanding the foregoing, the identifying demographic data shall remain in California at all times and only within the District Attorney's (or his agents') possession.* The Contractor may only process anonymous samples on its databases provided that barcodes are used on all relevant materials supplied to Contractor. County will have the responsibility for attaching the barcodes to the samples. County alone shall match the results from the barcodes with the identifying demographic data. Contractor only will maintain an anonymous DNA Database.





Contractor will enter metadata into valid FSS-iD input file on behalf of the County until informed by the County that this is no longer required.

Upon receipt of database query from County, Contractor will respond to County within 24 hours during the working week, Monday through Friday, excluding UK bank holiday and County observed holidays.

FSS-iD Maintenance and Support per Annum

Software Maintenance will be performed by the Contractor without additional charge for the duration of this Contract.

Annual Sample Storage

Samples submitted to the Contractor will be stored according to Contractor's standard storage conditions, a copy of which has been provided to County Processed scrapes, intermediate processing components (i.e. DNA extract and amplified DNA), second scrapes and sample cards will be stored by the Contractor until advised to either destroy them or return them to County.

AmpFISTR® Identifier™ Profiling:

Submission volumes are estimated to be 4,000 samples per annum.

Description

DNA STR Profiling using AmpFISTR® Identifier™ of Field Elimination Kits

County will submit samples in batches of 80 (when more than one batch is submitted batches will be bagged separately). The County will provide an identifying batch number. Contractor will endeavor to process samples within 10 calendar days of receipt of a batch of 80 samples to profile production. If Contractor determines that the samples will take longer than 10 calendar days, Contractor will inform the County and identify a revised turnaround time.

Samples that require re-processing will be completed as and when a suitable batch size can be created. Contractor will endeavor to process samples within 10 days of batch creation.

5% of all samples will be routinely reprocessed for quality assurance.

All samples to be submitted to Contractor must meet Contractor standard quality protocols, a copy of which has been provided to County and the terms of which are incorporated herein.

Contractor will provide the services of DNA sample tracking through the DNA process.

AmpFISTR® Y-Filer™ Profiling

As the exact quantity of samples that will be subject to AmpFISTR® Y-Filer™ profiling is unknown, they will be submitted by County on a case by case basis as appropriate. Samples will therefore be processed by the Contractor on a best endeavors basis.

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Description

DNA STR Profiling using AmpFISTR® Y-Filer™

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ATTACHMENT B
COMPENSATION AND PAYMENT

Compensation:

Compensation will be made according to the following pricing.

DNA Sample Collection Kits from Scenesafe™

Description	Unit Price (\$)
DNA Sample Collection Field Elimination Kit	7.00

County to place orders for kits via an electronic transmission of a "DNA Sample Collection Kit Order Form." The form to include the following information:

1. Order Date
2. Contract Number
3. Quantity of Kits Ordering
4. Description of Kit
5. OCDA Order Number (OCDA to furnish – OCDA-####)

The completed Order Form to be e-mailed to: Sales@FSS.pnn.police.uk and copied to NorthAmericaTeam@FSS.pnn.police.uk

The Unit Prices listed above are contingent upon County purchasing kits in a minimum quantity of 1000. Any revision to Kit specification may affect the unit price; this will be determined on a case-by-case basis and subject a contract amendment, as required.

Delivery lead time will be agreed upon placement of a new order and will be a minimum of 2 weeks. County will be invoiced per order inclusive of shipping costs of the kits monthly in arrears.

Database Administration*

Description	Unit Price (\$) per sample
Input Metadata for samples processed by FSS	5.75
Database Administration including match reporting	7.97

*Upon successful data transfer to the County these charges will no longer apply.

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FSS-iD Maintenance and Support

Description	Unit Price (\$)	Quantity	Price (\$)
FSS-iD Maintenance and Support per annum	100,000.00	1	100,000.00

County will be invoiced for the initial Contract Term on signing on the Contract.

Software maintenance as defined in Article 1.d. Any other technical support that the Contractor provides to correct errors in the functioning of the Software Product that the Parties agree after reasonable assessment does not directly flow from an error in the Software Products will be \$2,000 per day per technician plus prior approved travel, food and lodging.

County will reimburse Contractor reasonable travel expenses subject to prior approval by the County and may include airfare, hotel, meals, car rental and other miscellaneous travel expenses.

Annual Sample Storage

Description: Annual Storage of field elimination samples

The Contractor will store County samples related to this Contract for a period of 10 years at no charge in accordance with conditions set forth in this Contract. Upon the expiration of such 10-year period, the parties will make arrangements for either the destruction of the samples, the return of the samples to the County or the terms upon which Contractor will continue to store the samples.

Description	Unit Price (\$)	Discount	Price (\$)
Annual Sample Storage	1	1	0.00

AmpFISTR® Identifier™ and AmpFISTR® Y-Filer™ Profiling

Description

DNA STR Profile Analysis using AmpFISTR® Identifier™ and AmpFISTR® Y-Filer™ of Field Elimination Kits



Description	Unit Price (\$)	Discount	Discounted Price (\$)
AmpFISTR® Identifier™	75.36	15%	64.00 per sample
AmpFISTR® Y-Filer™	75.36	0	75.36 per sample

The foregoing pricing includes sample analysis, reprocessing and QA sampling of 5% of all samples. The price set forth above for the AmpFISTR® Y Filer™ is based upon County submitting samples in batches of 80 samples. Contractor reserves the right to change the prices quoted above if samples are submitted in smaller quantities.

Invoicing for profiling samples will be monthly in arrears.

Payment:

Payment will be net 30 days in arrears after receipt of an invoice in a format acceptable to County, verified and approved by the Project Manager and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with Contractor. Invoices are to be submitted to the following address:

Office of the District Attorney
Attn: Accounts Payable
Post Office Box 808
Santa Ana, CA 92702-0808

Contractor shall reimburse County for any monies paid to Contractor for services not provided or when services do not meet Contract requirements. Payments made by County shall not preclude the right of County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.

Contractor will provide a two-part invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address, if different from 1, above
3. Name of County agency/department
4. Delivery/service address
5. Contract Number N1000009935
6. Date services rendered
7. Service description, quantity, and prices
8. Sales tax, if applicable
9. Total