

Solicitation 017-556954-11

Service Award Pins



County of Orange

Bid 017-556954-11 Service Award Pins

Bid Number 017-556954-11
Bid Title Service Award Pins

Bid Start Date Apr 2, 2010 1:20:06 PM PDT
Bid End Date Apr 29, 2010 4:00:00 PM PDT
Question & Answer End Date Apr 21, 2010 4:00:00 PM PDT

Bid Contact Marijo Sio
marijo.sio@ocgov.com

Standard Disclaimer The County of Orange is not responsible for and accepts no liability for any technical difficulties or failures that result from conducting business electronically.

Changes made on Apr 13, 2010 12:50:14 PM PDT

New Documents Service Award Pins Contract MA-017-10010241-Authentic.pdf
Service Award Pins Contract MA-017-10010241-Jim Herndon.pdf

Changes were made to the following items:
[Service Award Pins](#)

Description

County of Orange CEO/County Procurement Office(CPO)is requesting competitive bids for Service Award Pins.

All questions must be posted on bidsync.com. Please do not email buyer.

Added on Apr 13, 2010:
Current Contracts have been provided in response to Question #3.

Changes made on Apr 13, 2010 12:50:14 PM PDT

INVITATION FOR BID
MUST BE RECEIVED
BY



FOR OFFICE USE ONLY

4/29/10 - 4:00 p.m. PST

DATE/TIME

017-556954-11

BID NUMBER

556954

FILE NO.

COUNTY OF ORANGE
County Procurement Office
1300 South Grand, Bldg. A
Santa Ana, CA 92705

Date/Time Stamp

Date: 04/01/10

COVER PAGE
INVITATION FOR BID

County of Orange, County Procurement Office (CPO) is requesting competitive bids for Service Award Pins to be provided in accordance with the requirements herein, inclusive of the Scope of Work attached hereto and incorporated herein by this reference as Attachment A.

The proposed Contract shall be effective for three (3) years and renewable for two (2) additional years with mutual concurrence from both Parties.

Bids submitted shall be valid for **180** days after bid closing date.

BID CLOSES AT 4:00 p.m. (Pacific Standard Time) on April 29, 2010.

☐ I have read and understand and agree to the terms and conditions herewith and I am submitting a response to this solicitation.

Date: _____ Company Name: _____

* Authorized Signature _____ Print Name _____ Title _____

* Authorized Signature _____ Print Name _____ Title _____

OR

I prefer not to submit a bid in response to this solicitation per the reason(s) given below.

Reason(s): _____

Date: _____ Company Name: _____

* Authorized Signature _____ Print Name _____ Title _____

* If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) 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.

RETURN THIS SHEET WITH YOUR RESPONSE

County of Orange
County Procurement Office

IFB 017-556954-11
Service Award Pins

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SECTION I

General Information

IMPORTANT NOTICE

If you received this solicitation by e-mail from the County of Orange as the result of the County's e-mail notice, copies of all addenda (additional information and/or modifications) to this solicitation will be e-mailed to you.

If you did not receive this solicitation as a result of a County e-mail notice, please contact the Deputy Purchasing Agent (hereinafter "DPA"), Marijo Sio, by e-mail at marijo.sio@ocgov.com. Include your company name and contact information, and you must reference this solicitation number: 017-556954-11.

The County of Orange does not guarantee that you will receive the addenda to this solicitation unless you received this solicitation by e-mail directly from the County of Orange. Bidders should review the County of Orange's Internet web site at www.BidSync.com for notices of addenda. It is the Bidder's responsibility to request all additional information and/or modifications to this solicitation.

The County of Orange does not require and neither encourages nor discourages the use of lobbyists or other consultants for the purpose of securing business.

I. GENERAL INFORMATION

- A. County Procurement Office business hours are 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., Monday through Friday.
- B. Important dates to remember:
 - April 21, 2010 – all written questions due by 4:00 PM PST
 - April 23, 2010 - addendum if necessary will be issued
 - April 29, 2010 – bid closes at 4:00 PM PST
- C. Faxed bids responses will **NOT** be allowed.
- D. All bids received by the County and opened are subject to disclosure under the California Public Records Act, and other applicable law.

II. INSTRUCTIONS TO BIDDERS AND PROCEDURES FOR SUBMITTAL

- A. If you choose to "NO BID" this Invitation for Bid (IFB), please complete the appropriate section on the IFB coversheet, indicating the reason(s) why you have chosen not to bid. Returning a "NO BID" response by the bid due date and time will keep your firm in the system.
- B. This IFB consists of the following items:
 - Cover Page
 - Section I – General Information
 - Section II – Model Contract
 - Attachment A – Scope of Work
 - Attachment B – Payment/Compensation
 - Attachment C – Bid Items
 - Exhibit A – Company Profile

- Exhibit B – References
- Exhibit C – County of Orange Child Support Enforcement Certification Requirements
- Exhibit D – EDD Independent Contractor Reporting Requirements

C. **Responsive bids will include the following completed pages:**

- Cover Page signed and dated by authorized company representatives (Note: special signature requirement for Corporation)
- Section II – Model Contract – page 20 duly signed/acknowledged signifying acceptance of the County's Terms and Conditions as stated under Article 44, of the Model Contract's Additional Terms and Conditions
- Attachment C – Bid Items
- Exhibit A – Company Profile
- Exhibit B – References (All Bidders must provide a minimum of three (3) Letters of Reference. The references should be from clients who are comparable in scope to the County of Orange. Include two (2) references from a governmental agency. References must cover services performed by your company in the past five (5) years. Services should be similar to those services required in this solicitation. Bidders must complete Exhibit B.

D. **If awarded the bid, you will be required to submit the following:**

- Exhibit C – County of Orange Child Support Enforcement Certification Requirements
- Exhibit D – EDD-Independent Contractor Reporting Requirements
- Current signed Form W-9 (Taxpayer Identification Number and Certification)

E. Bids must be provided for each item separately; "all-or-none" bids will not be accepted unless in the best interests of the County.

F. Out-of-state Contractors must include California sales tax permit number.

G. All bids must be received by the County Procurement Office and time-and-date stamped on the outside of the sealed package by a County employee of the County Procurement Office by 4:00 p.m. (Pacific Standard Time) on April 29, 2010. Delivery receipts will be provided to the deliverer once County staff has accepted the bid. It is the Bidder's responsibility to ensure that delivery is made to the County Procurement Office by the due date and time specified herein and to the following address:

County of Orange
County Procurement Office - Bldg A, 2nd Floor
1300 South Grand Ave.
Santa Ana, CA 92705

Bids received after 4:00 p.m. (Pacific Standard Time) on April 29, 2010 will not be accepted. **LATE BIDS WILL NOT BE ACCEPTED FOR ANY REASON.**

- H. All envelopes containing mailed bids must be marked with the solicitation number and the date and time of the bid closing. It is the Bidder's responsibility to verify that the closing date on the bid envelope matches the closing date of the bid. Only one bid submittal will be accepted per envelope.
- I. The County will attempt to provide all pertinent information. It is the responsibility of each Bidder to review, evaluate, and where necessary, request any clarification prior to submission of a bid. If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of this IFB or finds discrepancies in or omissions from the specifications, they may submit a request for clarification to the Deputy Purchasing Agent ("DPA") Marijo Sio via BidSync (Bid # 017-

556954-11). For BidSync assistance, please contact BidSync Vendor Support Team at 800-990-9339 Option 1.

Any questions or requests for clarifications or interpretations shall be requested via BidSync by 4:00pm on April 21, 2010. The person submitting the request will be responsible for its prompt and timely submission.

If clarification or interpretation of this IFB is considered necessary, an addendum shall be issued. Oral statement(s) concerning the meaning of the contents of this IFB by County personnel or any other person is (are) unauthorized and should not be relied upon. Any interpretation of, or correction to this IFB, will be made only by an addendum issued by either the assigned DPA or BidSync. It is the Bidder's responsibility to ensure that they have reviewed any and all addendums to this IFB.

- J. Bidders shall be solely responsible for any errors or omissions in their bids. Any discrepancies in numbers or calculations shall be interpreted to reflect the lowest price to the County.
- K. The County shall not be liable for any expenses incurred by potential Bidders in the preparation or submission of their bids. The County shall not, in an event, be liable for any pre-contractual expenses incurred by Bidders prior to the date of award and execution, if any, of the Contract. Pre-contractual expenses are defined as expenses incurred by the Bidder in: a) preparing its bid in response to this IFB; b) submitting that bid to the County; c) negotiating with the County any matter related to the Bidder's bid; and d) any other expenses incurred by the Bidder prior to the date of award and execution, if any, of the Contract.
- L. The Model Contract contained in Section II of this solicitation is the Contract proposed for execution. Negotiations may or may not be conducted with the finalists; therefore, the response submitted should contain Offeror's most favorable terms and conditions, since the selection and award may be made without further discussion. Any exceptions to the terms and conditions made by any Offeror after submission of its response may result in elimination from further consideration.
- M. Method of Compensation: Orders may be placed against this Regional Cooperative Agreement (RCA) at the convenience of the agency/department anytime within the effective dates of the RCA. The agency/department will be required to request the services on their individual purchase documents created from the Regional Cooperative Agreement. Contractor will be required to fulfill all order(s) placed by any County agency/department. Payment will be made based upon satisfactory completion and acceptance of the work for each service request. There will be no payment for services requested until all work has been completed.
- N. Bid Review/Acceptance/Rejection/Award:
 - 1. Bid packages will be reviewed by the County for responsiveness to all requirements. The County has the right to reject any bid deemed unresponsive or lacking the resources or experience to adequately perform the services described herein.
 - 2. Award shall be based upon the lowest responsive, responsible bid, which may also include a review of bidder's qualifications, experience, and resources, bidder's ability to meet the requirements and perform the services specified in this solicitation, bidder's references and past performance, and bidder's acceptance of County terms and conditions.
 - 3. Award will be contingent upon agency approval. The lowest responsive, responsible bid(s) may be subject to further negotiations.
 - 4. Refer to Attachment C for additional award detail.

Please take notice, non-acceptance of County of Orange terms and conditions may deem a bid non-responsive. The County will not accept any other terms, conditions, or provisions contrary to those contained in this solicitation.

III. INSTRUCTIONS - PROTEST PROCEDURES

Policy

Any actual or prospective bidder, proposer or contractor who alleges a grievance by the solicitation or award of a contract may submit a grievance or protest to the appropriate agency/department Deputy Purchasing Agent.

Procedure

All protests shall be typed under the protester's letterhead and submitted in accordance with the provisions stated herein. All protests shall include at a minimum the following information:

- The name, address and telephone number of the protester;
- The signature of the protester or the protester's representative;
- The solicitation or contract number;
- A detailed statement of the legal and/or factual grounds for the protest; and
- The form of relief requested.

Protest of Bid/Proposal Specifications:

All protests related to bid or proposal specifications must be submitted to the Deputy Purchasing Agent no later than five (5) business days prior to the close of the bid or proposal. Protests received after the five (5) business day deadline will not be considered by the County.

In the event the protest of specifications is denied and the protester wishes to continue in the solicitation process, they must still submit a bid prior to the close of the solicitation in accordance with the bid/proposal submittal procedures provided in the bid/proposal.

Protest of Award of Contract:

In protests related to the award of a contract, the protest must be submitted no later than five (5) business days after the notice of the proposed contract award is provided by the Deputy Purchasing Agent. Protests relating to a proposed contract award which are received after the five (5) business day deadline will not be considered by the County.

Protest Process

- In the event of a timely protest, the County shall not proceed with the solicitation or award of the contract until the Deputy Purchasing Agent, the County Purchasing Agent or the Procurement Appeals Board renders a decision on the protest.
- Upon receipt of a timely protest, the Deputy Purchasing Agent will within ten (10) business days of the receipt of the protest, issue a decision in writing which shall state the reasons for the actions taken.
- The County may, after providing written justification to be included in the procurement file, make the determination that an immediate award of the contract is necessary to protect the substantial interests of the County. The award of a contract shall in no way compromise the protester's right to the protest procedures outlined herein.
- If the protester disagrees with the decision of the Deputy Purchasing Agent, the protestor may submit a written notice to the Office of the County Purchasing Agent requesting an appeal to the Procurement Appeals Board, in accordance with the process stated below.

Appeal Process

- If the protester wishes to appeal the decision of the Deputy Purchasing Agent, the protester must submit, within three (3) business days from receipt of the Deputy Purchasing Agent's decision, a written appeal to the Office of the County Purchasing Agent.
- Within fifteen (15) business days, the County Purchasing Agent will review all materials in connection with the grievance, assess the merits of the protest and provide a written determination that shall contain his or her decision on whether the protest shall be forwarded to the Procurement Appeals Board.
- The decision of the County Purchasing Agent on whether to allow the appeal to go forward will be final and there shall be no right to any administrative appeals of this decision.

IV. RIGHTS RESERVED TO COUNTY

The County reserves the right to:

- A. Accept or reject in whole or in part any or all bids at its sole discretion and to solicit for new bids, as the best interest of the County may require;
- B. Award final Contract with the lowest, responsive, responsible Bidder or Bidders as necessary to serve the best interests of the County may require;
- C. Further negotiate pricing with the lowest Bidder as necessary to serve the best interests of the County;
- D. Withdraw in part or in its entirety this IFB at any time without prior notice; and/or
- E. Award its total requirement to one Bidder or to apportion those requirements among two or more Bidders as the County may deem to be in its best interests.
- F. Make no guarantee as to the usage of the services by the County. The County furthermore makes no representation that any Contract will be awarded to any Bidder responding to this IFB.
- G. **All bids received may be public record after opening. Bids are not to be marked as confidential or proprietary.** The County shall refuse to consider any bid so marked. Bids submitted in response to this IFB may be subject to public disclosure per the requirements of the California Public Records Act, Government Code Section 6250 et seq. The County shall not be liable in any way for disclosure of any such records. Additionally, all bids shall become the property of the County. The County reserves the right to make use of any information or ideas in the bids submitted.
- H. Waive, at its discretion, any irregularity or informality which the County deems correctable or otherwise not warranting rejection of the bid.
- I. Make final award determination based on the lowest responsive, responsible bid, but award will be contingent upon agency/department approval, including a review of qualifications, and the successful bidder must have met all the qualifications/requirements set forth herein.

V. SPECIAL REQUIREMENTS

- A. Bidders may be required to present satisfactory evidence that they have been regularly engaged in the business of providing services required by this solicitation or are reasonably familiar therewith and that they are fully prepared with the necessary capital, materials, and machinery as may be required or specified in this solicitation to complete the work to be contracted to the satisfaction of the County.
- B. Bidders may be required to provide information regarding and/or proof of the number of years they have provided the services requested in this solicitation.
- C. All Bidders must have a minimum of five (5) years experience for services comparable to that in the Scope of Work.

- D. By submitting a bid, the Bidder represents that it has thoroughly examined and become familiar with the services required under this IFB and that it is capable of providing the services requested by the County herein.
- E. Each Bidder must submit its bid in strict accordance with all requirements of this IFB. Deviations, clarifications and/or exceptions without adequate explanation or justification may be grounds for disqualification of the bid, and must be clearly identified and listed separately as alternative items for the County's consideration.

VI. PRICING

- A. Prices quoted shall be firm for the first year of the price agreement.
- B. Cost increases may be considered during Contract renewal periods only. The County requires bona fide proof of cost increases prior to any price escalation adjustment. A minimum of 30 (thirty) days advance notice in writing is required to secure such adjustments. When offering escalating price bids, quote applicable labor and material separately as to percentage of total cost. No retroactive pricing adjustments will be considered. The County may enforce, adjust, or cancel escalating price agreements as it sees fit. The net dollar amount of profit will remain firm during the period of the price agreement. Adjustments increasing Contractor's profit will not be allowed.
- C. All decreases will be automatically extended to the County.

VII. COUNTY OF ORANGE CHILD SUPPORT AND EDD REQUIREMENTS

Orange County Child Support

In order to comply with the child support enforcement requirements of the County of Orange, within ten 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:

1. In the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address;
2. 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;
3. A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
4. A certification that the 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 the 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 the 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 the County shall constitute grounds for termination of the contract.

(Upon County's request, Contractor shall utilize the forms provided in Exhibit C of this solicitation to satisfy this requirement.)

EDD Independent Contractor Reporting Requirements

Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txicr.htm.

To comply with the reporting requirements, County procedures for contracting with independent contractors mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

First name, middle initial and last name
Social Security Number
Address
Start and expiration dates of contract
Amount of contract

(Upon County's request, Contractor shall utilize the forms provided in Exhibit D of this solicitation to satisfy this requirement.)

SECTION II

Model Contract for Service Award Pins

This Regional Cooperative Agreement (RCA) to provide Service Award Pins, hereinafter referred to as "Contract" is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; hereinafter referred to as "County," and (Company Name), with a place of business at (Address); hereinafter referred to as "Contractor," which are sometimes referred to as "Party", or collectively as "Parties."

RECITALS

WHEREAS, Contractor responded to An Invitation for Bids (IFB)," for Service Award Pins; and

WHEREAS, the Contractor responded and represented that its proposed services shall meet or exceed the requirements and specifications of the IFB; and

WHEREAS, the County of Orange Board of Supervisors has authorized the Purchasing Agent or designee to enter into a Contract for Service Award Pins,

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

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 the 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 unless authorized by County in writing.
- 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 services is of the essence in this Contract. County reserves the right to refuse any services and to cancel all or any part of the descriptions or services that do not conform to the

prescribed statement of work. Delivery shall not be deemed to be complete until all services have actually been received and accepted in writing by County.

- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by the County, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the services covered by this Contract are fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "P" below, and as more fully described in paragraph "P", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, 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.
- 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 the more specific requirement contained in paragraph "P" below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims 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, attorney's fees, costs and expenses.
- I. **Assignment or Sub-Contracting:** 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 sub-contracted 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.
- 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 subcontractors 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 thirty (30) days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.
- 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.

- 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 the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; 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 work; and, if permitted to subcontract, shall be fully responsible for all work performed by sub-contractors.
- P. **Indemnification and Insurance**
Indemnification Provision
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 of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance 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, CONTRACTOR and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- 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 related to or arising from or related thereto.
- R. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- S. **Change 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 thirty-six (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, 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 Indemnities harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.
- W. **Freight (F.O.B. Destination):** 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.
- X. **Pricing:** The Contract bid price shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the scope of work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. **Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, 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.
- Z. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. **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.
- BB. **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.
- CC. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorney 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.
- EE. **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 has 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.
- FF. **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.

GG. Employee Eligibility Verification: 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, consultants and subcontractors 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 they may be hereafter amended. The Contractor shall retain all such documentation for all covered employee, consultants and subcontractors 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.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as Attachment A.
2. **Term of Contract:** This Contract shall commence on August 1, 2010 or upon execution of all necessary signatures, whichever occurs later, and will be effective for three years unless terminated by the County. This Contract may be renewed as set forth in paragraph 3 below.
3. **Renewal:** This Contract may be renewed by mutual written agreement of both Parties for two (2) additional years. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.
4. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
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 this contract without penalty.
6. **Adjustments – Scope of Work:** No adjustments made to the scope of work will be authorized without prior written approval of the County assigned Deputy Purchasing Agent.
7. **Regional Cooperative Agreement (RCA) – County-Wide Use:** This Contract is to be used as a Regional Cooperative Agreement against which subordinate contracts will be created and issued by the user agencies/departments based on the fixed pricing, terms, and conditions of this RCA. Contractor will be required to fulfill all service order(s) placed by any County agency/department. For the contractor's full and complete performance of its obligations under this Contract, the County shall compensate the contractor the fixed prices set forth herein. This pricing shall remain firm for the first period of this Contract. County agencies/departments will make service requests in their own names, will have deliveries made to their facilities, and will be responsible for making and approving payments for routine processing by the County of Orange Auditor-Controller.

As required by County policy, some subordinate contracts created against the Regional Cooperative Agreement may require Board of Supervisors approval.

Invoices are to be submitted to the user agency/department to the bill-to address, unless otherwise directed in this Contract. The contractor shall reference the agency/department's subordinate agreement number on the invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility of providing an acceptable invoice rests with the contractor.

The contractor will be responsible for providing each agency/department a copy of the Regional Cooperative Agreement upon request.

The contractor is required to maintain a list of the agencies/departments that have used this Regional Cooperative Agreement, including a list of the dollar volumes spent, and shall provide this report on a quarterly basis to the originating County entity.

8. **Regional Contracting Alliance Cooperative Agreement:** The provisions and pricing of this contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any contract entered into with another agency or entity that is entered into as an extension of this Contract a contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The contractor is responsible for providing each cooperative entity a copy of the contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this contract.

The contractor shall be required to maintain a list of the cooperative entities using this contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County.

9. **Amendments – Changes/Extra Work:** The Contractor shall make no changes to this Contract without the County's written consent. In the event that there are new or unforeseen requirements, the County with the 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 price, the Contractor's ability to deliver services, or the project schedule, the Contractor shall give the County written notice no later than seven calendar days from the date the law or regulation went into effect or the date the change was proposed by the County and the Contractor was notified of the change. Such changes shall be agreed to in writing and incorporated into a Contract Amendment; said Amendment shall be issued by the County-assigned DPA, shall require the mutual consent of all Parties, and may be prohibit the Contractor from proceeding with the work as set forth in this Contract.

10. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law.

Contractor agrees to allow interviews of any employees or others who might reasonably have

information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any sub-Contractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project manager.

11. **Authorization Warranty:** The contractor represents and warrants that the person executing this contract on behalf of and for the contractor is an authorized agent who has actual authority to bind the contractor to each and every term, condition and obligation of this agreement and that all requirements of the contractor have been fulfilled to provide such actual authority.
12. **Breach of Contract:** The failure of the 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 the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - i. Terminate the Contract immediately, pursuant to Section K herein;
 - ii. Afford the 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;
 - iii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - iv. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
13. **California Sales Tax to Out-of-State Contractors:** Out-of-state contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the state of California in lieu of payment of sales tax to the contractor.
14. **Contractor – Change in Ownership:** The contractor agrees that if there is a change in ownership prior to completion of this contract, the new owner will be required, under terms of sale, to assume this contract and complete it to the satisfaction of the County.
15. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
16. **Conflict of Interest – Contractor's Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Contractors; and third Parties associated with accomplishing work and services hereunder. The 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 the County.
17. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The contractor shall not, during the period of this contract, employ any County employee for any purpose.
18. **Conflict with Existing Law:** The Contractor and the County agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the

remainder of the Contract shall remain in full force and effect. Either Party having knowledge of such term or provisions shall promptly inform the other of the presumed non-applicability of such provision. Should the offending provision go to the heart of the Contract, the Contract shall be terminated in a manner commensurate with interests of both Parties to the maximum extent reasonable.

19. **Contingent Fees:** The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of the contractor or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

For breach or violation of this warranty, the 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 the contractor.

20. **Contractor Bankruptcy/Insolvency:** If the contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the contractor's insolvency, the County may terminate this contract.
21. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
22. **Contractor's Power and Authority:** The Contractor warrants that it has the full power and authority to grant the rights herein granted and will hold the County hereunder harmless from and against any loss, cost, liability and expense, including reasonable attorney fees, arising out of any breach of this warranty. Further, the Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the County under this Contract.
23. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of seven years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned DPA.
24. **Correspondence to Buyer - Contract:** Any correspondence related to the terms, prices and conditions of this contract must be directed to the agency/department purchasing division to the attention of the assigned DPA. Correspondence not directed through the DPA for resolution will not be regarded as valid.

County of Orange
Attn: Assigned DPA
County Procurement Office
1300 S. Grand Ave., Bldg. A, 2nd Floor
Santa Ana, CA 92705

25. **County Of Orange Child Support Enforcement [Within Ten (10) Days Of Notification Of Selection For Award Of Contract]:** In order to comply with the child support enforcement requirements of the 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:
- 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 ten (10) percent or more in the contracting entity;
- c. A certification that the contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- d. A certification that the 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 the 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 the 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 sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

26. **Debarment:** Contractor shall certify that neither contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, contractor must include an explanation with their bid/proposal. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department or agency may result in the bid/proposal being deemed non-responsible.

27. **Disputes – Contract:**

- a. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's project manager and the County's project manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:
 - i. The Contractor shall submit to the agency/department assigned DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - ii. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
- b. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the provision of services under this Contract. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.

28. **EDD Independent Contractor Reporting Requirements:** Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations. (See Exhibit D.)

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent contractors. An independent contractor is defined as "an individual who is not an employee of the ... government entity for California purposes and who receives compensation or executes a contract for services performed for that ... government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txcr.htm.

29. **Entire Contract:** This contract and all of its attachments comprise the entire contract between the contractor and the County. Additional or new terms contained in this contract which vary from the contractor's proposal are deemed accepted by the contractor by execution of this contract or other commencement of performance hereunder. All previous proposals, offers, discussions, preliminary understandings, and other communications relative to this contract, oral or written, are hereby superseded, except to the extent that they have incorporated into this contract. No future waiver of, exception to, addition to, or alteration of any of the terms, conditions and/or provisions of this contract shall be considered valid unless specifically agreed to in writing by both parties.
30. **Firm Price Quotes:** Prices quoted herein shall be firm for the first year of the Contract.
31. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the 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, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the 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.
32. **Headings Not Controlling:** Headings used in the Contract are for reference purposes only and shall not be considered in construing this Contract.
33. **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 the County's assigned buyer. If disagreement exists between the contractor and the County's assigned buyer in interpreting the provision(s), final interpretation and clarification shall be determined by the County's Purchasing Agent or his designee.
34. **Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

35. **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 terms 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 four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For Contractor: Company Name

Attention:

Address:

For County: County of Orange
County Procurement Office
1300 S. Grand Ave., Bldg. A, 2nd Floor
Santa Ana, CA 92705

36. **Parking for Delivery Services:** The County of Orange will not provide free parking for delivery services.
37. **Precedence:** The Contract documents consist of this Contract and its attachments and exhibits. 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 articles of this Contract, and then the exhibits and attachments.
38. **Price Increase/Decrease:** No price increases will be permitted during the first year of the Contract. All price decreases will automatically be extended to the County of Orange. The County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of thirty (30)-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
39. **Termination – Default:** If contractor is in default of any of its obligations under this contract and has not commenced cure within ten days after receipt of a written notice of default from County and cured such default within the time specified in the notice, the County shall immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this contract by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this contract, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this contract. Upon termination of the contract with contractor, the County may begin negotiations with a third-party contractor to provide goods and/or services as specified in this contract.

The right of either party to terminate this contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

40. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor shall submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than sixty (60) days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation plus previously paid

compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

41. **Usage Reports – Annual:** The contractor shall submit usage reports on an annual basis to the assigned buyer of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted 90 days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.
42. **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.
43. **Waivers - Contract:** The failure of the 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.
44. **Terms and Conditions:** The only terms and conditions that will be applicable to this solicitation and resultant Contract are those issued by County Procurement Office. **Bidder acknowledges that he has read and agrees to all terms and conditions, and requirements of this solicitation and resultant Contract and indicates concurrence below:**

Bidder: _____ Date: _____

Note: This page along with Bidder's signature agreeing to the County's Contract terms and conditions must be returned by bidder with its Bid.

MODEL CONTRACT SIGNATURE PAGE

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

CONTRACTOR *

Print Name	Title
------------	-------

DO NOT SIGN AT THIS TIME

Signature	Date
-----------	------

Print Name	Title
------------	-------

DO NOT SIGN AT THIS TIME

Signature	Date
-----------	------

*** If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.**

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) Assistant Treasurer.

In the alternative, a single corporation signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

COUNTY OF ORANGE, a political subdivision of the State of California

Print Name	Title
------------	-------

Signature	Date
-----------	------

ATTACHMENT A**SCOPE OF WORK****I. GENERAL INFORMATION:**

This contract is to provide Service Award Pins to various County department/agencies located throughout the County of Orange. Service Award Pins are requested on an as-needed basis and orders will be placed at any time during the term of the contract.

- Service pins will be used to recognize employees for the following years of service to the County: 5, 10, 15, 20, 25, 30, 35 and 40.
- Each service award pin will be placed in a two-tone plastic presentation box.
- Pins shall be made exactly as presented in the artwork. The County will NOT approve and/or pay for any changes made to the current artwork.
- No preference as to where the pins will be manufactured.
- Each agency/department will place their orders, but the pin will be uniform across the County.

II. PIN SPECIFICATION:

- Pins shall be of one piece construction with gold plated flat back clutch.
- Size of the pin from top to bottom: 1"; for the round shape: 13/16".
- Color for the fill of the outer orange circle is PMS #165.
- Pin shall be made with hard enamel with polished outside edges and satin back finish.
- All emblems shall be manufactured using the die pressed process from 85-15.50 with electro gold plated (EGP) finish.
- A clear 2.3mm synthetic stone shall be placed between the orange leaves located below the County logo (please see artwork).
- Stones must be nick set in the gold and not glued on.
- Pins shall have the year in raised gold in the center gold logo.

III. CONTRACTOR RESPONSIBILITIES:

- Contractor shall warrant all materials and workmanship to be free of defects.
- Contractor shall deliver service award pins within 45 days of receipt of order.
- Contractor shall endeavor to combine orders for departments where possible in order for the County to take advantage of quantity price breaks.
- If Contractor makes errors in die, Contractor will reproduce die at no additional expense to the County. The reproduced corrected die must have County approval before production of new pins.
- Contractor must notify the County Procurement Office each time a new pin denomination has been ordered and forward a copy of the invoice with the denomination charge.

SERVICE PIN ARTWORK



ATTACHMENT B

Payment/Compensation

1. **Payment – Invoicing Instructions:** The Contractor will provide a two-part invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the contractor will leave an invoice with each delivery. Invoices must be submitted to address indicated in the Subordinate Contract created by the individual agency/department. Each invoice must have a unique number and must include the following information:
 - a) Contractor's name and address;
 - b) Contractor's remittance address;
 - c) Contractor's Federal Tax I.D. Number;
 - d) Name of County Agency/Department;
 - e) Delivery/Service address;
 - f) DO Number/Subordinate Agreement Number
 - g) Date of order/services rendered;
 - h) Product/Service description, quantity, and prices
 - i) Sales tax, if applicable
 - j) Freight/delivery charges, if applicable
 - k) Total
2. **Payment Terms:** The Invoice is to be submitted in arrears to the user agency/department to the bill-to address, unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be net 30 days after receipt of the invoice in a format acceptable to the County and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services not previously invoiced. The Contractor shall reimburse the County for any monies paid to the Contractor for services not provided or when services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any services involved or billed under this Contract and shall not be construed as acceptance of any part of the services.
3. **Compensation:** The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder

ATTACHMENT C**PRICING**

<u>Quantity</u>	<u>Description</u>	<u>Cost per Each</u>
1 – 25	Service Award Pins	\$ _____/each
26 – 50	Service Award Pins	\$ _____/each
51 – 100	Service Award Pins	\$ _____/each
101 – 200	Service Award Pins	\$ _____/each
200 or more	Service Award Pins	\$ _____/each

Note: Shipping charges and presentation boxes must be included in proposed price. County shall not pay additional charges for shipping and presentation boxes.

Extra Charge

Die charge \$ _____ (one time charge to the County for each pin denomination).

Bid Award and Bidder's Note:

1. Bid award will be based on lowest proposed cost for quantity 1 – 25.
2. Contractor shall provide three (3) samples to the County when submitting bids.

EXHIBIT A

Company Profile

Company Name: _____

Business Address: _____

Address for mailed funds: _____

Telephone Number: (____)_____ Facsimile Number: (____)_____

E-mail Address: _____

Length of time the firm has been in business: _____

Length of time at current location: _____

Is your firm the sole proprietor doing business under a different name: _____ Yes _____ No

If yes, please indicate sole proprietor's name and the business name: _____

Indicate your firm's federal tax-exempt I.D. number: _____

Is your firm incorporated: _____ Yes _____ No State of Incorporation: _____

Contractor license number: _____ Expiration Date: _____

Regular business hours: _____

Regular holidays and hours when business is closed: _____

Contact's name in reference to this bid: _____

Telephone Number: (____)_____ Facsimile Number: (____)_____

E-mail Address: _____

Name of service manager: _____

Telephone Number: (____)_____ Facsimile Number: (____)_____

E-mail Address: _____

Name of administrator to whom customer service problems should be directed: _____

Telephone Number: (____)_____ Facsimile Number: (____)_____

E-mail Address: _____

Name administrator to who questions regarding accounts payable should be directed: _____

Telephone Number: (____)_____ Facsimile Number: (____)_____

E-mail Address: _____

In the event of an emergency or declared disaster, the following information is required:

Name of Contact individual during non-business hours: _____

Telephone Number: (____)_____ Facsimile Number: (____)_____

E-mail Address: _____

Cellular Number: _____

EXHIBIT B

References

All bidders must provide a minimum of three (3) Letters of Reference. The references should be from clients who are comparable in scope to the County of Orange. Include two (2) references from a governmental agency. References must cover services performed by your company in the past five (5) years. At least one of the references must cover services performed in the past year. Services should be similar to those services required in this solicitation.

Additionally, please complete the form below on the clients who have provided references:

References must include the name and address of the company or governmental agency and the name and telephone and facsimile numbers of contact person(s), annual agreement dollar amount of the Contract, and a brief description of the agreement/Contract work and services provided. Attach additional sheets if necessary.

1. Name of Reference: _____
Address: _____
Contact Name: _____ Telephone Number: _____
Annual agreement dollar amount: _____ Facsimile Number: _____
Brief Description of agreement/Contract work or services provided: _____

2. Name of Reference: _____
Address: _____
Contact Name: _____ Telephone Number: _____
Annual agreement dollar amount: _____ Facsimile Number: _____
Brief Description of agreement/Contract work or services provided: _____

3. Name of Reference: _____
Address: _____
Contact Name: _____ Telephone Number: _____
Annual agreement dollar amount: _____ Facsimile Number: _____
Brief Description of agreement/Contract work or services provided: _____

EXHIBIT C

County of Orange Child Support Enforcement Certification Requirements

In order to comply with child support enforcement requirements of the County of Orange, within ten (10) days of award of Contract, the successful Contractor must furnish to the Contract Administrator, Purchasing Agent or the agency/department Deputy Purchasing Agent:

1. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address;
2. 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 ten (10) percent or more in the contracting entity; A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
3. A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

The certifications will be stated as follows:

"I certify that _____ is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract _____ with the County of Orange. I understand that failure to comply shall constitute a material breach of the Contract and that failure to cure such breach within 10 calendar days of notice from the County shall constitute grounds for termination of the Contract.

It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders and for no other purposes and will be held confidential by those agencies.

Failure of the contractor to timely submit the data and/or certifications required above or to comply with all federal and state 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 ten (10) calendar days of notice from the County shall constitute grounds for termination of the Contract.

The successful Contractor may use the forms supplied herein, to furnish required information listed above.

EXHIBIT C

County of Orange Child Support Enforcement Certification Requirements

- A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address:

Name: _____

D.O.B: _____

Social Security No: _____

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 ten (10) percent or more in the contracting entity:

Name: _____

D.O.B: _____

Social Security No: _____

Residence Address: _____

Name: _____

D.O.B: _____

Social Security No: _____

Residence Address: _____

(Additional sheets may be used if necessary)

- C. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- D. A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

"I certify that _____ is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract _____ with the County of Orange. I understand that failure to comply shall constitute a material breach of the Contract and that failure to cure such breach within 10 calendar days of notice from the County shall constitute grounds for termination of the Contract.

Authorized Signature

Print Name

Title

EXHIBIT D

EDD Independent Contractor Reporting Requirements

Effective January 1, 2001, the County of Orange is required to file federal Form 1099-Misc for services received from a "service provider" to whom the County pays \$600 or more or with whom the County enters into a Contract for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations.

The term "service provider" is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as "an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a Contract for services performed for that service recipient within or without the state." The term is further defined by the California Employment Development Department to refer specifically to independent Contractors. An independent Contractor is defined as "an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a Contract for services performed for that government entity either in or outside of California."

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txicr.htm.

To comply with the reporting requirements, County procedures for Contracting with independent Contractors mandate that the following information be completed and forwarded to the Contracting agency/department immediately upon request:

First name, middle initial and last name
 Social Security Number
 Address
 Start and expiration dates of Contract
 Amount of Contract

First Name	Middle Initial	Last Name
SSN _____		
Contract Number _____		Dollar value of Contract _____
Start Date _____		Expiration Date _____



Amendment Number Two
Contract Number X1000000299
For Service Award Pins

THIS Amendment Number Two (2) (hereinafter referred to as "Amendment") to Contract Number X1000000299 to provide Service Award Pins, is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and Authentic Promotions.Com, with a place of business at 4640 Marconi Avenue, Ste. 5, Sacramento, CA 95821 (hereinafter referred to as "Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, Contractor responded to an Invitation For Bid (IFB) and represented that its proposed services shall meet or exceed the requirements and specifications of the IFB to provide Service Award Pins as further set forth herein; and

WHEREAS, the County of Orange Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract to obtain Service Award Pins.

WHEREAS, County and Contractor executed a Contract for Service Award Pins as outlined in Contract number X1000000299, commencing on 08/01/2005 through and including 07/31/2008, (hereinafter referred to as "Original Contract"); and

WHEREAS, the Contract was renewed for an additional year as X2000000299, commencing 08/01/2008 through and including 07/31/2009; and

WHEREAS, the County desires to renew the Contract for another year as MA-017-10010241 and add the following Articles to the Terms and Conditions;

NOW THEREFORE, in consideration of the mutual obligations set forth herein, both County and Contractor agree to amend the Contract as follows:

1. Article 2 on page 8 of the Contract is hereby amended to read as follows:

Term of Contract: Contract X2000000299 shall be renewed for an additional one-year period as MA-017-10010241 commencing on 08/01/09 through and including 07/31/10, unless otherwise terminated by the County.

2. Article GG: **Employee Eligibility Verification:** 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, consultants and subcontractors 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 they may be hereafter amended. The Contractor shall retain all such documentation for all covered employee, consultants and subcontractors 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.

3. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
4. **Debarment:** Contractor shall certify that neither contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, contractor must include an explanation with their bid/proposal. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department or agency may result in the bid/proposal being deemed non-responsible.
5. **Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
6. All other terms and conditions of the Contract, except as amended, herein shall remain unchanged, in full force and effect.

- Signature Page to Follow -

- Signature Page -

The parties hereto have executed this Amendment on the dates shown opposite their respective signatures below.

Authentic Promotions.Com*

Print Name

Title

Signature

Date

Print Name

Title

Signature

Date

*If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) 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.

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

Print Name

Title

Signature

Date



Amendment Number One
Contract Number X1000000299
For Service Award Pins

THIS Contract to provide Service Award Pins, hereinafter referred to as ("Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as "County" and Authentic Promotions.Com, with a place of business at 4640 Marconi Avenue, Ste. 5, Sacramento, CA 95821 hereinafter referred to as ("Contractor"), which are sometimes individually referred to as ("Party"), or collectively referred to as ("Parties").

RECITALS

WHEREAS, Contractor responded to a Invitation For Bid (IFB) and represented that its proposed services shall meet or exceed the requirements and specifications of the IFB to provide Service Award Pins as further set forth herein; and

WHEREAS, the County of Orange Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract to obtain Service Award Pins.

WHEREAS, County and Contractor executed a Contract for Service Award Pins as outlined in Contract number X1000000299, commencing on 08/01/2005 through and including 07/31/2008, (hereinafter referred to as "Original Contract"); and

WHEREAS, the County desires to renew the Contract for the second year, commencing 08/01/2008 through and including 07/31/2009; and

1. Articles 2 of page 8 of the Contract is hereby amended to read as follows:

NOW THEREFORE, in consideration of the mutual obligations set forth herein, both County and Contractor agree to amend the Contract as follows:

1. Contract X1000000299 shall be renewed as X2000000299 for an additional one-year period commencing 08/01/08 through and including 07/31/09, unless otherwise terminated by the County.
2. All other terms and conditions of the Contract, except as amended, herein shall remain unchanged, in full force and effect.

- Signature Page to Follow -

The parties hereto have executed this Amendment on the dates shown opposite their respective signatures below.

Authentic Promotions.Com*

<u>Peter Cannata</u>	<u>Part</u>
Print Name	Title
<u>Peter Cannata</u>	<u>3/18/08</u>
Signature	Date
<u>Maril Cardwell, Mg. Partner</u>	
Print Name	Title
<u>[Signature]</u>	<u>3-18-08</u>
Signature	Date

*If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) 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.

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

<u>Grace Scott</u>	<u>Procurement Contract Specialist</u>
Print Name	Title
<u>[Signature]</u>	<u>5/20/08</u>
Signature	Date



Agreement X1000000299

**CONTRACT X1000000299
For Service Award Pins**

This Agreement, hereinafter referred to as "Contract" is made and entered into as of the date fully executed by and between Authentic Promotions.com, with a place of business at 4640 Marconi Avenue, Suite 5, Sacramento, CA 95821; hereinafter referred to as "Contractor," and the County of Orange, a political subdivision of the State of California, hereinafter referred to as "County," which are sometimes referred to as ("Party") or collectively referred to as ("Parties")

ATTACHMENTS

This Agreement is comprised of this document and the following Attachments, which are incorporated by this reference into this Agreement.

Attachment A -- Scope of Work

Attachment B -- Pricing and Compensation

RECITALS

WHEREAS, Contractor responded to an Invitation For Bids (IFB)," for Service Award Pins; and

WHEREAS, the Contractor responded and represented that its proposed goods/services shall meet or exceed the requirements and specifications of the IFB; and

WHEREAS, the County of Orange Board of Supervisors has authorized the Purchasing Agent or designee to enter into an agreement for Service Award Pins,

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

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 the 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



Agreement X1000000299

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 unless authorized by County in writing.
- 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 or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed statement 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. Over shipments and under shipments 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 in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods/services covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "P" below, and as more fully described in paragraph "P", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, 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.
- 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 the more specific requirement contained in paragraph "P" below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims 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, attorney's fees, costs and expenses.



Agreement X1000000299

- I. **Assignment or Sub-contracting:** 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 sub-contracted 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.
- 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 subcontractors 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 anti-discrimination law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in the Contract, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.
- 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.
- 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 the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion, and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; 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 work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.



Agreement X1000000299

- P. **Indemnification:** 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 of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance 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 Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Insurance Provisions: Prior to the provision of services under this Contract, The 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 the 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 the 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 the 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 the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier).

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 the 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



Agreement X1000000299

Worker's Compensation	Statutory
Employer's Liability Insurance	\$1,000,000 per occurrence

All liability insurance required by this Contract shall be at least \$1,000,000 combined single limit per occurrence. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

The County of Orange shall be added as an additional insured on all insurance policies required by this Contract with respect to work done by the Contractor under the terms of this Contract (except Workers' Compensation/Employers' Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured 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 the Contractor's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability.

All insurance policies required by this Contract shall give the County 30 days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. ~~BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENT, OR REPRESENTATIVE.~~

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents, and employees when acting within the scope of their appointment or employment.

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

The 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. The Contractor will comply with such provisions and shall furnish the County satisfactory evidence that the 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.



Agreement X1000000299

If the 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 Contractor.

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 or to fulfill the indemnification provisions and requirements of this Contract.

The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements.

- 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 related to or arising from or related thereto.
- R. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- S. **Change 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 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, agents and employees.



Agreement X1000000299

- 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 liability, damages, costs, and expenses arising from or related to a violation of such laws.
- W. **Freight (F.O.B. Destination):** 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.
- X. **Pricing:** The Contract price shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the scope of work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. **Waiver of Jury Trial:** Each party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, 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.
- Z. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. **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.
- BB. **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.
- CC. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorney Fees:** In any action or proceeding to enforce or interpret any provisions of this Contract, or where any provisions hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.
- EE **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 has 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



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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.

- FF. **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.

ADDITIONAL TERMS AND CONDITIONS

1. **Scope of Contract:** This Contract, including attachments, specifies the Contractual terms and conditions by which the County will procure goods/services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as Attachment A.
2. **Term of Contract:** This Contract shall commence on August 01, 2005 through July 31, 2008. This Contract may be renewed for two (2) additional years, in one-year increments, by mutual agreement of both Parties. The County does not have to give reason if it elects not to renew.
3. **Master Contract:** This price agreement is to be used as a master agreement against which subordinate price agreements will be created and issued by the user agencies/departments based on the fixed pricing, terms, and conditions of this master. The subordinate price agreement must end prior to or be coterminous with the master agreement. For the contractor's full and complete performance of its obligations under this agreement, the County shall compensate the contractor the fixed prices set forth herein. This pricing shall remain firm for the first contract period.
4. **Master Contract – County-Wide Use:** The County agency/department who issued this Contract will be making the terms, conditions and pricing of this Contract available to other County agencies/departments. The County agencies/departments will make the purchases in their own names, will have deliveries made to their facilities, and will be responsible for making and approving payments for routine processing by the County of Orange Auditor-Controller.

The Contractor will be responsible for providing each agency/department a copy of the Contract upon request. County users who have the same requirements as are included in the existing Contract will issue their own Contract referencing this Contract.

The Contractor is required to maintain a list of the entities that have used this Contract, including a list of the dollar volumes spent, and shall provide this report on a quarterly basis to the originating County entity.
5. **Fiscal Appropriations:** This Contract is subject to and contingent upon applicable budgetary appropriations being made by the County of Orange Board of Supervisors for each fiscal year during the term of this Contract. If such appropriations are not approved, the Contract will be terminated without penalty to the County.



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6. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the state of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
7. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County, at prices listed in the Contract, regardless of quantity requested.
8. **Price Increase/Decrease:** No price increases will be permitted during the term of this Contract. All price decreases will automatically be extended to the County of Orange. The County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
9. **Firm Price Quotes:** Prices quoted shall be firm for the period of the Contract.
10. **Adjustments – Scope of Work:** Adjustments made to the scope of work will not be authorized or paid for without prior written approval of the County assigned buyer, in accordance with Paragraph C – Amendments.
11. **Precedence:** The Contract documents consist of this Contract and its attachments and exhibits. 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, and then the exhibits and attachments.
12. **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 the County's assigned buyer. If disagreement exists between the Contractor and the County's assigned buyer in interpreting the provision(s), final interpretation and clarification shall be determined by the County's Purchasing Agent or his designee.
13. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of four years after final payment is received from the County. Storage of records in another County will require written approval from the County of Orange assigned buyer.
14. **Conflict of Interest – Contractor's Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Contractors; and third Parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving,



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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 the County.

15. **Breach of Contract:** The failure of the 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 the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

1. Afford the 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 the contractor for and during the period in which the Contractor is in breach; and
3. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
4. County may terminate the Contract immediately without penalty.

16. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's project manager and the County's project manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:

1. The Contractor shall submit to the agency/department assigned buyer a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions.

17. **Termination – Default:** If Contractor is in default of any of its obligations under this Contract and has not commenced cure within ten days after receipt of a written notice of default from County an cured such default within the time specified in the notice, the County shall



Agreement X1000000299

immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this Contract by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this Contract, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this Contract. Upon termination of the Contract with Contractor, the County may begin negotiations with a third-party Contractor to provide goods and/or services as specified in this Contract.

The right of either party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

18. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the contractor shall submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the contractor. Upon termination County agrees to pay the contractor for all services performed prior to termination which meet the requirements of the contract, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the contract. Upon termination or other expiration of this contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of execution of the contract. In addition, each party will assist the other party in orderly termination of this contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each party.
19. **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 terms 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 four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

For County:
County of Orange
County Executive Office
Purchasing Division
Attn: Anna Ly-Tran
1300 S. Grand Ave. Bldg #A
Santa Ana, CA 92705

For Contractor:
Company Name: Authentic Promotions.com
Address: 4640 Marconi Ave. Suite #5
City, State, Zip Sacramento, CA 95821
Contact Name: Peter Carmazzi
Title: Partner

20. **Correspondence to Buyer – Contract:** Any correspondence related to the terms, prices and conditions of this Contract must be directed to the agency/department purchasing division to the attention of the assigned buyer. Correspondence not directed though the buyer for resolution will not be regarded as valid.



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21. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-controller or the Auditor-Controller authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.
- The County reserves the right to audit and verify the Contractor's records before payment is made.
- Contractor agrees to maintain such records for possible audit for a minimum of four years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any sub Contractor related to performance of this Contract.
- Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project manager.
22. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract unless otherwise specified. The County will not provide free parking for any service in the County Civic Center.
23. **Parking for Delivery Services:** The County of Orange will not provide free parking for delivery services.
24. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the 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, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the 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.
25. **Authorization Warranty:** The Contractor represents and warrants that the person executing this Contract on behalf of and for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority.
26. **County of Orange Child Support Enforcement Requirements:** In order to comply with the child support enforcement requirements of the County of Orange, within ten days of notification



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of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish to the Purchasing Agent:

- 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 the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- D. A certification that the 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 the 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 the 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 the County shall constitute grounds for termination of the Contract.



Agreement X1000000299

MODEL CONTRACT SIGNATURE PAGE

The Parties hereto have executed this Contract on the dates shown below their respective signatures.

Contractor:

PETER S. LAMM
Print Name

Peter Lamm
Signature

Partner
Title

7/25/05
Date

Maril Cardwell
Print Name

Maril
Signature

Managing Partner
Title

7-25-05
Date

* If a corporation, this document must be signed by two specific corporate officers. The first signature must be one of the following: a) the Chairman of the Board; b) the President; or c) any Vice President. The second signature must be one of the following: a) Secretary; b) the Chief Financial Officer; c) any Assistant Secretary; or d) 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.

County: Board of Supervisors Approval: ☐ Required ☒ Not Required

Authorized Signatory:

[Signature]
Purchasing Agent/Designee

7/25/05
Date



Agreement X1000000299

ATTACHMENT A**SCOPE OF WORK**

- A. Service pins will be used to recognize employees for the following years of service to the County: 5, 10, 15, 20, 25, 30, 35 and 40.
- B. Pins shall be of one piece construction with 5/15" long flat posts with flat black jeweler gold plated clutch.
- C. All emblems shall be manufactured using the die pressed process from 85-15.50 with electro gold plated (EGP) finish.
- D. A clear 2.3mm synthetic stone shall be placed between the orange leaves located below the County logo (please see artwork).
- E. Synthetic stones are to be nicked set in the gold and not glued on.
- F. Color for the fill of the outer orange circle is PMS #165.
- G. Pins shall be made with hard enamel with polished outside edges and satin back finish.
- H. Pin diameter from side to side is about 11/16" and pin length from top to bottom is about 7/8".
- I. Pins shall have the year in raised gold in the center gold logo.
- J. Pins shall be made exactly as presented in the artwork. The County will NOT approve and/or pay for any changes made to the current artwork.
- K. If Contractor makes errors in die, Contractor will reproduce die at no additional expense to the County. The reproduced corrected die must have County approval before production of new pins.
- L. Each service award pin will be placed in a tutone plastic presentation box.
- M. Contractor shall warrant all materials and workmanship to be free of defects.
- N. Contractor shall deliver service award pins within 45 days of receipt of order.
- O. Contractor shall endeavor to combine orders for departments where possible in order for the County to take advantage of quantity price breaks.



Agreement X1000000299

SERVICE PIN ARTWORK





Agreement X1000000299

ATTACHMENT B**PRICING AND COMPENSATION**

<u>Quantity</u>	<u>Description</u>	<u>Cost per Each</u>
1 – 499	Service Award Pins	\$0.73/each
500 – 999	Service Award Pins	\$0.69/each
1000+	Service Award Pins	\$0.67/each

Extra Charges

Die charge \$50.00 (one time charge for each pin denomination).

Plus the presentation boxes at \$0.20/each.

Shipping/handling charges are included.

Minimum order quantity of 100 pieces.

Payment Terms

Invoices/Payment in Arrears: Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the 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 goods or services.

Payment – Invoicing Instructions: The Contractor will provide a two-part invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. 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 or Purchase Order (PC) number
6. Date of order
7. Product/service description, quantity, and prices
8. Sales tax, if applicable
9. Freight/delivery charges, if applicable
10. Total



Amendment Number Three
Contract Number X1000000299
For Service Award Pins

THIS Amendment Number Three (3) (hereinafter referred to as "Amendment") to Contract Number X1000000299 to provide Service Award Pins, is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and Jim Herndon & Associates Inc., with a place of business at 7800 SW Barbur Blvd., Portland, CA 97219-2823 (hereinafter referred to as "Contractor"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, Contractor responded to an Invitation For Bid (IFB) and represented that its proposed services shall meet or exceed the requirements and specifications of the IFB to provide Service Award Pins as further set forth herein; and

WHEREAS, the County of Orange Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract to obtain Service Award Pins.

WHEREAS, County and Contractor executed a Contract for Service Award Pins as outlined in Contract number X1000000299, commencing on 08/01/2005 through and including 07/31/2008, (hereinafter referred to as "Original Contract"); and

WHEREAS, the County issued an amendment to reflect a changed in Vendor name from JH Recognition Company, to Jim Herndon & Associates Inc., dba Herndon Recognition; and

WHEREAS, the Contract was renewed for an additional year as X2000000299, commencing 08/01/2008 through and including 07/31/2009; and amend pricing listed in Attachment B commencing 07/31/08; and

WHEREAS, the County desires to renew the Contract for another year as MA-017-10010241 and add the following Articles to the Terms and Conditions;

NOW THEREFORE, in consideration of the mutual obligations set forth herein, both County and Contractor agree to amend the Contract as follows:

1. Article 2 on page 8 of the Contract is hereby amended to read as follows:

Term of Contract: Contract X2000000299 shall be renewed for an additional one-year period as MA-017-10010241 commencing 08/01/09 through and including 07/31/10, unless otherwise terminated by the County.

2. Article GG: **Employee Eligibility Verification:** 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

County of Orange
 County Procurement Office

Jim Herndon & Associates Inc
 MA-017-10010241

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 File Number: 559348

set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees, consultants and subcontractors 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 they may be hereafter amended. The Contractor shall retain all such documentation for all covered employee, consultants and subcontractors 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.

3. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
4. **Debarment:** Contractor shall certify that neither contractor nor its principles are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in the transaction by any Federal department or agency. Where contractor as the recipient of federal funds, is unable to certify to any of the statements in the certification, contractor must include an explanation with their bid/proposal. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any Federal department or agency may result in the bid/proposal being deemed non-responsible.
5. **Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
6. All other terms and conditions of the Contract, except as amended, herein shall remain unchanged, in full force and effect.

- Signature Page to Follow -

County of Orange
County Procurement Office

Jim Herndon & Associates Inc
MA-017-10010241

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Signature Page

The parties hereto have executed this Amendment on the dates shown opposite their respective signatures below.

Jim Herndon & Associates Inc*

Jim Herndon Pres.
Print Name Title

Jim Herndon 6/22/09
Signature Date

KIM HUA Secretary
Print Name Title

Kimhua 6/22/09
Signature Date

*If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) 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.

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

Marijo Sio Procurement Contract Specialist
Print Name Title

Marijo Sio 6-30-09
Signature Date

County of Orange
County Procurement Office

Jim Herndon & Associates Inc
MA-017-10010241

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File Number: 559348



Amendment Number Two
Contract Number X1000000299
For Service Award Pins

THIS Contract to provide Service Award Pins, hereinafter referred to as ("Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as "County" and Jim Herndon & Associates Inc., with a place of business at 7800 SW Barbur Blvd., Portland, CA 97219-2823 hereinafter referred to as ("Contractor"), which are sometimes individually referred to as ("Party"), or collectively referred to as ("Parties").

RECITALS

WHEREAS, Contractor responded to a Invitation For Bid (IFB) and represented that its proposed services shall meet or exceed the requirements and specifications of the IFB to provide Service Award Pins as further set forth herein; and

WHEREAS, the County of Orange Board of Supervisors has authorized the Purchasing Agent or his designee to enter into a Contract to obtain Service Award Pins.

WHEREAS, County and Contractor executed a Contract for Service Award Pins as outlined in Contract number X1000000299, commencing on 08/01/2005 through and including 07/31/2008, (hereinafter referred to as "Original Contract"); and

WHEREAS, the County issued an amendment to reflect a changed in Vendor name from JH Recognition Company, to Jim Herndon & Associates Inc., dba Herndon Recognition; and

WHEREAS, the County desires to renew the Contract for the second year, commencing 08/01/2008 through and including 07/31/2009; and

WHEREAS, County and Contractor agree to amend pricing listed in Attachment B commencing 07/31/2008; and

NOW THEREFORE, in consideration of the mutual obligations set forth herein, both County and Contractor agree to amend the Contract as follows:

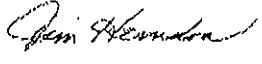
1. Contract X1000000299 shall be renewed as X2000000299 for an additional one-year period commencing 08/01/08 through and including 07/31/09, unless otherwise terminated by the County.
2. Attached hereto is a fully amended Attachment B – Pricing and Compensation; effective 08/01/08.
3. All other terms and conditions of the Contract, except as amended, herein shall remain unchanged, in full force and effect.

- Signature Page to Follow -

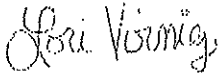
Signature Page

The parties hereto have executed this Amendment on the dates shown opposite their respective signatures below.

Jim Herndon & Associates Inc*

Jim Herndon	President
Print Name	Title
	May 15, 2008

Signature	Date
-----------	------

Lori Virnig	Assistant Secretary
Print Name	Title
	May 15, 2008

Signature	Date
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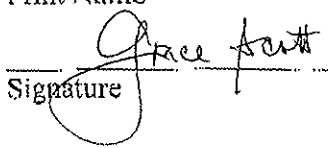
***If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.**

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) 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.

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

Grace Scott	PCO
Print Name	Title
	5/20/08
Signature	Date

ATTACHMENT B**(Revised - Effective 08/01/08)****PRICING AND COMPENSATION**

<u>Quantity</u>	<u>Description</u>	<u>Cost/Each</u>
1-499	Service Award Pins	\$ 2.74
500-999	Service Award Pins	\$ 2.51
1000 +	Service Award Pins	\$ 2.42

Extra Charges

No Die charge

No charge for presentation boxes.

Shipping/handling charges varies depending on order via UPS Ground from Portland Oregon.

No minimum order required.

Payment Terms

Invoices/Payment in Arrears: invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the 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 goods services.

Payment – Invoicing Instructions: The contractor will provide a two-part invoice on the contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the contractor will leave an invoice with each delivery. 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 or Purchase Order (PC) number
6. Date of order
7. Product/service description, quantity, and prices
8. Sales tax, if applicable
9. Freight/delivery charges, if applicable
10. Total

FROM :

FAX NO. : 5032441167

Sep. 12 2006 03:39PM P3



**Amendment Number One
To Contract Number X1000000299
For Service Award Pins**

Jim Herndon & Associates Inc., dba Herndon Recognition

This Amendment Number One (hereinafter "Amendment") to Contract Number X1000000299 is made and entered into upon execution of all necessary signatures between Jim Herndon & Associates Inc., dba Herndon Recognition with a place of business at 7800 SW Barbur Blvd., Portland, OR 97219-2823 (hereinafter "Contractor") and the County of Orange (hereinafter "County"), which are sometimes individually referred to as "Party", or collectively referred to as "Parties".

WHEREAS, County and Contractor entered into Contract No. X1000000299 (hereinafter referred to as "Original Contract") for Service Award Pins, commencing on 8/01/05 and expiring on 7/31/08; and

WHEREAS, the County desires to amend the Contract to reflect a change in vendor name;

NOW THEREFORE, in consideration of the mutual obligations set forth herein, both County and Contractor agree as follows:

1. The Contract shall be amended to reflect vendor name change from JH Recognition Company, to Jim Herndon & Associates Inc., dba Herndon Recognition.
2. Except as amended herein, all terms and conditions, including those terms of the Original Contract and any amendments/modifications are incorporated by this reference as if fully set forth herein and shall remain in full force.

- Signature Page follows -

County of Orange
CEO Purchasing

X1000000299
Jim Herndon & Associates Inc.
dba Herndon Recognition

Page 1 of 2
File No.: 559348

Received Sep-12-06 15:32

From-5032441167

To-CEO PURCHASING

Page 03

JM :

FAX NO. : 5032441167

Sep. 12 2006 03:39PM P4

- Signature Page -

The Parties hereto have executed this Amendment to Contract on the dates shown opposite their respective signatures below.

Jim Herndon & Associates Inc., dba Herndon Recognition *

<u>Jim Herndon</u>	<u>President</u>
Print Name	Title
<u>Jim Herndon</u>	<u>9/12/06</u>
Signature	Date
<u>Amy Tachine</u>	<u>9/12/06</u>
Print Name	Title
<u>Amy Tachine</u>	<u>9/12/06</u>
Signature	Date

* If the Contractor is a corporation, signatures of two specific corporate officers are required as further set forth.

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) 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.

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

<u>Robert Rice</u>	<u>Supervising PE</u>
Print Name	Title
<u>Robert Rice</u>	<u>9/28/06</u>
Signature	Date

County of Orange
CEO Purchasing

X1000000299
Jim Herndon & Associates Inc.
dba Herndon Recognition

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File No.: 559348

Received Sep-12-06 15:32

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To-CEO PURCHASING

Page 04



Agreement X1000000299

**CONTRACT X1000000299
For Service Award Pins**

This Agreement, hereinafter referred to as "Contract" is made and entered into as of the date fully executed by and between JH Recognition Company, with a place of business at 7800 S.W. Barbur Boulevard, Portland, OR 97219-2823; hereinafter referred to as "Contractor," and the County of Orange, a political subdivision of the State of California, hereinafter referred to as "County," which are sometimes referred to as ("Party") or collectively referred to as ("Parties")

ATTACHMENTS

This Agreement is comprised of this document and the following Attachments, which are incorporated by this reference into this Agreement.

Attachment A – Scope of Work
Attachment B – Pricing and Compensation

RECITALS

WHEREAS, Contractor responded to an Invitation For Bids (IFB), for Service Award Pins; and

WHEREAS, the Contractor responded and represented that its proposed goods/services shall meet or exceed the requirements and specifications of the IFB; and

WHEREAS, the County of Orange Board of Supervisors has authorized the Purchasing Agent or designee to enter into an agreement for Service Award Pins,

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

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 the 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



Agreement X1000000299

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 unless authorized by County in writing.
- 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 or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed statement 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. Over shipments and under shipments 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 in writing by County.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:** Contractor expressly warrants that the goods/services covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "P" below, and as more fully described in paragraph "P", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, 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.
- 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 the more specific requirement contained in paragraph "P" below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims 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, attorney's fees, costs and expenses.



Agreement X1000000299

- I. **Assignment or Sub-contracting:** 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 sub-contracted 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.
- 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 subcontractors 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 anti-discrimination law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in the Contract, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.
- 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.
- 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 the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion, and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; 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 work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.



Agreement X1000000299

- P. **Indemnification:** 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 of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance 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 Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Insurance Provisions: Prior to the provision of services under this Contract, The 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 the 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 the 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 the 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 the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier).

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 the 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



Agreement X1000000299

Worker's Compensation	Statutory
Employer's Liability Insurance	\$1,000,000 per occurrence

All liability insurance required by this Contract shall be at least \$1,000,000 combined single limit per occurrence. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

The County of Orange shall be added as an additional insured on all insurance policies required by this Contract with respect to work done by the Contractor under the terms of this Contract (except Workers' Compensation/Employers' Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured 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 the Contractor's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability.

All insurance policies required by this Contract shall give the County 30 days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. ~~BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENT, OR REPRESENTATIVE.~~

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents, and employees when acting within the scope of their appointment or employment.

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

The 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. The Contractor will comply with such provisions and shall furnish the County satisfactory evidence that the 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.



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

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 or to fulfill the indemnification provisions and requirements of this Contract.

The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements.

- 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 related to or arising from or related thereto.
- R. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- S. **Change 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 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, agents and employees.



Agreement X1000000299

- 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 liability, damages, costs, and expenses arising from or related to a violation of such laws.
- W. **Freight (F.O.B. Destination):** 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.
- X. **Pricing:** The Contract price shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the scope of work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
- Y. **Waiver of Jury Trial:** Each party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, 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.
- Z. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
- AA. **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.
- BB. **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.
- CC. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- DD. **Attorney Fees:** In any action or proceeding to enforce or interpret any provisions of this Contract, or where any provisions hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.
- EE **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 has 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



Agreement X1000000299

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.

- FF. **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.

ADDITIONAL TERMS AND CONDITIONS

1. **Scope of Contract:** This Contract, including attachments, specifies the Contractual terms and conditions by which the County will procure goods/services from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as Attachment A.
2. **Term of Contract:** This Contract shall commence on August 01, 2005 through July 31, 2008. This Contract may be renewed for two (2) additional years, in one-year increments, by mutual agreement of both Parties. The County does not have to give reason if it elects not to renew.
3. **Master Contract:** This price agreement is to be used as a master agreement against which subordinate price agreements will be created and issued by the user agencies/departments based on the fixed pricing, terms, and conditions of this master. The subordinate price agreement must end prior to or be coterminous with the master agreement. For the contractor's full and complete performance of its obligations under this agreement, the County shall compensate the contractor the fixed prices set forth herein. This pricing shall remain firm for the first contract period.
4. **Master Contract – County-Wide Use:** The County agency/department who issued this Contract will be making the terms, conditions and pricing of this Contract available to other County agencies/departments. The County agencies/departments will make the purchases in their own names, will have deliveries made to their facilities, and will be responsible for making and approving payments for routine processing by the County of Orange Auditor-Controller.

The Contractor will be responsible for providing each agency/department a copy of the Contract upon request. County users who have the same requirements as are included in the existing Contract will issue their own Contract referencing this Contract.

The Contractor is required to maintain a list of the entities that have used this Contract, including a list of the dollar volumes spent, and shall provide this report on a quarterly basis to the originating County entity.
5. **Fiscal Appropriations:** This Contract is subject to and contingent upon applicable budgetary appropriations being made by the County of Orange Board of Supervisors for each fiscal year during the term of this Contract. If such appropriations are not approved, the Contract will be terminated without penalty to the County.



Agreement X1000000299

6. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the state of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
7. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County, at prices listed in the Contract, regardless of quantity requested.
8. **Price Increase/Decrease:** No price increases will be permitted during the term of this Contract. All price decreases will automatically be extended to the County of Orange. The County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
9. **Firm Price Quotes:** Prices quoted shall be firm for the period of the Contract.
10. **Adjustments – Scope of Work:** Adjustments made to the scope of work will not be authorized or paid for without prior written approval of the County assigned buyer, in accordance with Paragraph C – Amendments.
11. **Precedence:** The Contract documents consist of this Contract and its attachments and exhibits. 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, and then the exhibits and attachments.
12. **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 the County's assigned buyer. If disagreement exists between the Contractor and the County's assigned buyer in interpreting the provision(s), final interpretation and clarification shall be determined by the County's Purchasing Agent or his designee.
13. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of four years after final payment is received from the County. Storage of records in another County will require written approval from the County of Orange assigned buyer.
14. **Conflict of Interest – Contractor's Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Contractors; and third Parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving,

Agreement X1000000299

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 the County.

15. **Breach of Contract:** The failure of the 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 the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
1. Afford the 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 the contractor for and during the period in which the Contractor is in breach; and
 3. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 4. County may terminate the Contract immediately without penalty.
16. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's project manager and the County's project manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:
1. The Contractor shall submit to the agency/department assigned buyer a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 2. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
- Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.
- Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions.
17. **Termination – Default:** If Contractor is in default of any of its obligations under this Contract and has not commenced cure within ten days after receipt of a written notice of default from County an cured such default within the time specified in the notice, the County shall



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immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this Contract by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this Contract, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this Contract. Upon termination of the Contract with Contractor, the County may begin negotiations with a third-party Contractor to provide goods and/or services as specified in this Contract.

The right of either party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

18. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the contractor shall submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the contractor. Upon termination County agrees to pay the contractor for all services performed prior to termination which meet the requirements of the contract, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the contract. Upon termination or other expiration of this contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of execution of the contract. In addition, each party will assist the other party in orderly termination of this contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each party.
19. **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 terms 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 four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

For County:
County of Orange
County Executive Office
Purchasing Division
Attn: Anna Ly-Tran
1300 S. Grand Ave. Bldg #A
Santa Ana, CA 92705

For Contractor:
Company Name: JH Recognition Company
Address: 7800 S.W. Barbur Boulevard
City, State, Zip Portland, OR 97219-2823
Contact Name: Janie Tate
Title: Regional Account Manager

20. **Correspondence to Buyer – Contract:** Any correspondence related to the terms, prices and conditions of this Contract must be directed to the agency/department purchasing division to the attention of the assigned buyer. Correspondence not directed though the buyer for resolution will not be regarded as valid.



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21. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-controller or the Auditor-Controller authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.
- The County reserves the right to audit and verify the Contractor's records before payment is made.
- Contractor agrees to maintain such records for possible audit for a minimum of four years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any sub Contractor related to performance of this Contract.
- Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project manager.
22. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract unless otherwise specified. The County will not provide free parking for any service in the County Civic Center.
23. **Parking for Delivery Services:** The County of Orange will not provide free parking for delivery services.
24. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the 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, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the 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.
25. **Authorization Warranty:** The Contractor represents and warrants that the person executing this Contract on behalf of and for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority.
26. **County of Orange Child Support Enforcement Requirements:** In order to comply with the child support enforcement requirements of the County of Orange, within ten days of notification



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of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish to the Purchasing Agent:

- 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 the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- D. A certification that the 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 the 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 the 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 the County shall constitute grounds for termination of the Contract.



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MODEL CONTRACT SIGNATURE PAGE

The Parties hereto have executed this Contract on the dates shown below their respective signatures.

Contractor:

Jim Herndon
Print Name
Jim Herndon
Signature

President
Title
7/18/05
Date

DIANE SINGLETON
Print Name
Diane Singleton
Signature

GENERAL MANAGER
Title
7/26/05
Date

* If a corporation, this document must be signed by two specific corporate officers. The first signature must be one of the following: a) the Chairman of the Board; b) the President; or c) any Vice President. The second signature must be one of the following: a) Secretary; b) the Chief Financial Officer; c) any Assistant Secretary; or d) 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.

County: Board of Supervisors Approval: ☐ Required ☒ Not Required

Authorized Signature:
[Signature]
Purchasing Agent/Designee

7/29/05
Date



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ATTACHMENT A**SCOPE OF WORK**

- A. Service pins will be used to recognize employees for the following years of service to the County: 5, 10, 15, 20, 25, 30, 35 and 40.
- B. Pins shall be of one piece construction with 5/15" long flat posts with flat black jeweler gold plated clutch.
- C. All emblems shall be manufactured using the die pressed process from 85-15.50 with electro gold plated (EGP) finish.
- D. A clear 2.3mm synthetic stone shall be placed between the orange leaves located below the County logo (please see artwork).
- E. Synthetic stones are to be nicked set in the gold and not glued on.
- F. Color for the fill of the outer orange circle is PMS #165.
- G. Pins shall be made with hard enamel with polished outside edges and satin back finish.
- H. Pin diameter from side to side is about 11/16" and pin length from top to bottom is about 7/8".
- I. Pins shall have the year in raised gold in the center gold logo.
- J. Pins shall be made exactly as presented in the artwork. The County will NOT approve and/or pay for any changes made to the current artwork.
- K. If Contractor makes errors in die, Contractor will reproduce die at no additional expense to the County. The reproduced corrected die must have County approval before production of new pins.
- L. Each service award pin will be placed in a tutone plastic presentation box.
- M. Contractor shall warrant all materials and workmanship to be free of defects.
- N. Contractor shall deliver service award pins within 45 days of receipt of order.
- O. Contractor shall endeavor to combine orders for departments where possible in order for the County to take advantage of quantity price breaks.



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SERVICE PIN ARTWORK





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ATTACHMENT B**PRICING AND COMPENSATION**

<u>Quantity</u>	<u>Description</u>	<u>Cost per Each</u>
1 – 499	Service Award Pins	\$1.72/each
500 – 999	Service Award Pins	\$1.68/each
1000+	Service Award Pins	\$1.59/each

Extra Charges

No die charge.

No charge for presentation boxes.

Shipping/handling charges varies depending on order via UPS Ground from Portland Oregon.

Minimum order of 12 pieces required.

Payment Terms

Invoices/Payment in Arrears: Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Contractor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the 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 goods or services.

Payment – Invoicing Instructions: The Contractor will provide a two-part invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. 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 or Purchase Order (PC) number
6. Date of order
7. Product/service description, quantity, and prices
8. Sales tax, if applicable
9. Freight/delivery charges, if applicable
10. Total

Question and Answers for Bid #017-556954-11 - Service Award Pins

OVERALL BID QUESTIONS

Question 1

On the artwork, is there enamel in the circle where the year sits? Is it the same PMS color? (Submitted: Apr 6, 2010 12:06:14 PM PDT)

Answer

- Sample of pins are available for viewing on the following days (until 4/29/10):

Tuesdays, Wednesdays and Thursdays
between 9:00am to 12 noon (close between 12 noon - 1:00 P.M.)
and 1:00pm to 4:00pm

Viewing Location:

County Procurement Office
1300 S. Grand Ave., Bldg. A, 2nd Floor
Santa Ana CA 92705

Ask for Sharron Anderson @ 714-567-7314 (Answered: Apr 13, 2010 2:01:09 PM PDT)

Question 2

Approximately how many pins collectively are ordered on a yearly basis? (Submitted: Apr 6, 2010 12:06:42 PM PDT)

Answer

- We do not have information for number of pins ordered on a yearly basis. Amount spent by County for the past 2 years:

2009 - \$8,794.10

2008 - \$6,629.54 (Answered: Apr 9, 2010 1:37:29 PM PDT)

Question 3

May we have a copy of the current contract? (Submitted: Apr 6, 2010 4:11:51 PM PDT)

Answer

- Copies of current contracts have been uploaded for viewing. (Answered: Apr 13, 2010 12:57:06 PM PDT)

Question 4

Does the County have a proposed budget for 2010 (Submitted: Apr 7, 2010 1:55:21 PM PDT)

Answer

- No proposed budget. Agency/department will place their own orders as needed. (Answered: Apr 9, 2010 1:37:29 PM PDT)

Question 5

Will the county provide a breakdown of pins needed by years of service (Submitted: Apr 7, 2010 1:55:52 PM PDT)

Answer

- No (Answered: Apr 9, 2010 1:37:29 PM PDT)

Question 6

Will the County provide \$ amount last years requirement. (Submitted: Apr 8, 2010 11:21:09 AM PDT)

Answer

- See answer to question #2. (Answered: Apr 9, 2010 1:37:29 PM PDT)

Question 7

Contractor shall provide three samples to the County when submitting bids. Is that samples of comperable items we have done in the past, or is it three samples of the actual item as pictured? (Submitted: Apr 8, 2010 11:22:36 AM PDT)

Answer

- Comparable items will be accepted. (Answered: Apr 9, 2010 1:37:29 PM PDT)

Question 8

Please provide the UNIT purchase price that the county is currently paying for these pins. (Submitted: Apr 9, 2010 1:53:24 PM PDT)

Answer

- Please review uploaded current contracts for pricing. (Answered: Apr 13, 2010 12:57:06 PM PDT)

Question 9

Why are the bids being made public before the closing date? Are they not suppose to be sealed, opnened on the close date and then review? (Submitted: Apr 14, 2010 2:56:56 PM PDT)

Answer

- Bids are not made public before closing. (Answered: Apr 14, 2010 3:13:59 PM PDT)

Question Deadline: Apr 21, 2010 4:00:00 PM PDT