

HEALTH SERVICES AGENCY
ADMINISTRATION

COUNTY OF SANTA CRUZ

HEALTH SERVICES AGENCY

P.O. BOX 962, 1080 EMELINE AVENUE
SANTA CRUZ, CA 95061
(408) 454-4066 FAX: (408) 454-4770
TDD: (408) 454-4123

May 23, 2000

AGENDA: June 13, 2000

BOARD OF SUPERVISORS

County of Santa Cruz
701 Ocean Street
Santa Cruz, CA 95060

RE: APPROVAL OF MENTAL HEALTH AGREEMENT FOR MANAGED CARE
SOFTWARE

Dear Board Members:

Since June of 1998 when the County implemented its mental health outpatient managed care program for Medi-Cal beneficiaries, Community Mental Health has utilized a computer software program for recording and tracking mental health managed care services. This software is known as cCURA3.

For 13 months (from June 1, 1998 through June 30, 1999), cCURA3 was serviced and maintained for the County by another contractor, United Behavioral Health (UBH). The County's contract with United Behavioral Health ended June 30, 1999 with that portion of the UBH agreement having to do with cCURA3 being passed to InfoMC, Inc., a software provider with whom the County already had a Licensing Agreement for use of the cCURA3 product.

Community Mental Health now wishes to contract directly with InfoMC, Inc. for maintenance and support of cCURA3. The attached proposed 1999-2000 agreement with InfoMC, Inc. will authorize County payment for the current fiscal year as well as provide a vehicle from which to negotiate and purchase InfoMC services in future years.

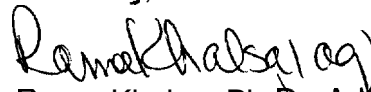
Sufficient funds exist within the 1999-2000 Mental Health budget and no additional County funds are needed or requested.

It is, therefore, RECOMMENDED that your Board:

1. Approve the attached new software agreement with InfoMC, Inc. (Budget Index 363103, Subobject 3665) in the amount of \$41,260 effective July 1, 1999 through June 30, 2000, and authorize the Health Services Administrator to sign.

Sincerely,


0288



Rama Khalsa, Ph.D. Administrator
Health Services Administrator

RK:PS:ep
Attachment

RECOMMENDED



Susan Mauriello
County Administrative Officer

cc: County Administrative Office
Auditor-Controller
County Counsel
Health Services Agency
Mental Health & Substance Abuse Administration

COUNTY OF SANTA CRUZ
REQUEST FOR APPROVAL OF AGREEMENT

0289

TO: Board of Supervisors
County Administrative Officer
County Counsel
Auditor-Controller

FROM: HEALTH SERVICES AGENCY (Mental Health) (Dept.)
Ran Kline (Signature) _____ (Date)

The Board of Supervisors is hereby requested to approve the attached agreement and authorize the execution of the same.

1. Said agreement is between the County of Santa Cruz (Community Mental Health) (Agency)
and InfoMC, Inc. 2250 Hickory Road, Plymouth Meeting, PA 19462 (Name & Address)
2. The agreement will provide a computer software program for managing mental health
managed care services.
3. The agreement is needed to provide the above.
4. Period of the agreement is from July 1, 1999 to June 30, 2000
5. Anticipated cost is \$41,260 through June 30, 2000 (Fixed amount; Monthly rate; Not to exceed)
6. Remarks: Auditor: This is a new Agreement to be added to the Continuing Agreements List.
7. Appropriations are budgeted in 363103 - - (Index#) 3665 (Subobject)

NOTE: IF APPROPRIATIONS ARE INSUFFICIENT, ATTACH COMPLETED FORM AUD-74

Appropriations are available and have been encumbered. Contract No. C09 FEB 2111 Date 6/1/00
are not will be

GARY A. KNUTSON, Auditor, Controller

By Ronald J. Silva Deputy

Proposal reviewed and approved. It is recommended that the Board of Supervisors approve the agreement and authorize the Health Services Administrator to execute the same on behalf of the

HEALTH SERVICES (Agency).

Remarks:

ES (Analyst)

County Administrative Officer
By ES Date 6/1/00

Agreement approved as to form. Date _____

Distribution:

Bd. of Supv. • White
Auditor-Controller • Blue
County Counsel - Green •
Co. Admin. Officer - Canary
Auditor-Controller - Pink
Originating Dept. • Goldenrod

To Orig. Dept. if rejected.

State of California)
County of Santa Cruz) ss

I _____ ex-officio Clerk of the Board of Supervisors of the County of Santa Cruz,
State of California, do hereby certify that the foregoing request for approval of agreement **was** approved by
said Board of Supervisors as recommended by the County Administrative Officer by an order duly entered
in the minutes of said Board on _____ 19 _____
County Administrative Officer
By _____ Deputy Clerk

County Department/Agency: The County of Santa Cruz through the
HEALTH SERVICES AGENCY (Community Mental Health)
1400 Emeline Avenue, P.O. Box 962, Santa Cruz CA 95061-0962

Hereinafter called COUNTY and:

INFOMC, INC.
2250 Hickory Road, Suite 400
Plymouth Meeting, Pennsylvania 19462
(484) 530-0100

hereinafter called INFOMC for INFOMC, INC. cCURA3

WHEREAS INFOMC possesses certain skills, experience, education and competency to perform the special services and, COUNTY desires to engage INFOMC for such special services upon the terms provided; and

WHEREAS pursuant to the provisions of California Government Code, Section 3 1000, and W & I Code, Sections 5775, et seq., the BOARD OF SUPERVISORS of COUNTY is authorized to enter into an agreement for such services.

NOW, THEREFORE, the parties here to do mutually agree as set forth in:

| <u>TITLE</u> | <u>EXHIBIT</u> |
|--|----------------|
| Standard Mental Health Provisions | A |
| Standard County/Agency Provisions | B |
| Software Maintenance and Support Agreement | C |

Said exhibits attached hereto and incorporated into this Agreement by this reference.

IN WITNESS THEREOF COUNTY AND INFOMC have executed this Contract Agreement to be effective:

JULY 1, 1999 through JUNE 30, 2000

INFOMC
By: Quadir Farook
Quadir Farook, President

COUNTY
By: _____
Rama K. Khalsa
HEALTH SERVICES ADMINISTRATOR

Approved as to Form:
[Signature]
County Counsel

Approved as to Insurances:
Janet McKinley 5-26-2000
Risk Management Division Chief

Index # 363103
Subobject # 3665
Contract # CO9TBD
Amount \$41,260

Distribution:
County Administrative Officer
County Counsel
Auditor-Controller
Health Services Agency
Community Mental Health
Contractor

(Reserved for Clerk of the Board of Supervisors posting of minute order citation)



**MAINTENANCE AND SUPPORT AGREEMENT
BETWEEN INFOMC AND THE COUNTY OF SANTA CRUZ**

0291

**EXHIBIT A
STANDARD MENTAL HEALTH PROVISIONS**

This is an Agreement between the parties relating to the rendering of software services. Services shall be provided under the general supervision of the Health Services Administrator or his designee. For the purposes of this Section, "designee," may include any permanent employee on the staff of such Administrator as may be appropriately designated to provide liaison, coordination, or supervision over the services described herein.

1. ADMINISTRATION:

COUNTY'S Director of Mental Health, or his or her designee, hereinafter called COUNTY'S ADMINISTRATOR, under direction of the Health Services Administrator, shall represent COUNTY in all matters pertaining to services rendered pursuant to this Agreement and shall administer this Agreement on behalf of COUNTY. INFOMC'S President shall administer this Agreement on behalf of INFOMC.

2. NOTICE:

Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, postage prepaid, return receipt requested, to the officials cited in Paragraph 1 above, for INFOMC at the address cited on this Agreement's cover sheet, and for COUNTY at Community Mental Health, P.O. Box 962, Santa Cruz, CA 95061-0962, Attention: Director of Mental Health.

3. PAYMENT:

COUNTY agrees to pay INFOMC all maintenance and support fees for the year from July 1, 1999 through June 30, 2000, upon execution of this Agreement.

4. ENTIRE AGREEMENT:

Each claim so approved and paid shall constitute full and complete compensation to INFOMC for the period covered by the claim. It is expressly understood and agreed that this Agreement constitutes the entire Agreement of INFOMC and COUNTY and in no event shall INFOMC be entitled to any compensation, benefits, reimbursements, or ancillary services other than as herein expressly provided.

**COUNTY OF SANTA CRUZ
EXHIBIT B
STANDARD COUNTY/AGENCY PROVISIONS**

0292

1. INDEPENDENT CONTRACTOR:

It is agreed that INFOMC shall perform as an independent contractor under this Agreement. INFOMC is, for all purposes arising out of this Agreement, an independent contractor, and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that INFOMC and its employees shall in no event be entitled to any benefits to which COUNTY employees are entitled, including, but not limited to, overtime, any retirement benefits, worker's compensation benefits, and injury leave or leave benefits. The President of INFOMC shall be vested with the responsibility for the administration of the program to be conducted under this Agreement.

By their signatures to this Contract, each party certifies that it is his or her considered judgment that INFOMC engaged under this Contract is in fact an Independent Contractor.

2. INFOMC'S EMPLOYEES AND EQUIPMENT:

INFOMC agrees that it has secured or will secure at its own expense all persons, employees and equipment unless otherwise specified required to perform the services required under this Agreement and that all such services will be performed by INFOMC or under INFOMC'S supervision. If any arrangement is made whereby employees of COUNTY are used by INFOMC, they shall, while engaged in such work be considered for all purposes, as employees, servants, or agents of INFOMC and not of COUNTY, irrespective of the party paying them.

3. INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS:

INFOMC shall exonerate, indemnify, defend, and hold harmless COUNTY which for the purpose of Paragraphs 3 and 22 (which shall include, without limitation, its officers, agents, employees and volunteers) from and against:

- a. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to tangible property as a result of, arising out of, or in any manner connected with the INFOMC'S performance under the terms of this contract, including but not limited to the use, misuse, or failure of any equipment, materials, tools, supplies or other property furnished to INFOMC by COUNTY, excepting any liability arising out of negligence of the COUNTY. Such indemnification includes any damage to the person(s) or tangible property(ies) of INFOMC and third persons.
- b. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to INFOMC and INFOMC'S officers, employees and agents engaged in the performance of this Contract (including, without limitation, unemployment insurance, social security and payroll tax withholding).

4. ASSIGNABILITY:

Neither party shall assign any interest in this Agreement, nor shall transfer any interest in the same (whether by assignment or novation), without the prior written consent of the other party except that INFOMC may assign its interest in this Agreement in a sale of all or substantially all of its assets. Claims for money due or to become due to INFOMC from COUNTY under this Agreement may be assigned without such approval. Notice of any assignment or transfer of a party's interest shall be furnished promptly to the other party.

5. INTEREST OF INFOMC:

INFOMC covenants that it presently has no interest, including but not limited to, other projects or independent contractors, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. INFOMC further covenants that in the performance of this Agreement no person having any such interest shall be employed or retained by him under this Agreement.

6. SUBCONTRACTS:

All subcontracts of INFOMC for provision of services under this Agreement shall be notified of INFOMC'S relationship to COUNTY. Any subcontract which is in excess of one thousand dollars (\$1,000) shall have prior written approval of COUNTY'S Administrator. INFOMC shall provide, upon request of COUNTY, copies of all subcontracts relating to this Agreement entered into by INFOMC. INFOMC has legal responsibility for performance of all contract terms including those subcontracted.

7. POLITICAL ACTIVITIES PROHIBITED:

None of the funds, provided directly or indirectly, under this contract shall be used for any political activities or to further the election or defeat of any candidate for public office. INFOMC shall not utilize nor allow its name to be utilized in any endorsement of any candidate for elected office. Neither the contract nor any funds provided thereunder shall be utilized in support of any partisan political activities for or against the election of candidates for an elected office.

8. LOBBYING:

None of the funds provided under this contract shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before State or Federal legislatures or the Board of Supervisors of the COUNTY to an extent other than allowed under applicable federal tax regulations for tax exempt corporations pursuant to 26 C.F.R., Section 501 (c)(3)-ib(3).

9. CONFORMANCE TO REGULATIONS:

INFOMC shall perform this Agreement in conformance with all applicable Federal, State and local rules and regulations, including applicable facility and professional licensure and/or certification laws.

10. CONFORMANCE TO LAW:

0294

This Agreement shall be construed and interpreted according to the laws of the State of California and the United States of America.

11. EQUAL EMPLOYMENT OPPORTUNITY:

During and in relation to the performance of this Agreement, INFOMC agrees as follows:

- a. INFOMC shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, mental or physical disability, medical condition (cancer related), marital status, gender, pregnancy, sexual orientation, age (over 18), veteran status or any other **nonmerit** factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. INFOMC agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

"Discriminate, Discrimination or Discriminatory" - shall mean any act, policy or practice which, regardless of intent, has the effect of subjecting any person to differential treatment as a result of that person's age (over 18), race, color, creed, religion, national origin, ancestry, mental or physical disability, marital status, pregnancy, gender, or sexual orientation. "Discrimination" includes the assertion of an otherwise valid reason for action as a subterfuge or pretext for prohibited discrimination.

- b. If this Agreement provides compensation in excess of \$50,000 to INFOMC and if INFOMC employs fifteen (15) or more employees, the following requirements shall apply:
 - (1) INFOMC shall, in all solicitations or advertisements for employees placed by or on behalf of INFOMC, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, mental or physical disability, medical condition (cancer related), marital status, gender, sexual orientation, age (over 18), veteran status, pregnancy, or any other non-merit factor unrelated to job duties. In addition, INFOMC shall make a good faith effort to consider Minority/Women/Disabled Owned Business Enterprises in INFOMC'S solicitation of goods and services. Definitions for **Minority/Women/Disabled Owned Business Enterprises** are available from the COUNTY General Services Purchasing Division.
 - (2) INFOMC shall furnish COUNTY Affirmative Action Office information and reports in the prescribed reporting format (PER 4012) identifying the gender, race, disability, and job classification of its employees and the names, dates and methods of advertisement and direct solicitation efforts made to subcontract with Minority/Women/Disabled Business Enterprises.
 - (3) In the event of INFOMC'S non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders INFOMC may be declared ineligible for further contracts with the COUNTY.

- (4) INFOMC shall cause the foregoing provisions of this Subparagraph **11.b.** to be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. CONFIDENTIALITY OF RECORDS:

"Confidential Information" means information that a reasonable business person doing business with a public agency would consider private, sensitive or proprietary and includes, but shall not be limited to, business or marketing plans, the Software and trade secrets. Each party ("Recipient") shall hold in confidence and not disclose (except on a confidential basis to its employees who need to know and who are informed of their confidentiality obligations) all Confidential Information received from the other party in the same manner and to the same extent as it holds in confidence its own Confidential Information, and shall not use any such Confidential Information except for purposes contemplated by this Agreement. In the event of a breach by either party of its obligations under this paragraph, the other party may suffer irreparable harm and its remedies at law will be inadequate and shall have, in addition to any other remedies it may have, the right to obtain injunctive relief to restrain any breach of threatened breach hereof. Confidential Information shall not include any information that is or comes into the public domain or is required by law to be disclosed by Recipient by court order or applicable law. Both parties agree that all information and records obtained in the course of INFOMC providing services to COUNTY under this Agreement shall be subject to confidentiality and disclosure provisions of applicable Federal and State statutes and regulations adopted pursuant thereto. INFOMC agrees that it has a duty and responsibility to make available to the COUNTY Administrator or his/her designated representatives, including the Auditor-Controller of the COUNTY, the contents of records pertaining to COUNTY which are maintained in connection with the performance of INFOMC'S duties and responsibilities under this Agreement, subject to the provisions of the heretofore mentioned Federal and State statutes and regulations. The COUNTY acknowledges its duties and responsibilities regarding such records under such statutes and regulations.

13. REPORTS:

INFOMC shall submit written reports of operations, and other reports as requested by COUNTY. Format for the content of such reports will be developed by COUNTY in consultation with INFOMC. Reports shall be submitted to COUNTY'S Administrator.

14. OWNERSHIP, PUBLICATION, REPRODUCTION AND USE OF MATERIAL:

All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other material or properties produced under this Agreement directly related to data supplied by COUNTY (and unrelated to software, software modifications, enhancements, customized software, changes and derivative works, and software reports of INFOMC) shall be the property of COUNTY. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyright or patent right by INFOMC in the United States or in any other country without the express written consent of the

COUNTY. COUNTY shall have unrestricted authority to publish, disclose, distribute and otherwise use any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.

15. TRAVELING EXPENSES, FOOD AND LODGING:

- a. INFOMC'S claim for travel expense for food and lodging must be directly related to this contract and shall be at rates not to exceed those applicable to regular COUNTY employees. No travel outside of the State of California shall be payable unless prior written authorization is obtained from COUNTY'S Administrator.
- b. Private mileage reimbursement, if paid based upon miles driven, to INFOMC'S employees when incurred in performance of duties under this Agreement shall be payable at a rate not to exceed COUNTY rates payable to COUNTY employees.

16. CHANGES:

COUNTY may from time to time request changes in the scope of the services of INFOMC to be performed hereunder. Such changes, including any increase or decrease in the amount of INFOMC'S compensation, which are mutually agreed upon by and between COUNTY and INFOMC, shall be effective when incorporated in written amendments in this Agreement. No alteration, amendment, or modification of the terms of this Agreement shall be valid unless executed by written amendment hereto and approved by both parties.

17. NOTICE OF POSSIBLE TERMINATION FOR CAUSE:

In the event either party fails to perform any of the provisions of this Agreement or fails to make progress so as to endanger performance of this Agreement in accordance with its terms, and in either of these circumstances does not cure such failure within a period of fourteen (14) days after receipt of notice from the other party specifying such failure, the other party may by written notice of default terminate the whole or part of this Agreement.

18. TERMINATION OF AGREEMENT WITHOUT CAUSE:

This Agreement may be terminated without cause by COUNTY or INFOMC with thirty (30) days written notice, however, INFOMC shall not be required to refund any amounts already paid in accordance with this Agreement, and County shall be required to make any payment that has already accrued.

19. RETENTION AND AUDIT OF RECORDS:

INFOMC shall retain records pertinent to this Agreement for a period of not less than five (5) years after final payment under this Agreement or until a final audit report is accepted by COUNTY, whichever occurs last. INFOMC hereby agrees to be subject to the examination and audit by the Santa Cruz County Auditor-Controller, the Auditor General of the State of California, federal auditors or the designee of either for a period of five (5) years after final payment under this Agreement.

20. DISALLOWANCE AND RESPONSIBILITY FOR AUDIT EXCEPTIONS:

INFOMC is responsible for knowledge of, and compliance with, all COUNTY, State and

Federal regulations applicable to expenditure of funds under the terms of this Agreement. In the event INFOMC claims and receives payment from COUNTY which is later disallowed based on an audit, performed by the COUNTY, the State of California or the United States government, INFOMC shall promptly refund the disallowed amount to COUNTY on request, or at COUNTY'S sole option, COUNTY may offset the amount disallowed from any payment due or to become due to INFOMC under this Agreement. INFOMC also agrees to assume all responsibility for receiving, replying to, and complying with any audit exception by the COUNTY, State or Federal audit agency.

21. OVERPAYMENTS:

Over payments as determined by audits shall be payable to COUNTY within thirty (30) days after the date of said determination. Over payments knowingly held in excess of thirty days shall be subject to a penalty charge of a flat twelve (12) percent per annum.

22. INSURANCE:

- a. INFOMC, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain at minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be excess of INFOMC'S insurance coverage and shall not contribute to it..
- b. If INFOMC utilizes subcontractors in the performance of this Agreement, INFOMC shall obtain and maintain Independent INFOMC'S Insurance as to each subcontractor or otherwise provide evidence of insurance coverage for each subcontractor equivalent to that required of INFOMC in this Agreement.

(1) Types of Insurance and Minimum Limits

- (a) Worker's Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall not be required if INFOMC has no employees.
- (b) Automobile Liability Insurance for each of INFOMC'S vehicles used in the performance of this Agreement, including owned, non-owned (e.g., owned by INFOMC'S employees), leased or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage.
- (c) Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of \$1 ,000,000 combined single limit, including coverage for:
 - bodily injury,
 - personal injury,
 - broad form property damage,
 - contractual liability, and
 - cross-liability.
- (d) Professional Liability Insurance in the minimum amount of \$1 ,000,000 combined single limit.

(2) Other Insurance Provisions

- (a) If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, INFOMC agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post agreement coverage") and any extensions thereof. INFOMC may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable.
- (b) All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contain the following clause:

"The County of Santa Cruz, its officials, employees, agents and volunteers are added as an additional insured as respects the operations and activities of, or on behalf of, the named insured performed under Agreement with the County of Santa Cruz".
- (c) All required insurance policies shall be endorsed to contain the following clause:

"This insurance shall not be canceled until after thirty (30) days prior written notice has been given to: **Claims Desk, Health Services Administration, P.O. Box 962, Santa Cruz, CA 95061.**
- (d) INFOMC agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Agreement with Certificates of Insurance for all required coverage. All Certificates of Insurance shall be delivered or sent to: **Claims Desk, Health Services Administration, P.O. Box 962, Santa Cruz, CA 95061.**

**COUNTY OF SANTA CRUZ
EXHIBIT C
SCOPE OF SERVICE, MAINTENANCE,
AND FEES**

0299

cCURA3 is a computer software program that allows tracking and recording of Mental Health Managed Care services. Because the COUNTY and INFOMC have a License Agreement entered into on November 13, 1998 ("License Agreement") for the COUNTY'S use of cCURA3 Software, which was originally serviced and maintained by a third party, the COUNTY and INFOMC now desire to enter into an Agreement which will allow INFOMC to directly maintain and support cCURA3 and additionally provide new products, updates and upgrades, as are necessary or requested by the COUNTY.

1. DEFINITIONS:

- a. "Customized Software" shall mean any and all software, user documentation and other intellectual property developed specifically for the COUNTY by INFOMC under this Agreement or pursuant to a separate work order or purchase order.
- b. "Error" shall mean any material failure of the Software to perform in accordance with its documentation or specifications. However, any nonconformity resulting from COUNTY'S misuse, improper use, alteration or damage of the Software, COUNTY'S combining or merging the Software with any hardware or software not supplied or identified as compatible by INFOMC, or COUNTY'S failure to install Updates, shall not be considered an Error.
- c. "Expense" shall mean all out-of-pocket costs incurred by INFOMC in performance of services for COUNTY, including, but not limited to, travel, lodging, meals, telephone calls, photocopying, faxes and postage.
- d. "Server" shall mean the single computer on which a single copy of the Software is installed at COUNTY'S location and to which Workstations are connected.
- e. "Software" shall mean, collectively, the cCURA3 Software, as more fully described in the License Agreement, in object code only, along with associated on-line documentation, including any Updates and Upgrades provided by INFOMC.
- f. "Standard Support Hours" shall mean 8:30 AM to 5:00 PM ET, Monday through Friday, except for holidays.
- g. "Support Contacts" shall mean the trained individuals designated by COUNTY as authorized technical support contacts as set forth in Paragraph 3f.
- h. "Upgrade" shall mean a major revision of any Software Product enhancing the current functions or adding new functions. Upgrades shall be designated by INFOMC with an increase in the X integer of the version number, where version numbers are designated by X.Y (ex: 2.4 to 3.0).

i. "Update" shall mean a minor revision of any Software Product, including all patches, bug fixes, and minor enhancements to current functions. Updates shall be designated by INFOMC with an increase in the Y integer of the version number, where version numbers are designated by X.Y (ex: 2.4 to 2.5). 03 00

j. "Workstation" shall mean a single computer connected to a Server for the purpose of accessing and using the Software.

2. OWNERSHIP:

a. Notwithstanding any other provision to the contrary contained herein, the COUNTY shall not receive any right, title or interest, copyright or otherwise, in or to the following:

- The Software.
- Any Software modifications, enhancements, Customized Software, changes and derivative works.
- Any intellectual property related to the foregoing, including, but not limited to, the design, concepts and documentation.

Without limiting the generality of the foregoing, INFOMC shall be the owner of all right, title and interest, including copyright, in and to any and all Customized Software and the right of COUNTY to use Customized Software shall be subject to the terms of the License Agreement.

3. SUPPORT AND MAINTENANCE:

- a. Support and maintenance shall be provided to COUNTY exclusively by INFOMC. INFOMC will provide the support and maintenance services described in Paragraphs 3b through 3g below.
- b. Error Correction. INFOMC shall promptly correct any error(s) in the Software. In such case, INFOMC may provide a temporary solution to the problem where one is available and shall correct the problem at its sole expense as soon as reasonably practicable.
- c. Updates. INFOMC shall provide Updates to the Software, but not Upgrades, to COUNTY when such are made available to INFOMC'S other customers receiving support and maintenance.
- d. Telephone Support. INFOMC shall provide toll free telephone support during Standard Support Hours (C.I.g) to the Support Contacts. Outside of Standard Support Hours, INFOMC will provide emergency support, twenty four (24) hours a day, seven (7) days a week. In the event that a COUNTY Support Contact calls INFOMC outside of Standard Business Hours for emergency support, INFOMC will return such call within four (4) hours. Telephone support is not to be considered as a source of training or as a source of consulting.
- e. Exclusions. To the extent problems arise from (i) COUNTY'S unauthorized modification of the Software ; (ii) COUNTY'S operational error with respect to the Software or the hardware upon which the Software operates; (iii)

hardware problems; or (iv) problems with third party software, support rendered by INFOMC in helping COUNTY to identify and resolve such problems (including telephone support) shall be billed at INFOMC'S then current hourly rate plus Expenses, as approved in writing by the COUNTY Administrator prior to rendering of those services. Support and maintenance will not be provided unless COUNTY has installed the latest Updates, within six (6) months of release of each Update.

- f. Support Contacts. COUNTY shall designate in writing no more than three (3) authorized Support Contacts for each Software Product. Each Support Contact is required to receive special training by INFOMC during Implementation of the Software. The fee for training the initial Support Contacts is included in the fees for implementation. In the case of a replacement Support Contact, such individual shall be trained by INFOMC before becoming an active Support Contact. Training for replacement Support Contacts shall be at INFOMC'S then standard rates plus Expenses, as approved in writing by the COUNTY Administrator before implementation of that training. Only the Support Contacts shall be permitted to contact INFOMC for support assistance.
- g. Modem. In order for INFOMC to provide support and maintenance, the COUNTY shall provide a modem line or dial-back modem for the purpose of INFOMC remotely accessing the Software. If COUNTY provides a dial-in capability that is not toll-free to INFOMC, INFOMC shall bill COUNTY for all telephone charges incurred. The modem must be attached to a Workstation with the necessary COUNTY provided support tools, as specified by INFOMC.

4. ADDITIONAL SERVICES:

If INFOMC agrees to provide additional services above and beyond this agreement to the COUNTY (such as consulting, creation of Customized Software, or additional training), such services shall be provided at INFOMC'S then standard hourly rates plus expenses. Additional services and/or products may be ordered by COUNTY through an Attachment, Work Order or Purchase Order. INFOMC'S fees quoted for such services and/or products will include taxes and expenses. All services and/or products above and beyond this agreement must be presented in writing to the COUNTY by INFOMC and be approved in writing by the COUNTY Administrator before those services or products are incurred.

5. FEES, PAYMENTS AND EXPENSES:

Fees. COUNTY shall pay all fees as set forth in Paragraph 9 for the one year period from July 1, 1999 to June 30, 2000, for standard and INFOMC Advantage maintenance and support. These fees for maintenance and support include all applicable taxes and expenses. Also set forth in Paragraph 9 are the license fees for the number of workstations allowed under the License Agreement.

6. AGREEMENT COMPLIANCE:

Verification of COUNTY Compliance to Agreement. With reasonable advance notice, the COUNTY shall permit INFOMC or its authorized representatives reasonable access, during normal business hours, to the location(s) where the Software is used in order for INFOMC to verify **COUNTY'S** compliance with the terms and conditions of this Agreement. In addition, upon request by INFOMC, but not more than once per quarter, the COUNTY shall execute a function in the Software that generates a file which verifies the number of Workstations accessing the Server, and the COUNTY shall forward said file to INFOMC. In the event that the COUNTY has more Workstations accessing the Software than the COUNTY has paid for, then the COUNTY shall immediately pay the list price (i.e. not a discounted price) for such additional work stations, plus the list price for maintenance and support for such additional work stations.

7. SERVICE WARRANTIES

- a. Limited Service Warranty. INFOMC warrants that it will render its services hereunder in a competent, efficient, timely and satisfactory manner. INFOMC will make commercially reasonable efforts to remedy any discrepancies in services submitted by claim to INFOMC from COUNTY. Any claim by COUNTY based on this warranty must be submitted in writing within thirty (30) days after delivery of the pertinent service. The COUNTY agrees to accept INFOMC'S reasonable efforts as the full remedy for any claimed discrepancy in Services.
- b. Year 2000 Warranty. INFOMC warrants that it will maintain the Software, including all Updates and Upgrades, such that it will correctly handle the change of the century in a standard and compliant manner, including the year 2000 and beyond as well as the leap year and the absence of leap year, and will operate accurately in all respects with respect to date related operations. COUNTY'S exclusive remedy for breach of this warranty shall be that INFOMC will provide compliant Software.
- c. Limitation of Warranty. THE WARRANTIES CONTAINED IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANT-ABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. The remedies set forth in this Section shall be COUNTY'S exclusive remedies and INFOMC's sole obligation for the breach of any warranty with respect to the Software or any services provided to COUNTY.
- d. Limitation on Liability. INFOMC WILL UNDER NO CIRCUMSTANCES BE LIABLE TO COUNTY OR ANY OTHER THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITIES, LOSS OF GOODWILL,

LOSS OF RECORDS OR DATA, OR LOSS OF EQUIPMENT USE, EVEN IF INFOMC IS ADVISED OF SUCH DAMAGES, LOSSES OR EXPENSES. IN NO EVENT SHALL INFOMC'S LIABILITY UNDER THIS AGREEMENT EXCEED THE FEES RECEIVED BY INFOMC UNDER THIS AGREEMENT DURING THE PREVIOUS 24 MONTHS. No action, regardless of form, arising out of this Agreement may be brought by Customer more than one (1) year after the cause of action has arisen.

8. ESTOPPEL

COUNTY hereby waives any and all claims it may have, at equity or law, against INFOMC in any way relating to the License Agreement or under any third party maintenance and support agreement, arising on or before the Effective Date hereof. The provisions of this section in no way affect the perpetual license to the Software granted to COUNTY in the License Agreement.

9. INFOMC FEES

MAINTENANCE AND SUPPORT FEES FOR 1999-2000:

| | |
|---|--|
| (1) \$700 per Workstation 12X\$700 = plus the following: | \$ 8,400 STANDARD MAINTENANCE AND SUPPORT |
|---|--|

| | |
|------------------------------|----------------------------------|
| (2) 0-12 Workstations | \$13,260 INFOMC ADVANTAGE |
| 13-25 Workstations | \$17,680 |
| 26-50 Workstations | \$22,100 |
| 51-75 Workstations | \$35,360 |
| 75-1 00 Workstations | <u>\$53,040</u> |

| | |
|---------------------------|-----------------|
| Total Annual Fees: | \$21,660 |
|---------------------------|-----------------|

LICENSE FEES (one time only)

| | |
|--|-----------------|
| (1) \$2,800 fee per machine (\$3,500.00 list price – 20% discount) 12X\$2800= | \$33,600 |
|--|-----------------|

| | |
|------------------------------------|-------------------|
| (2) 5 machines previously paid for | (\$14,000) |
|------------------------------------|-------------------|

Upon execution of Agreement,
COUNTY will pay balance of
License fee for 7 machines,

| | |
|----------------------|-----------------|
| 7 X \$2,800 = | \$19,600 |
|----------------------|-----------------|

| | |
|---|------------------------|
| Total Amount Due to InfoMC for 1999-2000 | <u>\$41,260</u> |
|---|------------------------|