

**MERIDIAN SERVICES ATTENDANT CONSOLE (MSAC)  
HARDWARE AND SOFTWARE MAINTENANCE  
CONTRACT N100008611  
BETWEEN  
THE COUNTY OF ORANGE  
AND  
T-METRICS, INC.**

THIS Contract N100008611 for MSAC Hardware and Software Maintenance to be provide at John Wayne Airport (JWA) 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 T-Metrics. Inc., with a place of business at 4430 Stuart Andrew Blvd, Charlotte, NC 28217 hereinafter referred to as ("Contractor"), which are sometimes individually referred to as ("Party"), or collectively referred to as ("Parties").

**RECITALS**

WHEREAS, Contractor and County are entering into a Contract to provide MSAC Hardware and Software Maintenance;

WHEREAS, Contractor represents that it is qualified to provide MSAC Hardware and Software Maintenance as further set forth herein; and

WHEREAS, Contractor agrees to provide MSAC Hardware and Software Maintenance as further set forth in the Scope of Work attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as more specifically described in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW, THEREFORE, the Parties mutually agree as follows:

**ARTICLES**

**COUNTY CONTRACT TERMS AND CONDITIONS**

1. **Renewal:** This Price Agreement may be renewed, annually, by mutual agreement of both parties. The County does not have to give reason if it elects not to renew.
2. **Correspondence:** Any correspondence referring to the terms, prices and conditions of this Price Agreement must be directed to JWA/Purchasing Department to the attention of the buyer. For further information contact the buyer (949) 252-5175, between the hours of 6:00 a.m., and 4:00 p.m., Monday through Friday. Under no circumstances shall the Contractor contact the using department without first clearing through the buyer.
3. **Termination:** The County of Orange reserves the right to cancel this Price Agreement without cause with a 30-days written notice, or with cause immediately.
5. **Change of Ownership:** The contractor agrees that if there is a change in ownership prior to the completion of this Price Agreement the new owners will be required under terms of sale to assume this Price Agreement and complete it to the satisfaction of the County.

1. **Scope of Services:** This Contract, including Attachments, specifies the contractual terms and conditions by which the Contractor will provide MSAC Hardware and Software Maintenance under a fixed-price Contract, as set forth in the Scope of Work identified and incorporated herein by this reference as Attachment A to this Contract.
2. **Term:** MSAC Hardware and Software Maintenance shall become effective upon execution of all authorized signatures and shall continue for one (1) year from that date, unless otherwise terminated by County. This Contract may be renewed upon expiration of the initial term, for four (4) consecutive one-year periods, upon mutual agreement of both parties. County is not obligated to give a reason or notice if it elects not to renew. Renewal amendments may require County Board of Supervisors approval.
3. **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.
4. **Precedence:** The Contract documents consist of this agreement and its exhibits and attachments. 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 agreement, i.e., those provisions set forth in the recitals and articles of this agreement, and then the exhibits and attachments.
5. **Project Administration Contractor's Project Manager and Personnel:** Contractor shall appoint a Project Manager, as specified in Article 19 to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

The Contractor's Project Manager and personnel shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Contractor personnel are those individuals who report directly to the Contractor's Project Manager. Contractor warrants that all Contractor personnel engaged in the performance of work under this Contract shall possess sufficient experience and/education to perform the services requested by the County.
6. **County's Project Manager:** The County shall appoint a Project Manager, as specified in Article 19. Notices, to act as liaison between the County and the Contractor during the term of this Contract. The County's Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager and personnel. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager and personnel. Said approval shall not be unreasonably withheld.
7. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the

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work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.

8. **Reports/Meetings:** Upon County's request, the Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's project manager and the Contractor's project manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's project manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by County for the purpose of monitoring progress under this Contract
9. **Conflict of Interest:** 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 Consultants; 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.
10. **Child Support Enforcement Requirements:** Contractor is required to comply with the child support enforcement requirements of the County. 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.
11. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.
12. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
13. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute 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. 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;

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- ii. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
    - iii. Terminate the Contract immediately without penalty.
  14. **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's Purchasing Agent by way of the following process:
    - i. 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.
    - 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.
    - iii. 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's 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. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of the County's final decision or one year following the accrual of the cause of action, whichever is later.
  15. **Stop Work:** The County may, at any time, by written stop work order to the Contractor, require the Contractor to stop all or any part of the work called for by this Contract for a period of 90 working days after the stop work order is delivered to the Contractor and for any further period to which the Parties may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of 90 working days after a stop work order is delivered to the Contractor or within any extension of that period to which the Parties shall have agreed, the County shall either:
    - i. Cancel the stop work order; or
    - ii. Terminate the Contract immediately in whole or in part in writing as soon as feasible. County is not required to provide thirty-day (30) days notice of the termination of the Contract to Contractor if a stop work has been issued.

16. **Orderly Termination:** 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 assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
17. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become, and remain, the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.
18. **Title to Data:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
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 County's Project Manager and Contractor's Project Manager 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.

County: JWA/IT  
 Attention: Don Forhane  
 3160 Airway Avenue  
 Costa Mesa, Ca 92626

cc: JWA/Purchasing  
 Attn: Debbie Temple  
 3160 Airway Avenue  
 Costa Mesa, CA 92626

Contractor: T-Metrics  
 Attn: Roger Pohl  
 4430 Stuart Andrew Blvd  
 Charlotte, NC 28217

20. **Governing Law and Venue (A):** 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

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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.

21. **Entire Contract (B):** This Contract, including Attachments A and B which are attached hereto and incorporated herein by this reference, 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 County's Purchasing Agent or his designee.
22. **Amendments (C):** 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.
23. **Taxes (D):** All prices shall include any applicable sales taxes.
24. **Delivery (E):** 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 Scope of Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. 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.
25. **Acceptance/Payment (F):** 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 annually in advance.
26. **Warranty (G):** 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 Article "35" below, and as more fully described in Article "35", 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.
27. **Patent/Copyright Materials/Proprietary Infringement (H):** 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 Article "35" below, it shall

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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.

28. **Assignment or Subcontracting (I):** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

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

29. **Non-Discrimination (J):** 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.

30. **Termination (K):** 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 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. Any termination or expiration of this Contract shall not divest County of the perpetual software licenses granted under this Contract.

31. **Consent to Breach Not Waiver (L):** 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.

32. **Remedies Not Exclusive (M):** 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.

33. **Independent Contractor (N):** Contractor shall be considered an independent Contractor and neither the Contractor, its employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor

anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.

34. **Performance (O):** 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.
35. **Indemnification (P):** 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.

**Insurance Provisions:** Prior to the provisions 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.



This 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
Workers' Compensation	Statutory
Employers' 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 Worker's 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 of Orange 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 AGENTS OR REPRESENTATIVES.~~

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

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

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

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

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

36. **Bills and Liens (Q):** 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 Article "35" 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.
37. **Changes (R):** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
38. **Change of Ownership (S):** 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.
39. **Force Majeure (T):** 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.
40. **Confidentiality (U):** 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.
41. **Compliance with Laws (V):** 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

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of Article “35” 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.

42. **Freight (F.O.B. Destination) (W):** 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.
43. **Pricing (X):** The Contract price, as more fully set forth in Attachment B, 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.
44. **Waiver of Jury Trial (Y):** 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.
45. **Terms and Conditions (Z):** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
46. **Headings (AA):** 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.
47. **Severability (BB):** 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.
48. **Calendar Days (CC):** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
49. **Attorneys Fees (DD):** 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.
50. **Interpretation (EE):** 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 of 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 effect the purpose of the Parties and this Contract.

51. **Authority (FF):** 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.
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**ATTACHMENT A  
SCOPE OF WORK****I. SCOPE OF WORK**

Contractor to provide preventive and remedial maintenance support for the following hardware and software

Service will provide telephone support; (8 am to 6 pm ET except weekends and holidays).

**II. BACKGROUND**

In December 1998, JWA purchased three computer based telephone console systems. In December 2000, JWA was notified that these three consoles were not going to be maintained as they had been for the past two years, so a contract was put in place with T-Metrics for three years. This is for a fixed price, Price Agreement to provide software subscription service and hardware warranty maintenance for the consoles located at JWA for an additional three years.

**III. EQUIPMENT LISTING**

**County of Orange  
John Wayne Airport  
Terminal**

Quantity	Description
3 each	T-Metrics MSAC Consoles w/LAN Software Maintenance

**IV. SERVICES**

The above will cover replacement of defective hardware (board), no upgrades to the hardware. Software updates are included. If Cards are found to be defective by T-Metrics, the new hardware card and telephone support would be provided under this agreement, delivery of new card would be via overnight delivery. JWA I.S. staff would provide the installation through telephone support from Contractor. JWA would be required to return defective card within 30 days of receipt of the new card. If not returned within 30 days, JWA will be invoiced for the current retail price of the card.

If a Contractor technician is required on-site, a separate one-time purchase order will be issued to cover expenses and daily on-site charges.

Attached is Contractors Service & Support agreement, which is a part of this County Agreement.

The Total Three Year Cost for Standard Service: \$ 8,400.00

**SCOPE OF WORK:** Contractor shall provide Hardware and Software Maintenance for three (3) MSAC computer based telephone console systems located at JWA Terminal. Contractor shall provide all necessary parts and labor required to maintain the MSAC as set forth herein.

**1. Software Maintenance:**

a. **On-Line Services:** On-line services will include full access to the T-Metric home page. Contractor will provide a logon to a password-protected area with the ability to access items listed below 24 hours a day, 7 days a week.

- The latest version of maintenance releases
- Software upgrades and updates
- New feature version releases the application code
- The latest version of the manual
- Documents describing bug fixes and new features
- Online training for new users

b. **Technical Support:** Technical support includes but is not limited to troubleshooting, new feature and system usage, and configuration problems. Technical support will be via telephone, fax or email provided Monday through Friday between the hours of 8:00 am to 6:00 pm **Eastern Time**. Contractor shall respond within two (2) business hours of County's initial call for support.

- Phone: (704) 525-5551 Press 2 for support
- Fax: (704) 525-4886
- Email: [support@tmetrics.com](mailto:support@tmetrics.com)
- Website: [www.tmetrics.com](http://www.tmetrics.com)

2. **Hardware Maintenance:** Contractor shall repair or replace defective T-Metrics manufactured hardware. Delivery shall be provided next business day at the Contractor's expense. County will return defective hardware within 30 days of receipt of the new.

3. **Equipment List:** Three (3) External MSAC Hardware Boxes

**ATTACHMENT B**  
**CONTRACTOR'S PRICING**

1. **Compensation:** This is an all-inclusive, fixed fee price Contract between the County and Contractor for MSAC Hardware and Software Maintenance as provided in Attachment A, Scope of Work.

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, tax, shipping, freight, insurance requirements, 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. The County shall have no obligation to pay any sum in excess of prices below and total Contract amount specified below unless authorized by amendment in accordance with Articles 22 and 37 of the General Terms and Conditions.

2. **Fees and Charges:** County will pay the following fixed rate fees in accordance with the provisions of this Contract.

Annual amount not to exceed: \$2,800.00

3. **Price Increase/Decrease:** No price increases will be permitted during the first period of the Contract. All price decreases will automatically be extended to the County. 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.

4. **Payment Terms:** MSAC Hardware and Software Maintenance shall be paid in annually advance. Should the Contract be terminated prior to the expiration date, Contractor shall promptly refund to County one twelfth (1/12) of the fees paid in advance for the terminated services for each month remaining in the Contract period which shall be computed based upon the date of written notice of termination.

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.

5. **Payment– Invoicing Instructions:** Invoices are to be submitted to the address specified below. 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 County and subject to routine processing requirements. The County's Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment. The responsibility for providing an acceptable invoice rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

The Contractor will provide an invoice on the Contractor's letterhead. Each invoice will have a number and will include the following information:

- a. Contractor's name and address
- b. Contractor's remittance address, if different from 1, above
- c. Name of County agency/department
- d. Delivery/service address
- e. Contract number
- f. Service Date
- g. Service Description (as specified above)
- h. Total
- i. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

John Wayne Airport  
Attn: Accounts Payable  
3160 Airway Ave.  
Costa Mesa, CA 92626



## I. PRICING

1. Prices quoted shall be firm for the period of the price agreement (3 yrs).
2. The County of Orange gives preference to firm price bids. All price escalation provisions will be considered alternate bids. Bids specifying a maximum escalation percentage during the period of the price agreement will be given preference over those offering an unspecified price escalation. The County requires bona fide proof of cost increases prior to any price escalation adjustment. A minimum of 30 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.
3. **Pricing:** The contract bid price shall include full compensation for providing all required services as specified in the scope of work and no additional compensation will be allowed therefore.
4. All decreases will be automatically extended to the County.

## II. COMPENSATION/INVOICING

1. **Invoice Submittal:** Contractor will submit two invoices to the John Wayne Airport, 3160 Airway Ave, Costa Mesa CA 92626. Each invoice will have a number and will include the following information:
  - A. Name of user agency/department;
  - B. Address of user agency/department;
  - C. Contract number;
  - D. Date of service;
  - E. Service description;
  - F. Name and address of contractor; and
  - G. Contractor's federal taxpayer's ID number.
2. **Acceptance of Services:** Payments made by the County shall not preclude the right of the County to thereafter dispute any services involved or billed under this agreement and shall not be construed as acceptance of any part of the services.
3. **Payment:** Payment will be net thirty (30) days after receipt of an invoice in a format acceptable to the County verified and approved by the agency and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Invoices are to be submitted in arrears for services provided. Billing shall cover services not previously invoiced.