

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

694



FROM: Assessor-County Clerk-Recorder

SUBMITTAL DATE:
August 27, 2013

SUBJECT: Approval of the Agreement with EMC Corporation to provide specialized training in Documentum for the Assessor-County Clerk-Recorder without obtaining competitive bids.

RECOMMENDED MOTION: Move that the Board of Supervisors:

1. Approve and authorize the Purchasing Agent to execute the one year professional service agreement with EMC Corporation for \$75,152 annually, which contains an option to renew the agreement for one additional one-year; and,
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to exercise the renewal option, based on the availability of fiscal funding; and to sign amendments that do not change the substantive terms of the agreement, including amendments to the compensation provision that do not exceed the annual CPI rates.

BACKGROUND:

EMC Corporation shall provide specialized Information Technology training in Documentum Systems Administration and Development for the Assessor-Clerk-Recorder (ACR) information technology staff, which includes on-site and off-site classroom training, live online, computer based training or a combination of training based on the needs of the ACR. County participants will learn how to install, upgrade, configure, and perform maintenance tasks for all Documentum Servers. Because the software is proprietary to EMC Corporation, only EMC can provide the training specifically tailored to meet the needs of the ACR department.

(CONTINUED)

Larry W. Ward, Assessor-County Clerk-Recorder

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 75,152	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	FY 13-14

SOURCE OF FUNDS: Recorder's Modernization Fund	Positions To Be Deleted Per A-30	☐
	Requires 4/5 Vote	☒

C.E.O. RECOMMENDATION:

APPROVE

BY:

Karen Johnson

County Executive Office Signature

Policy ☒ Policy ☒

Consent ☐ Consent ☐

Dep't Recomm.:
Per Exec. Ofc.:

2013 AUG -3 6:45:01

RECEIVED CLERK-RECORDER

The Honorable Board of Supervisors

RE: Approval of the Agreement with EMC Corporation to provide specialized training in Documentum for the Assessor-County Clerk-Recorder without obtaining competitive bids.

August 1, 2013

Page 2 of 2

BACKGROUND (Continued):

Technical training is required to support the implementation teams for the critical CREST Property Tax System Project and the ACR Document System (CARDS) Project. Documentum is part of the Enterprise Content Management System (ECMS) used by ACR to prepare and store the daily recording of official document images. ACR uses the Enterprise Content Management System (ECMS) to redact Social Security numbers from digital images of recorded documents. Training in Documentum is needed as the CREST Team continues the development and deployment of the new Property-Tax System. The training representatives from EMC will help plan the on-site training curriculum that is project specific to the ACR's needs. In addition, the new Clerk and Recorder Document System (CARDS) will be utilizing the ECMS to store all document images in a secure and trusted system as required by the State of California.

PRICE REASONABLNESS:

At the completion of the CARDS implementation, the fully integrated system will provide operational cost savings due to efficiencies and process improvement. The operational impact would be significantly negative if the data conversion projects do not progress on time. The ACR would be unable to implement CREST and CARDS projects in a timely manner which will end up costing the County unsubstantiated costs.

EMC Corporation is providing the County of Riverside with a 20% public/private discount based on volume (number of total training days). The pricing in this Agreement is for 122 days of training for each FY 13/14 and FY 14/15.

Number of Training Days	Training Package Value	Discount	Amount Due
122	\$93,940	20%	\$75,152

This allows the Assessor-County Clerk-Recorder to spread the cost of the training between two fiscal years to reduce any financial strain to the budget.

REVIEW/APPROVAL: Purchasing and County Counsel concurs with this request.

In compliance with Board Policy H-11 (Acquisition and Management of Information Systems and Services), Riverside County Information Technology has reviewed and recommended the approval of this proposed information technology acquisition (Tracking # PR201300364) on July 2, 2012.



**LARRY W. WARD
COUNTY OF RIVERSIDE
ASSESSOR-COUNTY CLERK-RECORDER**

Assessor
P.O. Box 12004
Riverside, CA 92502-2204
(951) 955-6200

County Clerk-Recorder
P.O. Box 751
Riverside, CA 92502-075
(951) 486-7000

www.riversideacr.com
www.riversidetaxinfo.com

Date: August 27, 2013

From: Larry Ward Department/Agency: Assessor-County Clerk-Recorder
Karan Chandran (James Moore)

To: Board of Supervisors/Purchasing Agent

Via: Purchasing Agent

Subject: Sole Source Procurement; Request for Specialized Information Technology Training

The below information is provided in support of my Department requesting approval for a sole source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

1. **Supply/Service being requested:** Specialized Information Technology Training in Documentum Systems Administration and Development Training for the Assessor-Clerk-Recorder (ACR) information technology staff. The System Administration course provides the Documentum System Administrator and Project Architects with a firm foundation in a wide variety of Documentum administrative tasks. Participants will learn how to install, upgrade, configure, and perform maintenance tasks for all Documentum Servers.
2. **Supplier being requested:** EMC Corporation
3. **Alternative suppliers that can or might be able to provide supply/service:** None. Because the software is proprietary to EMC Corporation, only EMC can provide the training specifically tailored to meet the needs of the ACR department.
4. **Extent of market search conducted:** Other IT training vendors such as ExecuTrain, New Horizon, and Soft-Train do not provide this type of training. Since Documentum is proprietary software, only EMC can provide specialized training specifically tailored to meet the needs of the ACR.
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** Customized training includes on-site and off-site classroom training, live online, or computer based training or a combination of them based on the needs of the Assessor-County Clerk-Recorder's Office. The on-site training is geared to meet the needs of the Assessor-County Clerk-Recorder. Courses can be tailored to meet the requirements of the organization. The curriculum will be developed by product experts at EMC. The Education Services Representative will help plan the onsite training after understanding the details of the projects, audience and time frame. Onsite training is an effective means of encouraging a high-degree of interactivity.
6. **Reasons why my department requires these unique features and what benefit will accrue to the county:** Technical training is required to support the implementation teams for the critical CREST Project and the ACR CARDS Project. Training in Documentum is needed as the CREST Team continues the development and deployment of the new Property-Tax System. At the completion of the CARDS implementation, the fully integrated system will provide operational cost savings due to



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ASSESSOR-COUNTY CLERK-RECORDER

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efficiencies and process improvement. A large financial risk would exist without acquiring the specialized technical training since ACR would be unable to implement the CREST and CARDS data conversion projects. This would jeopardize timely implementation which will end up costing the County unsubstantiated costs.

7. **Price Reasonableness including purchase price and any ongoing maintenance or ancillary costs from the supplier:** EMC is offering the County of Riverside a 20% discount on pricing when ACR orders 122 days or more of training. This discount is offered to government agencies and the private sector based on volume (number of total training days). ACR has contracted 122 training days for FY 13/14 and in FY 14/15. The cost of the on-site IT training is divided over a two year period, therefore \$75,152 is due in FY 13/14 and \$75,152 is due in FY 14/15 as per payment terms listed in the agreement. This allows the Assessor-County Clerk-Recorder to spread the cost of the training between fiscal years to reduce any financial strain to the budget.
8. **Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source? (Maintenance, support, or upgrades, if so, please explain).** No
9. **Period of Performance:** September 1, 2013 – June 30, 2014 and renewable for one additional year from July 1, 2014 through June 30, 2015.

(Provide a defined period of performance. Please note multi-year terms require Board approval, unless renewable in one year increments and the Purchasing Agent approves the terms.)

ACR is requesting approval for up to 2 years on this sole source as long as the renewal cost does not exceed the Consumer Price Index for LA and Orange Counties for the additional year. Pricing is guaranteed to remain the same for FY14/15



Department Head Signature

8-27-2013

Date

Purchasing Department Comments:

☒ Approve

☐ Approve with Condition/s

☐ Disapprove

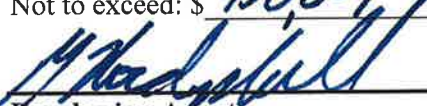
Not to exceed: \$

150,304

☐ One time

☐ Annual Amount through

June 30, 2015



Purchasing Agent

Date

14-114

Approval Number
(Reference on Purchasing Documents)

PROFESSIONAL SERVICE AGREEMENT

FOR

SPECIALIZED INFORMATION TECHNOLOGY TRAINING

BETWEEN

COUNTY OF RIVERSIDE

AND

EMC CORPORATION

(doing business in California as EMC PERIPHERALS, INC.)



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This Agreement, made and entered into _____ day of August, 2013, by and between EMC Corporation doing business in California as EMC Peripherals, Inc., (herein referred to as "CONTRACTOR"), and the COUNTY OF RIVERSIDE, a political subdivision of the State of California, (herein referred to as "COUNTY"). The parties agree as follows:

1. Description of Services

1.1 CONTRACTOR shall provide all services as outlined and specified in Exhibit A, Scope of Services, consisting of 1 page at the prices stated in Exhibit B, Payment Provisions, consisting of 1 page.

1.2 CONTRACTOR represents that it has the skills, experience, and knowledge necessary to fully and adequately perform under this Agreement and the COUNTY relies upon this representation. CONTRACTOR shall perform to the satisfaction of the COUNTY and in conformance to and consistent with the highest standards of firms/professionals in the same discipline in the State of California.

1.3 CONTRACTOR affirms this it is fully apprised of all of the work to be performed under this Agreement; and the CONTRACTOR agrees it can properly perform this work at the prices stated in Exhibit B. CONTRACTOR is not to perform services or provide products outside of the Agreement.

1.4 Acceptance by the COUNTY of the CONTRACTOR's performance under this Agreement does not operate as a release of CONTRACTOR's responsibility for full compliance with the terms of this Agreement.

2. Period of Performance

2.1 This Agreement shall be effective upon signature of this Agreement by both parties and continue in effect through June 30, 2014, with the option to renew for one additional year, each year shall be renewable in one year increments by written amendment, unless terminated earlier. CONTRACTOR shall commence performance upon signature of this Agreement by both parties and shall diligently and continuously perform thereafter. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year agreement.

3. Compensation

3.1 The COUNTY shall pay the CONTRACTOR for services performed, products provided and expenses incurred in accordance with the terms of Exhibit B, Payment Provisions. Maximum payments by COUNTY to CONTRACTOR shall not exceed \$75,152.00 annually including all expenses. The COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services or products. Unless otherwise specifically stated in

Exhibit B, COUNTY shall not be responsible for payment of any of CONTRACTOR's expenses related to this Agreement.

3.2 No price increases will be permitted during the first year of this Agreement. All price decreases (for example, if CONTRACTOR offers lower prices to another governmental entity in California) will automatically be extended to the COUNTY from that point forward and applied to services not yet delivered under this Agreement. The COUNTY requires written proof satisfactory to COUNTY of cost increases prior to any approved price adjustment. After the first year of the award, a minimum of 30-days advance notice in writing is required to be considered and approved by COUNTY. No retroactive price adjustments will be considered. Any price increases must be stated in a written amendment to this Agreement. The net dollar amount of profit will remain firm during the period of the Agreement. Annual increases shall not exceed the Consumer Price Index- All Consumers, All Items - Greater Los Angeles, Riverside and Orange County areas Specialized On-Site Information Technology Training and be subject to satisfactory performance review by the COUNTY and approved (if needed) for budget funding by the Board of Supervisors.

3.3 CONTRACTOR shall be paid only in accordance with an invoice submitted to COUNTY by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and COUNTY shall pay the invoice within thirty (30) working days from the date of the invoice. Contractor acknowledges that invoices not submitted within fifteen (15) days from the last day of each calendar month will result in a delay in payment until the following month. Prepare invoices in duplicate. For this Agreement, send the original and duplicate copies of invoices to:

Riverside County Clerk Recorder

ATTN: Accounts Payable

P.O. Box 751

Riverside, CA 92502-0751

- a) Each invoice shall contain a minimum of the following information: invoice number and date; remittance address; bill-to and ship-to addresses of ordering department/division; Agreement number (ASARC-95290-001-07/14); quantities; item descriptions, unit prices, extensions, sales/use tax if applicable, and an invoice total.
- b) Invoices shall be rendered monthly in arrears, unless otherwise specified herein.
- c) In accordance with California Government Code Section 926.10, COUNTY is not allowed to pay excess interest and late charges.

3.4 The COUNTY obligation for payment of this Agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding from which payment can be made. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify CONTRACTOR in writing; and this Agreement shall be deemed terminated, have no further force, and effect.

4. Alteration or Changes to the Agreement

4.1 The Board of Supervisors and the COUNTY Purchasing Agent and/or his designee is the only authorized COUNTY representatives who may at any time, by written order, alter this Agreement. If any such alteration causes an increase or decrease in the cost of, or the time required for the performance under this Agreement, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified by written amendment accordingly.

4.2 Any claim by the CONTRACTOR for additional payment related to this Agreement shall be made in writing by the CONTRACTOR within 30 days of when the CONTRACTOR has or should have notice of any actual or claimed change in the work, which results in additional and unanticipated cost to the CONTRACTOR. If the COUNTY Purchasing Agent decides that the facts provide sufficient justification, he may authorize additional payment to the CONTRACTOR pursuant to the claim. Nothing in this section shall excuse the CONTRACTOR from proceeding with performance of the Agreement even if there has been a change.

5. Termination

5.1. COUNTY may terminate this Agreement without cause upon 30 days written notice served upon the CONTRACTOR stating the extent and effective date of termination.

5.2 COUNTY may immediately terminate this Agreement for CONTRACTOR's default, if CONTRACTOR refuses or fails to comply with the terms of this Agreement or fails to make progress to endanger performance and does not immediately cure such failure within thirty (30) calendar days of written notice thereof. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.3 After receipt of the notice of termination, CONTRACTOR shall:

- (a) Stop all work under this Agreement on the date specified in the notice of termination;
- and

- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any completed materials, which, if the Agreement had been continued, would have been required to be furnished to COUNTY.

5.4 After termination, COUNTY shall make payment only for CONTRACTOR's performance (including completed materials delivered to the COUNTY) up to the date of termination in accordance with this Agreement and at the rates set forth in Exhibit B.

5.5 CONTRACTOR's rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon a dishonest, willful, or material uncured breach of this Agreement by CONTRACTOR; or in the event of CONTRACTOR's unwillingness or inability for any reason whatsoever to perform the terms of this Agreement and failure to cure in accordance with Section 5.2. In such event, CONTRACTOR shall not be entitled to any further compensation under this Agreement.

5.6 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

5.7 CONTRACTOR may immediately terminate this Agreement for COUNTY's default, if COUNTY refuses or fails to comply with the terms of this Agreement and does not cure such failure within thirty (30) calendar days of written notice thereof.

6. Ownership/Use of Contract Materials and Products

6.1. All patents, copyrights, trade secrets, methodologies, ideas, inventions, concepts, know-how, techniques or other intellectual property developed or provided by CONTRACTOR (including but not limited to the Training Materials and Training Material files) are and remain CONTRACTOR property ("CONTRACTOR Proprietary Rights"). Any CONTRACTOR Training Materials and Training Material Files are protected by copyright laws, international treaties, and trademark, trade secret, patent and other intellectual property laws. No right, title or interest is granted to either party's intellectual property as a result of the provision of the services except as stated herein

6.2 Subject to the payment of fees hereunder and compliance with these Agreement terms, CONTRACTOR hereby grants COUNTY a non-exclusive, limited, non-transferable and revocable license to use the Training Materials (a) for purposes of receiving the Training Services for the Term of this Agreement only, and (b) with respect to Training Manuals only, use such Training Manuals for the applicable CONTRACTOR product as a reference only and for no other purposes, for so long as COUNTY has a valid license to use such CONTRACTOR product.

6.3 COUNTY may not: reverse engineer, decompile, disassemble, translate, copy, reproduce, display, publish, create derivative works of, assign, sell, lease, rent, license, sublicense or grant a security interest in all or portion of the Training Materials provided to COUNTY. COUNTY may not utilize the Training Materials to replicate or attempt to perform the Training Services or to develop or attempt to develop any of the products described in the Training Materials for COUNTY employees or any other third party.

6.4 Rights not granted in this Agreement are reserved and prohibited. All Training Materials and Training Material Files are the proprietary and confidential information of CONTRACTOR and its third party licensors, and COUNTY is expressly forbidden from disclosing or transmitting the Training Materials, in whole or part to any third party without the prior written consent of CONTRACTOR.

6.5 For the purposes of this Agreement:

“Training Materials” means (i) all CONTRACTOR software applications distributed to or accessed by COUNTY for purposes of receiving the Training Services under this Agreement and/or (ii) software tools, CONTRACTOR-owned or leased hardware utilized by CONTRACTOR in the course of delivering the Training Services; (iii) accompanying technical information related to CONTRACTOR products or services or those of its third party licensors provided by CONTRACTOR to COUNTY during the Training Services in any medium whatsoever, including without limitation, training manuals, business processes, white papers, product configuration and installation instructions, and best practices guidelines (all items in (iii), collectively, **“Training Manuals”**).

“Training Material Files” means any electronic source files for non-compiled source files/ web based training for the customization of Training Manuals (**“Source Files”**), runtime files to execute customized Training Manuals (**“Runtime Files”**) or electronic course materials accompanying the Training Services.

7. Conduct of Contractor

7.1 The CONTRACTOR covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with CONTRACTOR’s performance under this Agreement. The CONTRACTOR

further covenants that no person or subcontractor having any such interest shall be employed or retained by CONTRACTOR under this Agreement. The CONTRACTOR agrees to inform the COUNTY of all the CONTRACTOR's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The CONTRACTOR shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the CONTRACTOR is doing business or proposing to do business, in accomplishing the work under this Agreement.

7.3 The CONTRACTOR or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

8. Warranty and Quality Control

8.1 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Agreement) shall be performed in a professional and workmanlike manner in accordance with industry standards, and subject to inspection and test by the COUNTY or other regulatory agencies at all times within thirty (30) days of performance and/or delivery by CONTRACTOR. The CONTRACTOR shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the CONTRACTOR's conformity with the terms of this Agreement. If any services performed or products provided by CONTRACTOR are not in conformance with the terms of this Agreement, the COUNTY shall have the right to require the CONTRACTOR to perform the services or provide the products in conformance with the terms of the Agreement at no additional cost to the COUNTY. When the services to be performed or the products to be provided are of such nature that the difference cannot be corrected, the COUNTY shall have the right to: (1) require the CONTRACTOR immediately to take all necessary steps to ensure future performance in conformity with the terms of the Agreement; and/or (2) reduce the Agreement price to reflect the reduced value of the services performed or products provided. The COUNTY may also terminate this Agreement for default and charge to CONTRACTOR any costs incurred by the COUNTY because of the CONTRACTOR's failure to perform, which costs shall be subject to any limits set forth in Section 21.6.

8.2 CONTRACTOR shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance by its personnel under this Agreement; and shall permit a

COUNTY representative or other regulatory official to monitor, assess, or evaluate CONTRACTOR's performance under this Agreement at any time upon reasonable notice to CONTRACTOR.

9. Independent Contractor

The CONTRACTOR is, for purposes relating to this Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CONTRACTOR (including its employees, agents, and subcontractors) 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 other leave benefits. There shall be no employer-employee relationship between the parties; and CONTRACTOR shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Agreement. It is further understood and agreed by the parties that CONTRACTOR in the performance of this Agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

10. Subcontract for Work or Services

No contract shall be made by the CONTRACTOR with any other party for furnishing any of the work or services under this Agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the CONTRACTOR and personnel assigned under this Agreement, or for parties named in the proposal and agreed to under this Agreement.

11. Disputes

11.1 The parties shall attempt to resolve any disputes amicably at the working level. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Agreement, which is not resolved by the parties, shall be decided by the COUNTY's Purchasing Department's Compliance Contract Officer who shall furnish the decision in writing. The decision of the COUNTY's Compliance Contract Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. The CONTRACTOR shall proceed diligently with the performance of this Agreement pending the resolution of a dispute.

11.2 Prior to the filing of any legal action related to this Agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third party mediator. A second mediation

session shall be required if the first session is not successful. The parties shall share the cost of the mediations.

12. Licensing and Permits

CONTRACTOR shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

13. Use By Other Political Entities

The CONTRACTOR agrees to extend the same pricing, terms, and conditions as stated in this Agreement to each and every political entity, special district, and related non-profit entity in Riverside County, and shall enter into a written agreement evidencing such arrangement. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the CONTRACTOR; and COUNTY shall in no way be responsible to CONTRACTOR for other entities' purchases.

14. Non-Discrimination

CONTRACTOR shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

15. Records and Documents

CONTRACTOR shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the CONTRACTOR's costs related to this Agreement. All such books, documents and records shall be maintained by CONTRACTOR for at least five years following termination

of this Agreement and be available for audit by the COUNTY. CONTRACTOR shall provide to the COUNTY reports and information related to this Agreement as requested by COUNTY.

16. Confidentiality

16.1 The CONTRACTOR shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Agreement. The term “privileged or confidential information” includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of contractors, subcontractors or suppliers in advance of official announcement.

16.2 The CONTRACTOR shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Agreement, except for general statistical information not identifying any person. The CONTRACTOR shall not use such information for any purpose other than carrying out the CONTRACTOR’s obligations under this Agreement. The CONTRACTOR shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

17. Administration/Contract Liaison

The COUNTY Purchasing Agent, or designee, shall administer this Agreement on behalf of the COUNTY. The Purchasing Department is to serve as the liaison with CONTRACTOR in connection with this Agreement.

18. Notices

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE

Purchasing and Fleet Services
2980 Washington St.

CONTRACTOR

EMC Corporation d/b/a EMC Peripherals, Inc.
299 Douglas Blvd. Suite 275

Riverside, CA 92508

Roseville, CA 95661

With a copy of any legal notices to:
EMC Corporation
176 South Street
Hopkinton, MA 01748
Attn. Office of the General Counsel
legalnotices@emc.com

19. Force Majeure

If either party is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

20. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent Contractor(s) form **DE 542** to the Employment Development Department. The CONTRACTOR agrees to furnish the required data and certifications to the COUNTY within ten (10) days of notification of award of Agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the CONTRACTOR to timely submit the data and/or certificates 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 and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Agreement. If CONTRACTOR has any questions concerning this reporting requirement, please call (916) 657-0529. CONTRACTOR should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under "Employment Development Department" or access their Internet site at www.edd.ca.gov.

21. Hold Harmless/Indemnification/Liability

21.1 Subject to Section 21.6 below, CONTRACTOR shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability whatsoever, based or asserted upon any services of CONTRACTOR, its officers, employees, subcontractors, agents or Sole Source

representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of CONTRACTOR, its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. CONTRACTOR shall defend, at its sole expense, all costs, and fees including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards, the Indemnitees in any claim or action based upon such alleged acts or omissions.

21.2 With respect to any action or claim subject to indemnification herein by CONTRACTOR, CONTRACTOR shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes CONTRACTOR'S indemnification to Indemnitees as set forth herein.

21.3 CONTRACTOR'S obligation hereunder shall be satisfied when CONTRACTOR has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

21.4 The specified insurance limits required in this Agreement shall in no way limit or circumscribe CONTRACTOR'S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

21.5 In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the CONTRACTOR from indemnifying the Indemnitees to the fullest extent allowed by law.

21.6 NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, CONTRACTOR'S TOTAL LIABILITY, AND COUNTY'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER HEREUNDER SHALL BE LIMITED TO DIRECT DAMAGES (DEMONSTRATED TO HAVE BEEN INCURRED) CAUSED BY CONTRACTOR'S NEGLIGENCE IN AN AMOUNT NOT TO EXCEED US\$1,000,000. EXCEPT FOR THE VIOLATION OF CONTRACTOR PROPRIETARY RIGHTS (INCLUDING ANY LICENSE GRANTED THEREUNDER), NEITHER COUNTY NOR CONTRACTOR (INCLUDING CONTRACTOR'S SUBCONTRACTORS, EMPLOYEES AND AGENTS) SHALL HAVE LIABILITY TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF..

22. Insurance

22.1 Without limiting or diminishing the CONTRACTOR'S obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

A. Workers' Compensation:

If the CONTRACTOR has employees as defined by the State of California, the CONTRACTOR shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and/or advertising injury, and cross liability coverage, covering claims which may arise from or out of CONTRACTOR'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CONTRACTOR shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

D. Professional Liability (ONLY TO BE INCLUDED IN CONTRACTS WITH SERVICE PROVIDERS INCLUDING BUT NOT LIMITED TO ENGINEERS, DOCTORS, AND LAWYERS). Contractor shall maintain Professional Liability Insurance providing coverage for the Contractor's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this

Agreement and CONTRACTOR shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

E. General Insurance Provisions - All lines:

1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

2) The CONTRACTOR may declare its insurance self-insured retention for each coverage required herein, but shall in any event maintain the minimum policy coverage requirement in this Section 22 for the duration of the Agreement. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, CONTRACTOR'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

3) CONTRACTOR shall cause CONTRACTOR'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that should any of the policies be cancelled before their expiration date, notice will be delivered in accordance with the policy provisions. Additionally, Contractor will endeavor to provide thirty (30) days written notice to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect CONTRACTOR shall not commence operations until the COUNTY has been furnished original Certificate

(s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.

4) It is understood and agreed to by the parties hereto that the CONTRACTOR'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

5) If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the CONTRACTOR has become inadequate.

6) CONTRACTOR shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

7) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

8) CONTRACTOR agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

23. General

23.1 CONTRACTOR shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

23.2 Any waiver by COUNTY of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Agreement.

23.3 In the event the CONTRACTOR receives payment under this Agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Agreement, the CONTRACTOR shall

promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the CONTRACTOR under this Agreement.

23.4 CONTRACTOR shall not provide partial delivery or shipment of services unless specifically stated in the Agreement.

23.5 CONTRACTOR shall not provide any services subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by a third party. The CONTRACTOR warrants that it has good title to all materials used by CONTRACTOR or provided to COUNTY pursuant to this Agreement, free from all liens, claims, or encumbrances.

23.6 Nothing in this Agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Agreement.

23.7 The COUNTY agrees to cooperate with the CONTRACTOR in the CONTRACTOR's performance under this Agreement, including, if stated in the Agreement, providing the CONTRACTOR with reasonable facilities and timely access to COUNTY data, information, and personnel.

23.8 CONTRACTOR shall comply with all applicable Federal, State and local laws and regulations. CONTRACTOR will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the CONTRACTOR shall comply with the more restrictive law or regulation.

23.9 CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Agreement.

23.10 CONTRACTOR shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

23.11 This Agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

23.12 This Agreement, including any attachments or exhibits, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement.

COUNTY:

CONTRACTOR:

EMC Corporation
doing business in California as EMC Peripherals Inc.
299 Douglas Blvd. Suite 275
Roseville, CA 95661

Signature: _____

Signature: Janessa Light

Print Name: _____

Print Name: Janessa Light

Title: Chairman, Board of Supervisors

Title: Contracts Manager

Dated: _____

Dated: 8/27/13

FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS 8/27/13
DATE

ATTEST:
Kecia Harper-Ihem, Clerk

By: _____
Deputy

EXHIBIT A SCOPE OF SERVICE

1.0 EMC Corporation to provide Information Technology training to ACR Staff in Documentum (Documentum Systems Administration and Development Training) to meet the needs of the Assessor-County Clerk-Recorder's Office. The System Administration course provides the Documentum System Administrator and Project Architects with a firm foundation in a wide variety of Documentum administrative tasks. Participants may learn how to install, upgrade, configure, and perform maintenance tasks for all Documentum Servers, depending on the content of the training course selected.

2.0 Training Overview:

- a) The projected total duration for the entire training period during which participants may enroll in training courses on an as-needed basis is estimated to be 24 months
- b) Contractor will provide on-site and off-site classroom training, live online, or computer based training or a combination of them based on the needs of the Assessor-County Clerk-Recorder's Office. Assessor-County Clerk-Recorder's Office will decide the nature of training and the schedule which its participants may select from EMC's course catalog.
- c) On-Site courses will be tailored to meet the requirements of the organization using EMC's existing course catalog
- d) The curriculum will be developed by product experts at EMC using EMC's existing course catalog
- e) The Education Services Representative will help plan the training curriculum for ACR staff after understanding the details of the project, audience and time frame.
- f) The complete course catalog can be found on the EMC Education Services website:
http://mylearn.emc.com/portals/home/ml_v2.cfm?actionID=34

3.0 Deliverables

- a) Documentum Training Plan for ACR
- b) Training Schedules
- c) Training Course Materials shall be provided to each participant at no additional cost.
- d) Other deliverables as needed and mutually agreed in a training statement of work.

4.0 Scheduling

The County will notify Contractor for any On-Site training courses it desires to schedule from the Contractor's course catalog. At that time, the County and Contractor shall execute a training statement of work which includes but is not limited to the following information:

SERVICE DESCRIPTION	NUMBER OF DAYS	PRICE PER DAY	AMOUNT
Course: Start Date: Start Time(Time Zone): TBD Delivery Mode: ☐ Onsite ☐ Live-Online ☐ Hybrid	__ days***	\$ _____	\$ _____
Customized Training Manual / Multiple book fee (per additional title)			\$ _____
Travel & Expense Estimate** (applicable for onsite)	NA	NA	\$ _____
		TOTAL*	\$ _____ USD
* There will be an additional charge of \$770/student/day for each student over twelve (12). One week prior to the start of class, we will reconfirm the number of students in order to ensure that we ship the correct number of class materials and set up the correct number of hosted sessions for the hands-on-labs. ** Prices include travel and expenses *** a 2 day minimum is required for On-site training			

EXHIBIT B PAYMENT PROVISIONS

1.0 Fees and Expenses:

- a) The training cost is all inclusive for on-site training; shall include training services (IT Training in Documentum), training materials, travel cost; and include any and all incidental or other cost incurred by the Contractor related to this Agreement.
- b) Contractor will be responsible for traveling to the Box Springs training facility, located in the City of Riverside. Unless otherwise provided for herein, all EMC's expenses are included in the fees outlined below in this Agreement.
- c) ACR will contract 122 training days. The unit price rate is \$770/per day. The training package value is \$93,940. The training package value (less any applicable discounts) shall be paid in advance by County to Contractor. During the term of the Agreement, each day of training delivered by Contractor to County shall be decremented against the training package value. The following rate schedule applies.

<u>Delivery Method</u>	<u>Number of Days Deducted from Training Credit Account Per Each Day of Training Delivered</u>
<u>Public Classroom, Live-Online or Web Based Training (WBT)</u>	<u>1 day</u>
<u>On-Site</u>	<u>9 days*</u>

* On-Site training includes up to 12 participants and instructor's travel expenses

- d) On-site training services cancelled within fifteen (15) business days are subject to a fifty percent (50%) cancellation fee. Cancellations within (5) business days or less are subject to a one hundred (100%) cancellation fee. Cancellation must be submitted in writing. Such amounts shall be decremented against the training package value.

2.0 Discount:

- a) EMC Corporation is providing the County Riverside a 20% discount based on volume (number of training days). The pricing in this Agreement is for 122 days of training in FY 13/14 and 122 days of Training in FY 14/15. The training credits shall not expire at least for 3 years from the date of purchase, and shall expire after that time without any right of refund.

Year(s)	Number of Training Days	Training Package Value	Discount	Amount Due
2013-2014	122	\$93,940	20%	\$75,152
2014-2015	122	\$93,940	20%	\$75,152

3.0 Payment Schedule:

a) Contractor's payments as outlined below will be authorized:

Invoice #	Date	Deliverables	Amount
1	TBD	Fiscal Year 2013-2014 Training Credits	\$75,152
2	TBD	Fiscal Year 2014-2015 Training Credits	\$75,152

b) In the event County purchases training credits for Fiscal year 2014-2015, the County will amend the Agreement to increase Section 3 – Compensation by \$75,152.