

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: Parks and Recreation

BOARD AGENDA # \*B-24

Urgent  Routine

AGENDA DATE June 3, 2008

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

2B

opt

SUBJECT:

Approval to Enter into an Agreement with POSitive Technology.com, Inc. for the Design, Delivery, and Installation of a Park Campground Reservation System and a Retail Management and Reporting System

STAFF RECOMMENDATIONS:

1. Approve entering into an agreement with POSitive Technology.com, Inc. for the design, delivery and installation of a park campground reservation system and a retail management and reporting system.
2. Authorize the Director of the Department of Parks and Recreation, or her designee, to sign an agreement with POSitive Technology.com, Inc. for the design, delivery, and installation of a park campground reservation system and a retail management and reporting system at an amount not to exceed \$213,695.80.

Continue on next page.

FISCAL IMPACT:

If this agreement is approved, the maximum amount to be paid for services will be \$245,750.17. Funding for this agreement was appropriated by the Board of Supervisors in Fiscal Year 2006 -2007 as part of the Adopted Proposed Budget in the amount of \$180,000. The additional \$65,750.17 will be funded through funds from the Special Revenue Modesto Reservoir Patrol and Off-Highway Vehicle accounts.

BOARD ACTION AS FOLLOWS:

No. 2008-399

On motion of Supervisor Monteith, Seconded by Supervisor O'Brien  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Monteith, DeMartini and Chairman Mayfield

Noes: Supervisors: None

Excused or Absent: Supervisors: Grover

Abstaining: Supervisor: None

1)  Approved as recommended

2)  Denied

3)  Approved as amended

4)  Other:

MOTION:

*Christine Ferraro*

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

**STAFF RECOMMENDATIONS: (Continued)**

3. Authorize the Director of the Department of Parks and Recreation, or her designee, to sign amendments to the agreement for an overall total not to exceed \$245,750.17, that includes contingency funding up to \$32,054.37, which is equal to a maximum of 15% of the total contract amount.
4. Direct the Auditor-Controller to increase appropriations and estimated revenue in the amount of \$65,750.17 as detailed in the Budget Journal Form (Attachment A).

**DISCUSSION:**

The County's Department of Parks and Recreation is responsible for collecting fees from the public on a daily basis at various park locations. These locations include Modesto Reservoir, Woodward Reservoir, La Grange Off Highway Vehicle Area, Frank Raines Regional Park and Off-Highway Vehicle Area and the Department's Administrative Office located at 3800 Cornucopia Way, in Modesto, CA.

Four of these locations are open to the public for recreational activities. The Department is responsible for collecting fees including day use, camping, boating, fishing, bird watching, horseback riding, personal watercraft, and swimming. The Department's Administrative Office is where daily activity is reviewed and daily reports are created. The current method of collecting fees is manual. The two reservoirs utilize cash registers whereby data is uploaded nightly via modem to an antiquated and cumbersome Pan Polling System in the Department's Administrative Office. The two remote off-highway vehicle sites must take cash registers to and from the location, thus there is no uploaded nightly polling system in place. The Department's field staff walk in hardcopy receipts and accounting staff verify that polled amounts match the tape register amount.

The Department of Parks and Recreation's current system is a "Pan Polling Program" that provides the Department with data and reports to better control inventory and identify growth trends. This information is used as a visitor-measuring tool to provide monthly counts to Modesto Irrigation District (MID) who provides information to the Department of Health Services for the annual watershed surveys. Visitor counts from the Pan Polling Program are also given to State and Federal agencies when applying for competitive grants. The integrity of the data given to the State and Federal agencies is extremely important as it is used for funding justifications for current and future operations.

The current system's inefficiencies include revenue data not transferring properly; transposing of revenue between facilities; a manual tracking system for daily, weekly, monthly, and annual revenue; and current system "crashes". The consequences of continuing to operate with this antiquated system results in major downtime; no system back-up; inability to run a daily "close tape"; operational only from its current sites; not interchangeable from site to site; no process currently in place to provide reservations to park patrons; and the only known vendor is located in Sacramento and no longer stocks parts for this system.

Approval to Enter into an Agreement with POSitive Technology.com, Inc. for the Design, Delivery, and Installation of a Park Campground Reservation System and a Retail Management and Reporting System

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The Department relies entirely on the premise of first come, first served or by Board approved exclusive use. The opportunity for a park patron to reserve a camping location, picnic shelter or other location via the Internet is what the Department desires. By providing a reservation system compatible with Internet capabilities, the Department anticipated increased revenue and better customer service.

Additionally, the retail management portion of the system will allow the Department expedited transactions, less manual input, minimized losses by handling cash transactions, better customer service, the ability to purchase and book reservations in advance, increased labor resource management, and the ability of a reporting system capable of real-time computing (as it happens).

During fiscal year 2006-2007, the Department began to do research as to whether or not there was anything in the market that would allow for two functions to occur simultaneously—an online reservations system and retail management system. Department staff looked at other online reservations systems, made numerous phone calls to those organizations currently using online reservation systems, asked questions regarding positives and negatives of the systems, and talked with companies who supply online reservation systems and retail management systems. It was determined that an online reservation system and a concurrent retail management system could operate simultaneously.

In partnership with the General Services Agency, the first Request for Proposals (RFP) was issued in 2006 and no bids were received. A second RFP was released and two organizations attended the pre-conference workshop. At the close of the RFP, no bids were received.

The Department telephoned the two organizations and asked why they had not responded to the requests. One business stated that they were not able to offer the requested system and the second business stated they could offer the requested system but were unable to respond in a timely manner with a proposal and by the closing date. The General Services Agency approved the Department to negotiate an agreement with the organization able to offer the requested system. (Attachment B)

The reservation system will be utilized for the following locations: Modesto Reservoir, Woodward Reservoir and Frank Raines Off-Highway Vehicle Park. The benefits anticipated to be achieved by the new system at these locations will allow for expedited transactions, require less manual input, minimize monetary loss by enabling online payment capabilities, speed up the process for customers entering the park, view information at any time of the day, and offering the ability to sell customer gift vouchers at the reservoirs.

There will be a total of nine registers to perform general transactions. The registers will have rugged touch screen capabilities with configurable buttons and integrated card processing for fast and efficient transactions. The Department of Parks and Recreation anticipates the ability to accept credit card and debit card transaction through the County's on-line payment system. However, should this not be available at the time of implementation, the Department will need to address alternative resources to ensure customer service goals can be met with its online reservation and retail management system.

The Online Campground and Facility Rental Reservations will be web-enabled to make reservations at the three sites (Modesto Reservoir, Woodward Reservoir and Frank Raines Off-Highway Vehicle Park). They will also be able to make and change reservations for family events at picnic shelters and other facility amenities as deemed appropriate. The system will allow receipts to be printed along with providing fast and accurate tracking of sales and activities.

The Department currently does not have online payment capabilities. On September 11, 2007, the Board of Supervisors approved the Stanislaus County Business Technology Strategy (BTS) whereby key objectives of expanding electronic access to County services and investing in human and organizational capital were recommended. On January 29, 2008, the Board of Supervisors approved the installation of an automated public computer reservation system and electronic commerce module for paying fines and fees over the Internet at the Stanislaus County Library. It is understood that the County is in the process of a Request for Proposal (RFP) to determine a vendor through which to handle online payments. It is also understood that the County Treasury is not prepared currently to handle online payments. The Department is preparing other arrangements by which online payments can be received.

The Department currently has four bank accounts with Bank of the West to facilitate depositing cash coming from the outlying facilities. Daily deposits are made in Oakdale, Waterford, and Patterson. The deposits are then electronically submitted to the County Treasury weekly.

It is envisioned that through the current banking system, acceptance of online payments directly into the four bank accounts specifically set up for the Department can be utilized. The Department would continue to have the responsibility of reconciling online payments similar to that of daily deposits. Weekly deposits will continue to be made to the Treasury. Without the need to invest in additional and organizational capital the Department is enabled to move forward in expanding electronic access to County services.

Training is an integral part of the plan. The contractor, prior to the system going live, will provide complete training for Department staff to better understand how to use the system, customize reports and modify system for future implementations with minimal assistance.

**POLICY ISSUES:**

The Board of Supervisors should determine if staff's recommendation is consistent with its commitment to ensure a well-planned infrastructure system and an efficient delivery of public services.

**STAFFING IMPACT:**

There is no staffing impact associated with this item.

**AUDITOR-CONTROLLER  
BUDGET JOURNAL**



Balance Type	<b>PKS Budget</b>
Category	Budget - Upload
Source	
Currency	USD
Budget Name	LEGAL BUDGET
Batch Name	
Journal Name	<b>PKS-LLF</b>
Journal description	<b>Establish Appropriations and Anticipated Revenue</b>
Period	<b>5/15/2008</b>
Organization	Stanislaus Budget Org
	BO#

Line	Coding Structure						Debit		Credit		Description
	Fund 4	Org 7	Account 5	G/L Proj 7	Loc 6	Misc 6	incr appropriations decr est revenue	decr appropriations incr est revenue			
1	100	35110	82570				65,750.17			Computer Equipment	
2	100	35110	38000					65,750.17		Govt Interfund Revenue	
3							.0				
4							.0				
5							.0				
6							.0				
7							.0				
8							.0				
9							.0				
10							.0				
11							.0				
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21							.0				
22							.0				
23							.0				
24							.0				
25							.0				
<b>Totals</b>							<b>65,750.17</b>	<b>65,750.17</b>			

Explanation: Establish appropriations and anticipated revenue (reservation system project).

<b>Requesting Department</b> <i>Merry Korabaugh</i> Signature 5/15/2008 Date	<b>CEO</b> <i>[Signature]</i> Signature 05/22/08 Date	<b>Auditors Office Only</b> <i>[Signature]</i> Prepared By Admin Approval (\$75K+) 5-23-08 Date
------------------------------------------------------------------------------------------	-------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------



DEPARTMENT OF PARKS AND RECREATION  
3800 Cornucopia Way, Suite C, Modesto, CA 95358  
Phone: (209) 525-6770  
Fax: (209) 525-6773

**AGREEMENT  
FOR  
INDEPENDENT CONTRACTOR SERVICES**

This Agreement For Independent Contractor Services (the "Agreement") is made and entered into by and between the County of Stanislaus ("County") and POSitive Technology.com, Inc. ("Contractor") on \_\_\_\_\_, 2008.

**Recitals**

WHEREAS, the County has a need for services involving the provision of all the labor, equipment, software, licenses, material, training, manuals, accessories, materials, tools, peripherals to deliver and install an ergonomic, fully functional, efficient and easy to use park campground reservation system and a retail management and reporting system; and

WHEREAS, the Contractor is specially trained, experienced and competent to perform and has agreed to provide such services;

NOW, THEREFORE, in consideration of the mutual promises, covenants, terms and conditions hereinafter contained, the parties hereby agree as follows:

**Terms and Conditions**

**1. Scope of Work**

1.1 The Contractor shall furnish to the County upon execution of this Agreement or receipt of the County's written authorization to proceed, those services and work set forth in **Exhibit A**, attached hereto and, by this reference, made a part hereof.

1.2 All documents, drawings and written work product prepared or produced by the Contractor under this Agreement, including without limitation electronic data files, are the property of the Contractor; provided, however, the County shall have the right to reproduce, publish and use all such work, or any part thereof, in any manner and for any purposes whatsoever and to authorize others to do so. If any such work is copyrightable, the Contractor may copyright the same, except that, as to any work which is copyrighted by the Contractor, the County reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such work, or any part thereof, and to authorize others to do so.

1.3 Services and work provided by the Contractor at the County's request under this Agreement will be performed in a timely manner consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions, and in accordance with a schedule of work set forth in Exhibit A. If there is no schedule, the hours and times for completion of said services and work are to be set by the Contractor; provided, however, that such schedule is subject to review by and concurrence of the County.

**2. Consideration**

2.1 County shall pay Contractor as set forth in Exhibit A and **Exhibit B**.

2.2 Except as expressly provided in Exhibit A and Exhibit B of this Agreement, Contractor shall not be entitled to nor receive from County any additional consideration, compensation, salary, wages or other type of remuneration for services rendered under this Agreement. Specifically, Contractor shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays or other paid leaves of absence of any type or kind whatsoever.

2.3 County will not withhold any Federal or State income taxes or Social Security tax from any payments made by County to Contractor under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums is the sole responsibility of Contractor. County has no responsibility or liability for payment of Contractor's taxes or assessments.

2.4 Pursuant to Penal Code section 484b and to Business and Professions Code section 7108.5, the Contractor must apply all funds and progress payments received by the Contractor from the County for payment of services, labor, materials or equipment to pay for such services, labor, materials or equipment. Pursuant to Civil Code section 1479, the Contractor shall direct or otherwise manifest the Contractor's intention and desire that payments made by the Contractor to subcontractors, suppliers and materialmen shall be applied to retire and extinguish the debts or obligations resulting from the performance of this Agreement.

3. Term

3.1 The term of this Agreement shall be from the date of approval of this Agreement until completion of the agreed upon services unless sooner terminated as provided below or unless some other method or time of termination is listed in Exhibit A.

3.2 Should either party default in the performance of this Agreement or materially breach any of its provisions, the other party, at that party's option, may terminate this Agreement by giving written notification to the other party.

3.3 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, (b) sale of Contractor's business, (c) cancellation of insurance required under the terms of this Agreement, and (d) if, for any reason, Contractor ceases to be licensed or otherwise authorized to do business in the State of California, and the Contractor fails to remedy such defect or defects within thirty (30) days of receipt of notice of such defect or defects.

3.4 The County may terminate this agreement upon 30 days prior written notice to the Contractor. Termination of this Agreement shall not affect the County's obligation to pay for all fees earned and reasonable costs necessarily incurred by the Contractor as provided in Paragraph 2 herein, subject to any applicable setoffs.

4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Contractor to provide the services and work described in Exhibit A must be procured by Contractor and be valid at the time Contractor enters into this Agreement. Further, during the term of this Agreement, Contractor must maintain such licenses, certificates and permits in full force and effect. Licenses, certificates and permits may include but are not limited to driver's licenses, professional licenses or certificates and business licenses. Such licenses, certificates and permits will be procured and maintained in force by Contractor at no expense to the County.

5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in Exhibit A, Contractor shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Contractor to provide the services identified in Exhibit A to this Agreement. County is not obligated to reimburse or pay Contractor for any expense or cost incurred by Contractor in procuring or maintaining such items. Responsibility for the costs and expenses incurred by Contractor in providing and maintaining such items is the sole responsibility and obligation of Contractor.

6. Insurance

6.1 Contractor shall take out, and maintain during the life of this Agreement, insurance policies with coverage at least as broad as follows:

6.1.1 General Liability. Comprehensive general liability insurance covering bodily injury, personal injury, property damage, products and completed operations with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to any act or omission by Contractor under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 Automobile Liability Insurance. If the Contractor or the Contractor's officers, employees, agents, representatives or subcontractors utilize a motor vehicle in performing any of the work or services under this Agreement, owned/non-owned automobile liability insurance providing combined single limits covering bodily injury, property damage and transportation related pollution liability with limits of no less than One Million Dollars (\$1,000,000) per incident or occurrence.

6.1.3 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Contractor certifies under section 1861 of the Labor Code that the Contractor is aware of the provisions of section 3700 of the Labor Code which requires every employer to be insured against liability for workmen's

compensation or to undertake self-insurance in accordance with the provisions of that code, and that the Contractor will comply with such provisions before commencing the performance of the work of this Agreement.

6.1.4 **Professional Liability Insurance.** Professional errors and omissions (malpractice) liability insurance with limits of no less than One Million Dollars (\$1,000,000) aggregate. Such professional liability insurance shall be continued for a period of no less than one year following completion of the Contractor's work under this Agreement.

6.2 Any deductibles, self-insured retentions or named insureds must be declared in writing and approved by County. At the option of the County, either: (a) the insurer shall reduce or eliminate such deductibles, self-insured retentions or named insureds, or (b) the Contractor shall provide a bond, cash, letter of credit, guaranty or other security satisfactory to the County guaranteeing payment of the self-insured retention or deductible and payment of any and all costs, losses, related investigations, claim administration and defense expenses. The County, in its sole discretion, may waive the requirement to reduce or eliminate deductibles or self-insured retentions, in which case, the Contractor agrees that it will be responsible for and pay any self-insured retention or deductible and will pay any and all costs, losses, related investigations, claim administration and defense expenses related to or arising out of the Contractor's defense and indemnification obligations as set forth in this Agreement.

6.3 The Contractor shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, if any, naming the County and its officers, officials and employees as additional insureds regarding: (a) liability arising from or in connection with the performance or omission to perform any term or condition of this Agreement by or on behalf of the Contractor, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Contractor; (c) premises owned, occupied or used by the Contractor; and (d) automobiles owned, leased, hired or borrowed by the Contractor. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County and its officers, officials and employees for losses arising from the performance of or the omission to perform any term or condition of this Agreement by the Contractor.

6.4 The Contractor's insurance coverage shall be primary insurance regarding the County and County's officers, officials and employees. Any insurance or self-insurance maintained by the County or County's officers, officials and employees shall be excess of the Contractor's insurance and shall not contribute with Contractor's insurance.

6.5 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County or its officers, officials, employees or volunteers.

6.6 The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

6.7 Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party except after thirty (30) days' prior written notice has been given to County. The Contractor shall promptly notify, or cause the insurance carrier to promptly notify, the County of any change in the insurance policy or policies required under this Agreement, including, without limitation, any reduction in coverage or in limits of the required policy or policies.

6.8 Insurance shall be placed with California admitted insurers (licensed to do business in California) with a current rating by Best's Key Rating Guide acceptable to the County; provided, however, that if no California admitted insurance company provides the required insurance, it is acceptable to provide the required insurance through a United States domiciled carrier that meets the required Best's rating and that is listed on the current List of Eligible Surplus Line Insurers maintained by the California Department of Insurance. A Best's rating of at least A-VII shall be acceptable to the County; lesser ratings must be approved in writing by the County.

6.9 Contractor shall require that all of its subcontractors are subject to the insurance and indemnity requirements stated herein, or shall include all subcontractors as additional insureds under its insurance policies.

6.10 At least ten (10) days prior to the date the Contractor begins performance of its obligations under this Agreement, Contractor shall furnish County with certificates of insurance, and with original endorsements, showing coverage required by this Agreement, including, without limitation, those that verify coverage for subcontractors of the Contractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements shall be received and, in County's sole and absolute discretion, approved by County. County reserves the right to require complete copies of all required insurance policies and endorsements, at any time.

6.11 The limits of insurance described herein shall not limit the liability of the Contractor and Contractor's officers, employees, agents, representatives or subcontractors.



7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend the County and its agents, officers and employees from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorneys' fees, arising out of, resulting from, or in connection with the performance of this Agreement by the Contractor or Contractor's officers, employees, agents, representatives or subcontractors and resulting in or attributable to personal injury, death, or damage or destruction to tangible or intangible property, including the loss of use; provided, however, such indemnification shall not extend to or cover loss, damage or expense arising from the sole negligence or willful misconduct of the County or its agents, officers and employees.

7.2 Contractor's obligation to defend, indemnify and hold the County and its agents, officers and employees harmless under the provisions of this paragraph is not limited to or restricted by any requirement in this Agreement for Contractor to procure and maintain a policy of insurance.

8. Status of Contractor

8.1 All acts of Contractor and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Contractor relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Contractor, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in Exhibit A, Contractor has no authority or responsibility to exercise any rights or power vested in the County. No agent, officer or employee of the County is to be considered an employee of Contractor. It is understood by both Contractor and County that this Agreement shall not be construed or considered under any circumstances to create an employer-employee relationship or a joint venture.

8.2 At all times during the term of this Agreement, the Contractor and its officers, employees, agents, representatives or subcontractors are, and shall represent and conduct themselves as, independent contractors and not employees of County.

8.3 Contractor shall determine the method, details and means of performing the work and services to be provided by Contractor under this Agreement. Contractor shall be responsible to County only for the requirements and results specified in this Agreement and, except as expressly provided in this Agreement, shall not be subjected to County's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor has control over the manner and means of performing the services under this Agreement. Contractor is permitted to provide services to others during the same period service is provided to County under this Agreement. If necessary, Contractor has the responsibility for employing other persons or firms to assist Contractor in fulfilling the terms and obligations under this Agreement.

8.4 If in the performance of this Agreement any third persons are employed by Contractor, such persons shall be entirely and exclusively under the direction, supervision and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or requirements of law shall be determined by the Contractor.

8.5 It is understood and agreed that as an independent Contractor and not an employee of County, the Contractor and the Contractor's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and do not have the right to act on behalf of the County in any capacity whatsoever as an agent, or to bind the County to any obligation whatsoever.

8.6 It is further understood and agreed that Contractor must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's assigned personnel under the terms and conditions of this Agreement.

8.7 As an independent Contractor, Contractor hereby indemnifies and holds County harmless from any and all claims that may be made against County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

9. Records and Audit

9.1 Contractor shall prepare and maintain all writings, documents and records prepared or compiled in connection with the performance of this Agreement for a minimum of four (4) years from the termination or completion of this Agreement. This includes any handwriting, typewriting, printing, photostatic, photographing and every other means of recording upon any tangible thing, any form of communication or representation including letters, words, pictures, sounds or symbols or any combination thereof.

9.2 Any authorized representative of County shall have access to any writings as defined above for the purposes of making audit, evaluation, examination, excerpts and transcripts during the period such records are to be maintained by Contractor. Further, County has the right at all reasonable times to audit, inspect or otherwise

Ind-Con-Agmt (Rev 021706)

evaluate the work performed or being performed under this Agreement.

10. Confidentiality

The Contractor agrees to keep confidential all information obtained or learned during the course of furnishing services under this Agreement and to not disclose or reveal such information for any purpose not directly connected with the matter for which services are provided.

11. Nondiscrimination

During the performance of this Agreement, Contractor and its officers, employees, agents, representatives or subcontractors shall not unlawfully discriminate in violation of any federal, state or local law, rule or regulation against any employee, applicant for employment or person receiving services under this Agreement because of race, religion, color, national origin, ancestry, physical or mental handicap, medical condition (including genetic characteristics), marital status, age, political affiliation or sex. Contractor and its officers, employees, agents, representatives or subcontractors shall comply with all applicable Federal, State and local laws and regulations related to non-discrimination and equal opportunity, including without limitation the County's nondiscrimination policy; the Fair Employment and Housing Act (Government Code sections 12900 et seq.); California Labor Code sections 1101, 1102 and 1102.1; the Federal Civil Rights Act of 1964 (P.L. 88-352), as amended; and all applicable regulations promulgated in the California Code of Regulations or the Code of Federal Regulations.

12. Assignment

This is an agreement for the services of Contractor. County has relied upon the skills, knowledge, experience and training of Contractor and the Contractor's firm, associates and employees as an inducement to enter into this Agreement. Contractor shall not assign or subcontract this Agreement without the express written consent of County. Further, Contractor shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. Waiver of Default

Waiver of any default by either party to this Agreement shall not be deemed to be waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless this Agreement is modified as provided below.

14. Notice

Any notice, communication, amendment, addition or deletion to this Agreement, including change of address of either party during the term of this Agreement, which Contractor or County shall be required or may desire to make shall be in writing and may be personally served or, alternatively, sent by prepaid first class mail to the respective parties as follows:

To County: County of Stanislaus  
Department of Parks and Recreation  
Attention: Susan M. Garcia, C.P.M., A.P.P.  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358

To Contractor: POSitive Technology.com, Inc.  
Attention: Mike Nicholson  
20010 Century Blvd, Suite 401  
Germantown, MD 20874

15. Conflicts

Contractor agrees that it has no interest and shall not acquire any interest direct or indirect, which would conflict, in any manner or degree with the performance of the work and services under this Agreement.

16. Severability

If any portion of this Agreement or application thereof to any person or circumstance shall be declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal, state or county statute, ordinance or regulation the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

17. Amendment

This Agreement may be modified, amended, changed, added to or subtracted from by the mutual consent of the parties hereto if such amendment or change is in written form and executed with the same formalities as this Agreement and attached to the original Agreement to maintain continuity.

18. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between any of the parties herein with respect to the subject matter hereof and contains all the agreements between the parties with respect to such matter. Each party acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

19. Advice of Attorney

Each party warrants and represents that in executing this Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.

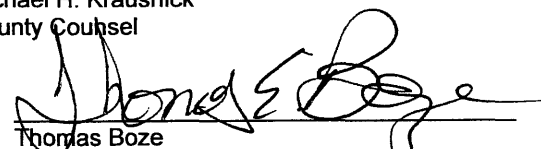
20. Construction

Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Agreement.

21. Governing Law and Venue

This Agreement shall be deemed to be made under, and shall be governed by and construed in accordance with, the laws of the State of California. Any action brought to enforce the terms or provisions of this Agreement shall have venue in the County of Stanislaus, State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first hereinabove written.

<p><b>COUNTY OF STANISLAUS</b> Department of Department of Parks and Recreation</p> <p>By: _____ Sonya K. Harrigfeld Director</p> <p style="text-align: center;">"County"</p>	<p><b>POSITIVE TECHNOLOGY.COM, INC.</b></p> <p>By: _____</p> <p>Name Title</p> <p style="text-align: center;">"Contractor"</p>
<p>APPROVED AS TO FORM: Michael H. Krausnick County Counsel</p> <p>By:  Thomas Boze Deputy County Counsel</p>	

## EXHIBIT A

## A. DEFINITIONS:

Unless otherwise specified in the Statement of Work the following terms shall be given the meaning shown, unless context requires otherwise.

1. "Acceptance Tests" means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
2. "Application Program" means a computer program, which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but the Contractor may supply them.
3. "Attachment" means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer, that is not connected by the Contractor.
4. "Commercial Software" means Software developed or regularly used that; (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Agreement; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Agreement.
5. "Custom Software" means Software that does not meet the definition of Commercial Software.
6. "Data Processing Subsystem" means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent) and Operating Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
7. "Data Processing System (System)" means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors) and Operating Software, which are acquired to operate as an integrated group.
8. "Deliverables" means Goods, Software, Information Technology, telecommunications technology; and other items (e.g. reports, training, custom screens,) to be delivered pursuant to this Agreement, including any such items furnished incident to the provision of services.
9. "Designated CPU(s)" means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Agreement, the term shall mean any and all CPUs located at the site specified therein.
10. "Documentation" means nonproprietary manuals and other printed materials necessary or useful to the County in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the County hereunder constitutes Documentation only to the extent that such materials are described in or required by the Statement of Work.
11. "Equipment" is an all-inclusive term, which refers either to individual Machines or to a complete Data Processing System or subsystem, including its Hardware and Operating Software (if any).
12. "Equipment Failure" is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended functions(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software, which prevents the accomplishment of the Equipment's intended functions, shall be deemed to be an Equipment Failure.
13. "Facility Readiness Date" means the date specified in the Statement of Work by which the County must have the site prepared and available for Equipment delivery and installation.
14. "Goods" means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
15. "Hardware" usually refers to computer Equipment and is contrasted with Software. See also Equipment.
16. "Installation Date" means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment and Software ready (certified) for use by the County.
17. "Information Technology" includes, but is not limited to, all electronic technology systems, and services, automated information handling. System design and analysis conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.

## B. STATEMENT OF WORK

The Contractor shall provide all of the labor, equipment, software, licenses, material, training, manuals, accessories, materials, tools, peripherals to design, deliver and install an ergonomic, fully functional and efficient park  
Ind-Con-Agmt (Rev 021706)

campground reservation system, and a point of sale (POS)/retail management/reporting system under this Agreement as follows:

1. Specifications

The system shall be designed and implemented for zero down time during the heavy sales cycle, speed, easy to use, dependable, accurate and provide security of transaction information. The transaction speed shall be extremely fast to allow decreased wait time to access facilities and have the ability to provide the following:

a. Online Campground and Facility Rental Reservations shall include, but not limited to, the below functions.

- Web-enabled
- Online GUI based reservation and secure access to website;
- Online web credit processing;
- Reserve different facilities;
- Customers shall be able to access permits and other items online;
- Customers shall renew and manager their profile and or memberships online;
- Campground reservation automation for three (3) sites: Frank Raines, Modesto Reservoir, and Woodward Reservoir Regional Parks;
- Reserve picnic shelters and schedule "special" events that would reserve campsites;
- On demand modification of reservations at the POS and via an on line web based program;
- Create and automate process for "pull-up" pass at the site;
- Allow customers to change reservations;
- On-line processes that is consistent with all applicable ADA requirements.
- County shall be able to customize pages using county colors and images such as logos and maps;
- Graphical interactive maps;
- Email notification of transactions to clients purchasing over the web reservation system.
- Automated order fulfillment system via web is required to meet requirements of County's e-payment system requirements;
- Expansion capabilities – County staff shall be trained to be able to self configure the system hardware and software;
- All pages offering e-payment must post a disclaimer identifying when one is leaving Stanislaus County web site and give the customer an option to continue or not continue;
- County staff shall be able to view throughout the County's campground reservation and retail management system network, real time inventory and availability of campgrounds and facilities;
- System shall allow County the ability to print large font receipts that can be posted on the windshield with clearly legible entry and exit dates and reports to track customer activity;
- System shall provide fast and accurate tracking of sales and activities;
- Other than the charges identified in Exhibit B of this Agreement the Contractor shall not charge the County per transaction fees to use the Campground Reservation/POS/Retail Management system;
- Data is integrated to Retail Management/Point of Sale System and County's Parks and Recreation main office servers and computers;
- Import data from County's Park and Recreation main office at the time of initial set up. The system shall be designed so that once the original database is created, items could be added on a one by one basis;
- Export data from County's Park and Recreation main office;
- Take credit cards through web and Retail Management System, cash, checks, gift certificates or coupons through the Retail Management System;
- Manage customer records;
- Close batches and run end of the day reports;
- Customize only the screens required;
- Parks Managers with security access rights shall be able to view every transaction and manage campsites from any location;
- Parks Managers with security access rights shall be able to manage the reservation inventory, make changes and modifications, and manager physical inventory;
- Parks Managers shall be able to report, make projections and manage expenses;

b. Cash Registers at the entrance station including, but not limited to, the below functions:

- Nine (9) cash registers to perform the following general transactions: sale by department, category or item; perform voids; automatically compute tax; and look up campsite inventory control;
- Accept credit card and debit card processing, through the County's on-line payment system;
- Customizable, rugged Touch Screen for Cash Registers with configurable buttons and integrated credit card processing for fast and efficient transactions;

- Perform the following special transactions: gift cards and vouchers; process returns; place transaction on hold and recall and could complete credit card transaction through the register;
  - Automate camper fee transactions;
  - Integration with Microsoft Office products; and County's accounting system;
  - Import and export data in multiple formats, (i.e. Excel, Access or Outlook, etc.);
  - Import and export data from County's Park and Recreation main office;
  - Transaction speed shall be extremely fast to allow decreased wait time to access facilities;
  - To put Iron Ranger number and create a report ;
  - Web-enabled and multimedia enabled point-of-sale software;
  - Internet capability on cash registers for reservations;
  - Reportable security levels for POS sales users shall be implemented to protect data;
  - Program a personalized "pin" or pass code for each user, so the system could track (by date and time) who processed each transaction;
  - County shall be able to access and make changes if necessary to the security level of users;
  - All functions performed at the POS (i.e., sales, voids, transaction recalls, etc.) shall be traceable and reportable. County shall have the ability to track users to the time of transaction or customer record and generate a report;
  - Include notice of entering secure site disclaimer on camp reservation website;
  - Automated order fulfillment through the web (camp magic);
  - All revenue is traceable at the POS and/or at HQ level with provided access and security rights;
  - Automatically enter customer information from on-line orders into the POS system as a sales transaction, ending redundant manual data entry;
  - Automatically computes taxes, (if applicable) and generates receipts.
  - Track inventory quantities on-hand, ordered and reserved;
  - Store, print, display or transmit on-line digital e-receipts, pick tickets a with all graphics;
  - Data is integrated with County's Parks and Recreation main office servers and computers through Retail Management System Headquarters;
- c. Data Collection/Management Reports including, but not limited to, the below functions:
- Standardized and customized reports that convert to Excel and integrate with Microsoft Office products;
  - Point-and-click speed;
  - Track data from the cash registers (For example: customers who use visitor pass, ownership of annual pass, inventory, sales and sales history, reservation information, cash, check, credit/debit card information, sales receipt number, date, IDs of items sold, as-sold prices, tax collected, customer ID, cashier ID, etc.) which is available through web service or a download capability to the County's Park Accounting office;
  - Data must be accessible in a format that is ODBC compliant;
  - County's Department of Parks and Recreation's main office shall have ability to access all real time and historical data (i.e. to see, understand, run instant analyses, check sales, find complete details on any transaction, control a wealth of meaningful data, etc.) from any location and from the Camp reservation and Retail Management POS system;
  - Track all of the revenue (daily, weekly, monthly, annually) electronically from any location and provide real time reports;
  - Electronically interface the batch reports with existing accounting software;
- d. Employee Management including, but not limited to, the below functions:
- Track and Manage Employee Information
  - Assign Security Levels to Grant Specified Access Privileges
  - Send Messages to Cashiers
  - Generate Cashier Log Report
- e. Training on the reservation and retail management system including, but not limited to, the below functions:
- The Contractor, prior to the system going live, shall provide complete training for the County users so that County users understand how to use system, customize reports and modify system for future implementations with minimal assistance;
  - The Contractor shall provide documentation and manuals for County users;
- f. Support
- 24/7 Support at no additional charge until County signs off that the project is completed.

- Unlimited 24/7, 365 day phone support, as identified in Exhibit D attached hereto and made a part of this Agreement, after the project has been signed off by the County as being accepted and completed.

g. Benefits

- Ability to begin an installation schedule after May 1, 2008 and have online reservation system up and running by February, 2009.
- Allow for expedited transactions;
- System shall be upgradeable. It shall have the ability to upgrade to IVR should the County desire the IVR upgrade at a later date.
- Allow for expedited transactions
- Require less manual input;
- Minimize loss by handling cash transactions through the system;
- Speed up the process for customers entering the park;
- View information at any time of the day;
- Sell customer Gift Voucher at the reservoir instead of the office;

h. Printing Capabilities

- Print durable receipt;
- Conduct field collecting and print out a receipt immediately.

i. User Manuals

The Contractor shall provide a number of all nonproprietary manuals and other printed materials, and updated versions thereof, which are necessary or useful to the County in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.

2. Equipment Location

The cumulative total of cash registers at the following locations is nine (9).

- Modesto Reservoir – (4)
- Woodward Reservoir – (4)
- Frank Raines – (1)

The headquarter office has the following equipment:

- Keyboard
- Monitor
- Hard Drive

3. Project Management

The Contractor shall provide technical and project management assistance throughout the project lifecycle and shall properly assess and determine the scope of the project and communicate effectively to the County representative. Contractor shall ensure that each element of the project is operational and advise the County how to migrate fully into the new solution.

Contractor shall specifically provide the development of a project and implementation plan with County designated employees to ensure the many facets of deploying the park campground reservation system, and point of service/retail management/reporting system is done in a timely and coordinated fashion. The Contractor shall develop a complete project and implementation plan for each installation and both the Contractor and the County shall sign off on each element. Included in the plan shall be finalized equipment and software installation timeline and a schedule for on-site equipment and software training. It shall also include detailed information such as, the time and date of training, type of training and date system tests shall be conducted, etc. Contractor shall verify all configurations prior to installation, plan the client configuration and communication schema for proper operability, consider the County's future expansion needs, provide project completion status, and identify and resolve open issues. Comprehensive backup procedures shall be provided to the County by the Contractor to further reduce risk of system or data failure.

The Contractor shall create and provide a campground reservation and retail management/POS and reporting system template that can be easily configured and adapted to the fluid and changing environment in which the County operates. Contractor shall assure that the County has a full working knowledge of the operating system and provide the County designated representative training on how to administer the system.

The County shall have appropriate staff available to the Contractor for the purposes of obtaining the necessary information (i.e., project policies and procedures, ordinances, and inventory information), and data required to setup and configure the system and to complete the project. County shall provide Contractor with routine access

to appropriate County personnel who have sufficient network privileges and facility access to support the design and implementation of a proper architecture.

4. Task Deliverables

The Contractor shall perform the following Tasks:

- Business Process Consulting – on site and remote;
- Consulting – Project Management;
- Proof of Concept;
- Delivery of on-line reservation and campground software built on Microsoft Retail Management Systems (RMS), Point of Sales (POS), RMS Headquarter, and USEDIRECT on line reservation and camping enhancement, installed by Contractor.
- Head Quarter (HQ) Implementation;
- Image System;
- CampMagic Database setup and Discovery;
- Camp Ground Rollout Preparation;
- Campground Rollout;
- CampMagic Location Installation (all locations);
- POS Station Pre-configuration;
- Training Class – RMS Cashier Training;
- POS Training;
- RMS Training;
- Report Training;
- CampMagic Training;
- Head Quarter Training;
- Store Operations Training;
- Retail Management Headquarters Training Manual;
- Training manual for Microsoft RMS Store Operations.

5. Tasks and Deliverable Details:

Task	Contractor Deliverables	County Deliverables
1. Business Process Consulting on-site and remote	<p>This task encompasses, but is not limited to the following:</p> <ol style="list-style-type: none"> <li>1. Identify and Map in a Visio Network Diagram the number of locations (3 and HQ), number of stations (9), number of users, number of items to be sold and general review of the type and general review of Parks requirements for campground and Web based reservations system.</li> </ol> <p>Special requirements, not limited to, power, back-up, walk up client and park services reviewed. Interface to Reservation software.</p> <ol style="list-style-type: none"> <li>2. Identify component of the campground interface for each location. Identify all of the parks reservation amenities. Document workflow at gates and ticketing options. Design prints out for campers and develops reports to be used by the rangers.</li> </ol>	<ol style="list-style-type: none"> <li>1. View of the desired retail architecture and performance including all integration points, remote access, and special requirements provided by the County's IT representative. Special requirements for power and back up reviewed.</li> <li>2. Detail to the level of locations to start, locations to be added over the next several years, number of users today, projected number of users, number SKU's today and expected future numbers of SKU's.</li> <li>3. Detailed information on existing systems products. Database or spreadsheets of items and required items fields are preferred. Discussion around special items requirements such as tracking serial numbers or building kits, etc. Assist in defining Reservation Business Rules.</li> </ol>



Task	Contractor Deliverables	County Deliverables
	<p>3. Identify components of reservation system. Detail components and web design. Establish business process for Credit card processing; phone in vs. web based reservations. Define security access.</p> <p>4. Detail solution of office functionalities and document the business process and workflow in the office.</p> <p>Set expectations of deployment for office and parks locations. Training schedule set up.</p> <p>Set expectations for training time and place.</p> <p>5. Demonstrate RMS/HQ functional capabilities through detailed presentation and systematic application walkthrough with business owners that shall result in the identification of configuration requirements, setup procedures and training needs.</p> <p>6. Identify any custom development.</p> <p>7. Role assignment incorporated into the final project plan.</p> <p>8. Project Plans and installation guide finalized.</p> <p>9. Deployment plan in Microsoft Project that shall be approved by the County and then used as the road map to complete the project.</p> <p>10. Provide Excel Spreadsheets for detailed database import of items, suppliers, and possible customers. Available data shall be collected for exporting.</p> <p>11. Order Testing POS Software for 9 POS terminals and 4 locations: Stores (3 Terminal Store and Warehouse) and HQ.</p>	<p>4. Detail of current tenders taken, and methodologies for processing those tenders. Detail in new tenders that are desired now or in the future, also detail any desires for gift certificates or gift card type functionalities or annual passes.</p> <p>5. Description of activities cashier level individual is allowed to perform within the store; assist with the design of the cashier screens and walk through each process available at POS and Manager Screens and determine what functions Cashiers shall have.</p> <p>6. Detailed description of activities Manager Level individual is allowed to perform within the store, walk through each process available at POS and Manager Screens and determine what functions Managers shall have.</p> <p>7. Detailed description of activities Regional Manager Level individual is allowed to perform within the store. Walk through each process available at POS and Regional Manager Screens and determine what functions Regional Managers shall have.</p> <p>8. Detailed information surrounding current accounting practices including Supplier List. Detail any desired changes in functionality of business flow. Indicate areas of integration required for the project.</p> <p>9. Knowledge of desired report outputs, samples of any existing reports that would need to be replicated and detail any desired reporting functionality not contained within the core solutions suggested.</p> <p>10. Detailed description of the retail solution parts that must be integrated to other business systems. Be prepared to make business decisions based on cost or complexity of desired integrations.</p>

Task	Contractor Deliverables	County Deliverables
	<ol style="list-style-type: none"> <li>12. Interview County representative for Report and GL requirement; and establish reporting needs and categorize items within departments and categories.</li> <li>13. Establish all receipt templates and report formats for management.</li> <li>14. Interview County representative to establish base business rules for each application, whether it be reservation, permits, returns, cancellations or voids.</li> <li>15. Establish all SKU's and GL codes for the system.</li> <li>16. Business rules and modifications shall be made accordingly.</li> </ol>	<ol style="list-style-type: none"> <li>11. Key individuals and a business owner/project lead for the implementation who shall be empowered to make decisions and guide the County side of the planning and implementation.</li> <li>12. Key individuals and a business owner/project lead for the implementation who shall be empowered to make decisions and guide the County side of the planning and implementation.</li> <li>13. Role assignment.</li> <li>14. Project Plan Acceptance.</li> <li>15. Identification and provision of Head Quarter hardware for development environment.</li> </ol>
2 Staging	<ol style="list-style-type: none"> <li>1. Stage all hardware at the County Parks and Recreation locations identified in this Agreement.</li> <li>2. Install and configure core POS components to include MSDE version of MS SQL 2005, RMS Store Operations, RMS Store Manager, RMS Store Administrator, Credit Card Software, RMS HQ Client, and hardware drivers. Use Direct Reservation modules.</li> <li>3. Install and configure core HQ components to include RMS HQ Manager, RMS HQ Administrator, and RMS HQ Server.</li> </ol>	<ol style="list-style-type: none"> <li>1. Necessary information to configure the Headquarters database setup.</li> <li>2. Importable supplier data and item lists.</li> <li>3. Installation and configuration of virus protection software &amp; activate MS live update into POS hardware.</li> <li>4. Installation and configuration of Remote Access Software into POS Hardware.  Restrict Web Access for HQ to sites defined in Stage 1, Business Process of this Implementation.</li> <li>5. Installation and Configuration of Hardware Drivers for HQ Server for Development Environment.</li> </ol>

Task	Contractor Deliverables	County Deliverables
3 Proof of Concept	<ol style="list-style-type: none"> <li>1. Configure, design and test HQ and POS configuration as outlined in Stage 1, Business Process Consulting, of this Implementation.</li> <li>2. Configuration of credit card authorization software onto the two (2) development POS systems.</li> <li>3. Import data lists from Excel spreadsheets.</li> <li>4. Provide Concept Acceptance sign-off documents as outlined in Stage 1, Business Processing Consulting, of the Implementation.</li> <li>5. Order remaining solution hardware and software.</li> </ol>	<ol style="list-style-type: none"> <li>1. Confirm Solution Test.</li> <li>2. Proof of Concept Acceptance sign-off.</li> <li>3. Identification and provision HQ hardware for live environment.</li> <li>4. Confirm HQ Training attendees.</li> </ol>
4 HQ Training	<ol style="list-style-type: none"> <li>1. Provide item, accounting and customer management training at location determined in Stage 1, Business Process Consulting, of this Implementation.</li> <li>2. Provide HQ User Manual from Microsoft.</li> </ol>	<ol style="list-style-type: none"> <li>1. Attend item, accounting, and customer management training.</li> </ol>
5 HQ Implementation	<ol style="list-style-type: none"> <li>1. Migrate development database to the HQ production system using the tools available in MS SQL Server Enterprise Manager.</li> <li>2. Test communications with Development POS systems and verify HQ Production system.</li> <li>3. Provide HQ Manager Installation Disk to Stanislaus County Parks and Recreation for additional manager stations.</li> <li>4. Demonstrate HQ Manager Installation on HQ Production Server.</li> </ol>	<ol style="list-style-type: none"> <li>1. Provide physical access to HQ hardware for system migration from the development environment to the production environment.</li> <li>2. Install and configure HQ Manager to additional stations from which management actions shall be performed.</li> <li>3. Confirm Store Operations Training attendees.</li> </ol>
6 Store Operations Training	<ol style="list-style-type: none"> <li>1. Provide Cashier Manager, and Store Administration Training.</li> <li>2. Provide Store Operations User Manual</li> <li>3. Provide POS Cashier</li> </ol>	<ol style="list-style-type: none"> <li>1. Attend Cashier, Manager and Store Administration Training</li> </ol>

Task	Contractor Deliverables	County Deliverables
7 System Image	<ol style="list-style-type: none"> <li>1. Create System Image on CD/DVD/Hard drive as determined in Stage 1 Business Process Consulting, of this Implantation.</li> <li>2. Store Image at both and Positive Technology locations as determined in Stage 1 Business Process Consulting, of this Implementation.</li> </ol>	<ol style="list-style-type: none"> <li>1. None</li> </ol>
8 Camp Ground Rollout Preparation	<ol style="list-style-type: none"> <li>1. Restore base POS image on remaining POS stations by technician assigned in Stage 1, Business Process Consulting, of this Implementation.</li> <li>2. Provide Store Specific Configuration Document in an electronic MS Word file.</li> </ol>	<ol style="list-style-type: none"> <li>1. Accept store specific configuration document.</li> <li>2. Confirm POS installers as outlined in Stage 1, Business Process Consulting, of this Implementation.</li> <li>3. Schedule end-user training.</li> </ol>
9 Campground Rollout	<ol style="list-style-type: none"> <li>1. Approx 4 days on-site installation at each location. One week at HQ, Training of Managers, Parks Rangers and Cashiers individually trained, HQ Management training users.</li> </ol>	<ol style="list-style-type: none"> <li>1. Shadow Positive Technology and prepare for remaining sites.</li> </ol>

6. Training

Contractor shall provide training to the County's designated Parks and Recreation staff. Training shall include the following:

a. Three weeks on site training, for County's Parks and Recreation personnel performing cashiering and manager duties, on the use of the campground reservation system and the point of sale/retail management/reporting system including but not limited to the following:

- o Setting up security structure
- o Managing the database
- o Controlling the pricing
- o Tracking inventory
- o Tracking sales
- o Shipping and tracking
- o Managing customers
- o Managing employees
- o Generating reports
- o Using labels
- o Backups
- o Moving around the POS screen
- o Processing daily POS activities
- o How to:
  - Work the drawer
  - Modify on screen data
  - Discounting sale
  - Handling holds, deposits and layaways
  - Managing cashiers and sales reps
  - Using graphs and macros
  - Working with terminal off-line
  - Working with receipts
  - Using online shipping
- o Store Operations Manager Training
- o Camp Magic applications, use and set up
- o Web reservations and registration

- o RMS Cashier Training – class includes all hands on exposure to all tasks performed by cashier.
  - o Training Class RMS Manager Application Detail Training – Highly detailed training on all back office functions
  - o Training Class Store Administration – Details maintenance of RMS system by end user for maximum uptime and training on backup procedures.
  - o Head Quarters (HQ) Training - Items. Detailed training class for managing HQ and Store databases in regards to items. Including create new; modify descriptions, price by store, region or company, quantity updates, transfers, purchases and other items.
  - o Head Quarters Training – Customer Management. Detailed training class for managing HQ and Store databases in regards global customers. Create new; modify descriptions, assign price level, update special fields, take payments at HQ, create statements Reports.
  - o Training for Camp reservation software.
- b. Users shall be trained to be able to self configure the system hardware and software.
- c. Training for the County's Parks and Recreation personnel performing cashiering and manager duties shall be completely addressed before the system goes live.
- d. Documentation and manuals shall be provided to the County's users and managers.

7. Software Assurance

Contractor shall provide source code and documentation to the County's legal department for software escrow in the event that Contractor ceases to do business in the future. In this unlikely event, County shall have full source code access to all campground reservation system, and retail management /reporting system code and documentation of Contractor for the sole purpose of maintaining the software and the system.

Campground software install shall be conducted by trained UseDirect staff at each location.

8. Customization of Screens

Contractor shall screens to meet the County needs. Screen customizations include extending the data model to capture date that is unique to the County's Parks and Recreation department.

9. Reports

Contractor shall work with County Representative to attain a clear understanding of current and future reporting requirements. The Contractor shall start with reports currently used by the County to compare to standard reports available with the system. Contractor shall develop customized reports within the system as requested by the County to meet County-reporting needs.

10. Hardware

The Obvios POS system shall be pre-configured in the Positive Technology Inc., Phoenix, AZ office and then shipped to the County's location for deployment based on the predefined schedule. Contractor shall coordinate shipment and delivery with County designated representative.

11. Integration to County's System

Contractor shall work with appropriate County personnel to interface to County's system and integrate to retail management system (RMS).

12. Installation

Contractor shall install the hardware and software identified in Exhibit B, upon completion and sign off of the documentation process identified in the Implementation Stage 1 Business Process Consulting.

13. Acceptance Tests

Once Contractor has completed installing all of the software and hardware, Contractor shall within a two (2) week period, test the system for stability and work out any problems and obtain sign-off by County that the problems identified have been worked-out and that the system's equipment and software comply with the specifications and all other Exhibits and Attachments incorporated herein by reference and to determine the reliability of the Equipment.

14. After Acceptance Annual Support

Support Contract 1 Year Positive, 24/7 365 days online log in of support cases, unlimited support calls to cover problems with RMS and hardware provided by Contractor is included in this Agreement. Response time is

based on priority. It does not provide updates to the USE direct software (optional can be billed as needed at the rate of \$175.00 per hour).

USEdirect annual software support for all patches and updates to the Camp Magic and software provided by USE Direct is included in this Agreement.

**B. COMPENSATION**

The Contractor shall be compensated for the services provided under this Agreement on a time and material basis upon the rates and unit price schedule set forth in Exhibit B attached hereto and made a part of this Agreement. In addition to the aforementioned rates Contractor shall be reimbursed for the following items, that are reasonable, necessary and actually incurred by the Contractor in connection with the services:

Travel expenses shall be reimbursed in accordance with the County's travel policy, which is incorporated herein by reference.

Rates, unit price schedule, plus reimbursable expenses shall not exceed the amounts set forth in Exhibit B. Payments shall be based upon work actually completed and product actually delivered along with documentation submitted to that effect by the Contractor to the County and accepted by County, as being satisfactory to County's needs, not work in process.

**C. LIMIT OF EXPENDITURE**

The parties hereto acknowledge the maximum amount to be paid by the County for services provided shall not exceed **\$213,695.80**, including, without limitation, the cost of any subcontractors, Contractors, experts or investigators retained by the Contractor to perform or to assist in the performance of its work under this Agreement.

**D. PAYMENT AND INVOICING**

1. The terms of payment are Net 30 days after acceptance of work documents, acceptance of hardware and software and approval of the invoice.
2. Contractor shall submit a detailed invoice of all delivered and accepted equipment, hard and software and for work actually completed as outlined in Exhibit B and the scope of work in Exhibit A. The invoice is to include but not be limited to the following information: hours worked by Contractor's Staff, the title of the Staff, billable rate, description of service provided, product description, quantity, unit price extended price, tax, shipping and reimbursable items that are reasonable, necessary and actually incurred by the Contractor in connection with the services.

Detailed invoices shall be mailed or delivered to the Department indicated below. The remit to address is:

Stanislaus County  
Department of Parks and Recreation  
Attention: Accounts Payable  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358

**E. CONTRACT PERIOD**

This Agreement shall be effective from May 13, 2008 or the date of award; whichever is later, through March 31, 2009.

**F. WORK SCHEDULE**

Time is of the essence in the performance of services under this Agreement and any timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with the Agreement. Contractor is obligated to perform in a timely manner the services and work provided for under this Agreement and County hereby gives the Contractor notice to proceed with the work as of the effective date of this Agreement. It is understood by Contractor that the performance of these services and work shall require the Contractor to perform the services and work in conformance with a work schedule agreed to by the parties in Exhibit C attached hereto and made a part of this Agreement. Any services for which times for performance are not specified in this Agreement shall be commenced and completed by Contractor in a reasonable prompt and timely manner based upon the circumstances and direction communicated by the County to the Contractor.

**G. TERMINATION FOR CONVENIENCE**

The County may terminate this Agreement at any time for its convenience and at its sole option, in whole or in part, by giving written notice to Contractor. Contractor agrees to waive any claims for damages, including loss of anticipated profits, in the event the County terminates the Agreement as provided for in this paragraph. Upon such termination, the obligations of this Agreement shall continue as to any work already performed and the County shall pay Contractor the amount due for work properly performed as of the date of termination, less any sums previously paid.

**H. REPRESENTATIVES**

The County's representative is Margarita Ramos, Project Manager (209) 525-6700. The Contractor's representative is Brett Bennett (602) 253-8700 ext 111.

**J. PACKING AND SHIPMENT**

1. All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
  - a. Show the number of the container and the total number of containers in the shipment; and
  - b. The number of the container in which the packing sheet has been enclosed.
2. All shipments by Contractor or its subcontractors must include packing sheet identifying: the County's number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
3. Shipments must be made as specified in this Agreement.

**K. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES**

No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose shall be paid by the County unless expressly included and itemized in this Agreement.

1. Contractor must strictly follow the Agreement requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The County may permit use of an alternate carrier at no additional cost to the County with advance written authorization of the County.
2. On "F.O.B. Shipping Point" transactions, should any shipments under the Agreement be received by the County in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on request of the County shall at Contractor's own expense assist the County in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

**L. DELIVERY**

Contractor shall strictly adhere to the delivery and completion schedules specified in this Agreement. Time, if stated as of a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the County shall not be required to make any payment for the excess Deliverables, and may return them to the Contractor at Contractor's expense or utilize any other rights available to the County at law or in equity.

**M. SUBSTITUTIONS**

Substitution of Deliverables may not be tendered without advance written consent of the County. Contractor shall not use any specification in lieu of those contained in the Agreement without written consent of the County.

**N. INSPECTION, ACCEPTANCE AND REJECTION**

Unless otherwise specified in the Statement of Work:

1. Contractor and its subcontractors shall provide and maintain a quality assurance system acceptable to County covering Deliverables and services under this Agreement and shall tender to the County only those Deliverables that have been inspected and found to conform to this Agreement's requirements. Contractor shall keep records evidencing inspections and their result, and shall make these records available to the County during Contract performance and for three years after final payment. Contractor shall permit the County to review procedures, practices, processes and related documents to determine the acceptability of Contractor's quality assurance system or other similar business practices related to performance of the Agreement.
2. All Deliverables may be subject to inspection and test by the County or its authorized representatives.
3. Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the County. Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
4. All Deliverables may be subject to final inspection, test and acceptance by the County at destination, notwithstanding any payment or inspection at source.
5. The County shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection shall state the respects in which the Deliverables do not substantially conform to their specifications. If the County does not provide such notice of rejection within thirty (30) days of delivery, such Deliverables and services shall be deemed to have been accepted. Acceptance shall not be construed to waive any warranty rights that the County might have at law or by express reservation in this Agreement with respect to any nonconformity.
6. Unless otherwise specified in the Statement of Work, title to the Equipment shall remain in the Contractor and assigns, if any, until such time as successful acceptance testing has been achieved. Title to a special feature installed on a Machine and for which only a single installation charge was paid shall pass to the County at no additional charge, together with title to the Machine on which it was installed.

**O. SAMPLES**

1. Samples of items may be required by the County for inspection and specification testing and must be furnished free of expense to the County. The samples furnished must be identical in all respects to the products specified in the Agreement.
2. Samples, if not destroyed by tests, may upon request made at the time the sample is furnished, be returned at Contractor's expense.

**P. WARRANTY**

1. Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods and services in questions and end (1) year thereafter. Contractor warrants that (i) Deliverables and services furnished hereunder shall substantially conform to the requirements of this Agreement (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables shall be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, Contractor shall warrant that Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants that such Software shall perform in accordance with its license and accompanying Documentation. The County's approval of designs or specifications furnished by Contractor shall not relieve the Contractor its obligations under this warranty.
2. Contractor warrants that Deliverables furnished hereunder (i) shall be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) shall not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the County believes that harmful code may be present in any Commercial Software delivered hereunder, Contractor shall, upon the County's request, provide a master copy of the Software for comparison and correction.
3. Unless otherwise specified in the Statement of Work:
  - a. Contractor does not warrant that any Software provided hereunder is error-free or that it shall run without immaterial interruption.
  - b. Contractor does not warrant and shall have no responsibility for a claim to the extent that it arises directly form (1) a modification made by the County, unless such modification is approved or directed by Contractor, (2) use of Software in combination with or on products other than as specified by Contractor, or (3) misuse by the County.
  - c. Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor shall pass warranty through any such warranties to the County and shall reasonably cooperate in enforcing them. Such warranty pass-through shall be supplemental to, and not relieve Contractor from, Contractor's



warranty obligations set forth above.

4. All warranties, including special warranties specified elsewhere herein shall inure to the County, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
5. Except as may be specifically provided in the Statement of Work or elsewhere in this Agreement, for any breach of the warranties provided in this Section, the County's exclusive remedy and Contractor's sole obligation shall be limited to:
  - a. Re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
  - b. Should the County in its sole discretion consent, refund of all amounts paid by the County for the nonconforming Deliverable or service and payment to the County of any additional amounts necessary to equal the County's Cost to Cover. "Cost to Cover" means the cost, properly mitigate, of procuring Deliverables or services of equivalent capability, function and performance. The payment obligation in subsection (e) (ii) above shall not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."
  - c. Except for the express warranties specified in this section, Contractor makes no warranties either express or implied, including without limitation any implied warranties of merchantability or fitness for a particular purpose.

**Q. SAFETY AND ACCIDENT PREVENTION**

In performing work under this Agreement on the County's premises, Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. Contractor shall take any additional precautions as the County may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Agreement in accordance with the default provisions hereof.

**R. TERMINATION FOR DEFAULT**

1. The County may subject to sub-section d) below, by written notice of default to the Contractor, terminate this Agreement in whole or in part if the Contractor fails to:
  - a. Deliver the Deliverables or perform the services within the time specified in the Agreement or any amendment thereto;
  - b. Make progress, so that the lack of progress endangers performance of this Agreement; or
  - c. Perform any of the other provisions of this Agreement.
2. The County's right to terminate this Agreement under sub-section a) above, may be exercised if the failure constitutes a material breach of this Agreement and if the Contractor does not cure such failure within the time frame stated in the County's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a shorter period.
3. If the County terminates this Agreement in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the County considers appropriate, Deliverables or services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
4. If the Agreement is terminated for default, the County may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the County, as directed by the County, any;
  - a. Completed Deliverables,
  - b. Partially completed Deliverables, and,
  - c. Subject to provisions below, Manufacturing Materials related to the terminated portion of this Agreement. Nothing in this sub-section shall be construed to grant the County rights to Deliverables that it would not have received had this Agreement been fully performed. Upon direction of the County, the Contractor shall also protect and preserve property in its possession in which the County has an interest.
5. The County shall pay Agreement price for completed Deliverables delivered and accepted. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and County shall attempt to agree on the amount of payment for Manufacturing materials and other materials delivered and accepted by the County for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge shall apply. Failure to agree shall constitute a dispute under the Disputes clause. The County may withhold from these amounts any sum it determines to be necessary to protect the County against loss because of outstanding liens or claims of former lien holders.
6. If, after termination, it is determined by a final ruling in accordance with the Disputes Clause that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County.
7. The rights and remedies of the County in this clause are in addition to any other rights and remedies provided by law or under this Agreement, and are subject o the clause titled "Limitation of Liability."

**S. RIGHTS AND REMEDIES OF STATE FOR DEFAULT**

1. In the event any Deliverables furnished or services provided by the Contractor in the performance of the Agreement shall fail to conform to the requirements herein, or to the sample submitted by the Contractor, the County may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the County and immediately replace all such rejected items with other conforming to the Agreement.
2. In addition to any other rights and remedies the County may have, the County may require Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
3. In the event of the termination of the Agreement, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the County in procuring any items, which the Contractor agreed to supply, shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability").
4. The County reserves the right to offset the reasonable cost of all damages caused to the County against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

**T. LIMITATION OF LIABILITY**

1. Contractor's liability for damages to the County for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to two times the Purchase Price. For purposes of this sub-section a), "Purchase Price" shall mean the aggregate Agreement price; "Purchase Price" shall mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor shall have a separate limitation of liability for each purchase order.
2. The foregoing limitation of liability shall not apply (i) to liability under the "Terms and Conditions" of this Agreement or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (ii) to claims covered by any specific provision herein calling for liquidated damages; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the County for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the County becomes entitled to recover as a prevailing party in any action.
3. The County's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as the term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the County's sovereign immunity or any other immunity from suit provided by law.
4. In no event shall either the Contractor or the State be liable for consequential, incidental indirect, special, or punitive damages, even if notification has been given as for the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), or b)(iv) above.

**U. COMPLETE INTEGRATION**

This Agreement, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Agreement.

**V. NEWLY MANUFACTURED GOODS**

All Goods furnished under this Agreement shall be newly manufactured Goods; used or reconditioned Goods are prohibited, unless other specified.

**W. DOCUMENTATION**

1. The Contractor agrees to provide to the County, at no charge, a number of all nonproprietary manuals and other printed materials, as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the County in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
2. If the Contractor is unable to perform maintenance or the County desires to perform its own maintenance on Equipment purchased under this Agreement then upon written notice by the County the Contractor shall provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the County to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the County may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the County may have hired to maintain the Equipment to use the above noted Documentation. The County agrees to include the Contractor's copyright notice on any such Documentation

reproduced, in accordance with copyright instruction to be provided by the Contractor.

**X. FOUR DIGIT DATE COMPLIANCE:**

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the County. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere herein.

**Y. PUBLIC WORKS REQUIREMENTS (LABOR/INSTALLATION):**

In accordance with the provisions of Section 1773 of the California Labor Code, the Contractor shall, conform and stipulates to the general prevailing rate of wages, including employer benefits as defined in Section 1773.1 of the California Labor Code, applicable to the classes of labor to be used for public works such as the delivery site for the assembly and installation of the equipment or materials under this Agreement. Pursuant to Section 1770n of the California Labor Code, the Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the work is to be done, to be as listed in the Department of Transportation booklet entitled General Prevailing Wage Rates. The booklet is compiled monthly and copies of the same are available from the Department of Industrial Relations, Prevailing Wage Unit at [www.dir.ca.gov](http://www.dir.ca.gov) (select Statistics and Research) or (415) 703-4774. The booklet is required to be posted at the job site.

**Z. LICENSE GRANT**

1. Contractor hereby grants to the County and the County accepts from Contractor, subject to the terms and conditions of this Agreement a non-exclusive, non-transferable license to use the Software Products listed in Statement of Work and Exhibit B of this Agreement (hereinafter referred to as "Software Products").
2. Count may use the Software Products in the conduct of its own business, and any division thereof.
3. The license granted above authorizes the County to use the Software Products in machine-readable form on the Computer System located at the site(s) specified in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the County to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation.
4. By prior written notice the County may redesignate the CPU in which the Software Products are to be used. The redesignation shall be effective upon the date specified in the notice of redesignation.

**AA. ENCRYPTION/CPU ID AUTHORIZATION CODES**

1. When Encryption/CPU identification (ID) authorization codes are required to operate the Software Products, the Contractor shall provide all codes to the County with delivery of the Software.
2. In case of an inoperative CPU as defined in paragraph "Z3" above, Contractor shall provide a temporary encryption /CPU ID authorization code to the County for use on a temporarily authorized CPU until the designated CPU is returned to operation.
3. When changes in designated CPU's occur, the County shall notify the Contractor via telephone and/or facsimile/e-mail of such change. Upon receipt of such notice, Contractor shall issue via telephone and/or facsimile/email to the County within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as a permanent code is assigned.

**AB. FEES AND CHARGES**

Upon acceptance of Software by County, in accordance the Statement of Work, County shall pay the license fee or recurring charge for the Software Products as set forth in Statement of Work. Charges shall commence on the Acceptance Date as established in the Statement of Work. The Contractor shall render invoices for recurring charges or single charges in the month following the month in which the charges accrue.

**AC. MAINTENANCE**

The following terms and conditions are superseded and replaced by any alternate or inconsistent terms and conditions in the Statement of Work.

1. The correction any residual errors in any Software Product that may be discovered by Contractor or by the County shall be considered maintenance. Such maintenance shall be performed by Contractor without additional charge for the duration of this Agreement. Suspected errors discovered by the County in the Software Products shall be handled by the following procedures:
  - a. A listing of the output and a copy of the identical input data in machine-readable form shall be submitted to Contractor along and if appropriate, a listing of the contents of the memory of the CPU at the time the

error condition was noted.

- b. Errors in the Software Product as verified by Contractor shall be corrected by providing a new copy of the said Software product (or of the affected portions) in machine-readable form.
  - c. The Contractor shall attempt to correct Software Product errors within a reasonable time.
2. Contractor shall be available to assist the County in isolating and correcting error conditions caused by the County's particular Hardware or Operating System at rates in accordance with Exhibit B.

#### **AD. ACCEPTANCE OF SOFTWARE**

Commercial Software: Acceptance of Commercial Software shall be governed by the terms and conditions of the license agreement governing such Software.

#### **AE. RIGHT TO COPY OR MODIFY**

1. Any Software Product provided by Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the County with the designated CPU, to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the Software Product as provided below; provided, however, that no more than the number of printed copies and machine-readable copies as specified in the Statement of Work shall be in existence under this Agreement at any one time without prior written consent from Contractor. Such consent shall not be unreasonably withheld by the Contractor. The original, and any copies of the Software Product, in whole or in part, which are made hereunder shall be the property of the Contractor.
2. The County agrees to keep any such copies and the original at a mutually designated County location, except that the County may transport or transmit a copy of the original of any Software Product to another County location for backup use when required by CPU malfunction, provided the copy or the original is destroyed or returned to the designated location when the malfunction is corrected.
3. The County may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material; provided that nothing in this Subsection (c) shall be construed to contradict the terms of any separate applicable third party license agreement. Any portion of the Software Product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of this Agreement.

#### **AF. FUTURE RELEASES**

1. Unless otherwise specifically provided in this Agreement or the Statement of Work, if improved versions of any Software Product are developed and are made available to other licensees, they shall be made available to the County at the County's option. This shall entitle the County to automatic version upgrades in its period of validity. This shall cover all modules purchased and all optional modules purchased. Software releases are done on a quarterly basis.
2. All updates pertaining to the camp reservation system can be obtained remotely and can be accomplished by UseDIRECT staff or by the local administrator or user. Updates are self-applying requiring no or very minor involvement from the user. Updates shall not be conducted without express consent from the user. Bug fixes, performance improvements, new features and Update/Upgrade releases are included for the support period. All Updates & Upgrades (bug fixes, maintenance releases, and new feature versions) are included; any optional plug-ins, add-ons, and new product offerings are not included with this agreement.

**EXHIBIT B  
RATE SCHEDULE**

**Schedule Contractor Fees and Expenses**

The Contractor shall be compensated on a time and material basis based on the hourly rates, equipment prices, and the not to exceed amounts for each task as set forth below.

**1. BILLABLE HOURLY RATES**

Title	Billable Hourly Rate
Project Manager	\$150.00
Certified Installation Technician	\$150.00
Trainer	\$150.00

**2. EQUIPMENT PRICES**

Quantity	Model #	Manufacturer	Description	Unit Cost	Extended
9	SOF1404	Microsoft	Retail Management System 6 to 20 Lanes with Parallel USB Dongle	\$ 1,090.00	\$ 9,810.00
9	SOF1405	Microsoft	Retail Management System 6 to 20 Lanes License Service	\$ 196.20	\$ 1,765.80
1	SOF1185-USB	Microsoft	Retail Management System Head Quarters Server with 2 Store Pack - USB Dongle (includes Headquarters and Modesto Reservoir)	\$ 3,000.00	\$ 3,000.00
1	SOF1187	Microsoft	Retail Management System Head Quarters License Service for Base 2 Store Pack (includes Headquarters and Modesto Reservoir)	\$ 540.00	\$ 540.00
2	SOF1186	Microsoft	HQ - Client Retail Management System Store License, Frank Raines and Woodward	\$ 500.00	\$ 1,000.00
2	SOF1188	Microsoft	HQ - Client Retail Management System Store License Services	\$ 90.00	\$ 180.00
3	MISCSFW	USEDirect	Camp Magic Software Enhancements for Retail Management System	\$ 6,000.00	\$ 18,000.00
3	MISCSFW	USEDirect	Camp Magic Reservation Software Web (internet reservations)	\$ 6,000.00	\$ 18,000.00
3	MISCSFW	USEDirect	Park Pass Software	\$ 3,500.00	\$ 10,500.00
9	HARK1001	Obvios	Gladius Bundled 745iP4R consisting of a Gladius Terminal with HDD, MCR, 512MB, Win XP-Pro & MCR 123AL-15, ORP-800 DG, Thermal Receipt Printer, OBS-2200 - Hand Held CCD Scanner & stand (STD-HHR), C430-624S- Obvios Steel Cash Drawer, Generic PS/2 Keyboard, Generic PS/2 Mouse, 15" Touch - P4 2.0 GHz Dual, Scanner Cable (CAB 412)	\$ 2,699.00	\$ 24,291.00

Quantity	Model #	Manufacturer	Description	Unit Cost	Extended
9	PER1247	Obvios	Customer Display, 2 x 20, 9mm Character for Obvios	\$ 90.00	\$ 810.00
9	ACC1048		Battery Back –Volt Reg. 400VA, SBK-TBF The combination of battery back-up, automatic voltage regulator and TBF (Transformer Based Filter). Line Conditioner provides 100% power protection for your equipment.	\$ 159.00	\$ 1,431.00
9	PPS1005	Ingenico eN-Touch 1000 – Serial In	Serial Interface 12 total registers/if credit card processor allos signature capture. If not use debit pads only	\$ 885.00	\$ 7,965.00
1	DOC1002	Microsoft RMS	Training Manual for RMS Store Operations	\$ 149.00	\$ 149.00
1	DOC1003	Microsoft	Training Manual for Retail Management Headquarters	\$ 149.00	\$ 149.00
<b>TOTAL</b>					<b>\$ 97,590.80</b>

**3. PROJECT PRICE**

The below project pricing is devised to allow the County the ability to identify costs. The Contractor shall be compensated based on the hourly rates and equipment prices set forth above to perform the work associated with each task, not to exceed the amounts listed below. Maximum Total Task Price includes without limitation, the cost of any shipping, taxes, license fees, material, equipment, labor, fees, reasonable reimbursable expenses, subcontractors, Contractors or experts retained by the Contractor to perform or to assist in the performance of its work under this Agreement.

Task Number	Description	Estimated Quantity	Rate	Total Not to Exceed Price
<b>Task 1</b>				
SER1000	Professional Services - Installation. Actual time shall be billed includes; Solution pre-installation and discovery meeting – Detailed discussion with users to prepare installation of software. Includes: Screen config. – Security levels – departments and categories, - Sub description fields – cost basis, - custom system Store Operations – initial setup of store database. Database may be populated from other sources or setup for manual data entry. Consulting on each element requiring setup as well as final modeling of store databases. RMS software component load for each register station. Includes POS software, drivers and testing of each peripheral device. Setup of "off line" mode as required, (Often can be performed prior to end location delivery). POS station installation – Physical placement of each register station. Final placement and connection to network. Cable cleanup and management including tying up all cables ensuring network connectivity and final system testing.	167	\$ 150.00	\$ 25,050.00

SER1000 (continued..)	Data Import Services – Includes date verification in Contractor template and Import to live system. Does not include transfer from legacy systems. Credit card interface setup and testing. Installation of unique Credit card processing engine for a single store or for entire enterprise. Test transactions at each register and test end of day closing and batch out. SO – Software Load – Workstation: Installation of RMS software on back office user station. Connection to or setup of SQL server, setup of individual files or shared files as determined by pre-installation sessions, logo for reports, testing of station. Go Live Support for Store – Contractor consultants support for initial deployment of RMS Store Operations. Support to allow for final tweaking of any configurations as well as fill in training to get County Parks staff up to speed rapidly.			
SER1007	Consulting - Project Management	25	\$ 150.00	\$ 3,750.00
SER1000	CampMagic Database setup and discovery	1	\$ 7,500.00	\$ 7,500.00
MISCSER	CampMagic Location Installation (all locations)	1	\$ 10,500.00	\$ 10,500.00
MISCSER	CampMagic Training	1	\$ 5,000.00	\$ 5,000.00
SER1100	POS Station Pre-configuration	9	\$ 295.00	\$ 2,655.00
<b>Subtotal</b>				<b>\$ 54,455.00</b>
<b>Task 2</b>				
SER3000 Training	Retail Management System Cashier Training – Class includes all hands on exposure to all tasks performed by cashier. County Department of Parks & Recreation designated staff shall attend this class.	1	\$ 450.00	\$ 450.00
SER3001 Training	Retail Management System Manager Application Detail Training Class – Highly detailed training on all back office functions (Outline available)	1	\$ 1,200.00	\$ 1,200.00
SER3002 Training	Retail Management System Store Administration Training Class – Details maintenance of Retail Management System by end user for maximum uptime and training on backup procedures.	1	\$ 300.00	\$ 300.00
SER3003 Training	Head Quarters Training Class – Items. Detailed training class for managing HQ and store databases in regards to items. Create new; modify descriptions, price by store, region or company, quantity updates, transfers, purchases and more.	1	\$ 1,200.00	\$ 1,200.00

Task Number	Description	Estimated Quantity	Rate	Total Not to Exceed Price	
SER3004 Training	Headquarter Training Class – Customer Management. Detailed training class for managing HQ and Store databases in regards to global customers. Create new; modify descriptions, assign price level, update special fields, take payments at HQ, create statements Reports and more.	1	\$ 600.00	\$ 600.00	
SER1002	Consulting – Training for Camp reservation software	1	\$ 4,000.00	\$ 4,000.00	
<b>SUBTOTAL</b>				<b>\$ 7,750.00</b>	
SER1005	Support Contract 1 Year Positive, 24/7 365 days Netusite log in of cases, unlimited support calls to cover problems with RMS and hardware provided by Contractor. Response time is based on priority. It does not provide updates to the USE direct software (optional can be billed as needed at the rate of \$175.00 per hour)	1	\$ 17,500.00	\$ 17,500.00	
MISC SER	USEdirect annual software support for all patches and updates to the Camp Magic and software provided by USE Direct.	1	\$ 6,000.00	\$ 6,000.00	
<b>SUBTOTAL</b>				<b>\$ 23,500.00</b>	
<b>TOTAL</b>				<b>\$ 85,705.00</b>	
Travel and Accommodations	Travel expenses shall be reimbursed in accordance with the County's travel policy, which is incorporated herein by reference and shall not exceed \$15,000.00	1		\$ 15,000.00	
<b>TOTAL ADD ON</b>				<b>\$15,000.00</b>	
<b>QTY</b>	<b>TASK</b>	<b>MANUFACTURER</b>	<b>DESCRIPTION</b>	<b>UNIT PRICE</b>	<b>EXTEND PRICE</b>
1	MISCSFW	USE Direct Facilities Module	Facilities Module Software	\$ 17,400.00	\$ 17,400.00
1	MISC SER	USE Direct	Annual software support annual charge	\$ 2,000.00	\$ 2,000.00
1	MISC ER	USE Direct	Facility Specific database creation	\$ 3,000.00	\$ 3,000.00
40	SER1000	USE Direct	Consulting - Installation	\$ 150.00	\$ 6,000.00
			Discount	(\$14,000.00)	(\$14,000.00)
			Total		\$14,400.00
			Shipping (FedEx Ground)		\$1,000.00
			<b>TOTAL</b>		<b>\$15,400.00</b>
<b>PROJECT TOTAL NOT TO EXCEED</b>					<b>\$213,695.80</b>



**EXHIBIT C  
PROJECT TIMELINE**

The following is a timeline for which the tasks identified below shall be performed or completed:

<b>Task Number</b>	<b>Task Description</b>	<b>Start Date</b>	<b>Completion Date</b>
Business Process Consulting on-site and remote	Refer to Scope of Work Exhibit A	March 30, 2008 or contract start date	1-2 weeks
Staging	Refer to Scope of Work Exhibit A	May 30, 2008	30 calendar days
Proof of Concept	Refer to Scope of Work Exhibit A	June 30, 2008	45 calendar days
HQ Training	Refer to Scope of Work Exhibit A	September 8, 2008	2-3 weeks
HQ Implementation	Refer to Scope of Work Exhibit A	September 8, 2008	2-3 weeks
Store Operation Training	Refer to Scope of Work Exhibit A	September or October 2008	1 week
System Image	Refer to Scope of Work Exhibit A	September 2008	1 week
Campground Rollout Preparation	Refer to Scope of Work Exhibit A	March 2008 or contract start date	6 months
Campground Rollout	Refer to Scope of Work Exhibit A	November 2008	3 months

NOTE: Field installation to commence after September 15, 2008.

## EXHIBIT D

## END-USER LICENSE AGREEMENT FOR MICROSOFT SOFTWARE

## Microsoft Retail Management System Store Operations version 1.2

**IMPORTANT-READ CAREFULLY:** This End-User License Agreement ("EULA") is a legal agreement between you (either an individual or a single entity) and Microsoft Corporation for the Microsoft software that accompanies this EULA, which includes computer software and may include associated media, printed materials, "online" or electronic documentation, and Internet-based services ("Software"). An amendment or addendum to this EULA may accompany the Software. **YOU AGREE TO BE BOUND BY THE TERMS OF THIS EULA BY INSTALLING, COPYING, OR OTHERWISE USING THE SOFTWARE. IF YOU DO NOT AGREE, DO NOT INSTALL, COPY, OR USE THE SOFTWARE; YOU MAY RETURN IT TO YOUR PLACE OF PURCHASE FOR A FULL REFUND, IF APPLICABLE.**

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ii. Time Restriction. The Evaluation version of the Software is time sensitive and will not function upon expiration of the Trial Period. After the expiration of your license

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Microsoft garantit que le Logiciel fonctionnera conformément aux documents inclus pendant une période de 90 jours suivant la date de réception.

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**LIMITATION DES RECOURS; ABSENCE DE DOMMAGES INDIRECTS OU AUTRES.** Votre recours exclusif pour toute violation de la présente garantie limitée est décrit ciaprès. **Sauf pour tout remboursement au choix de Microsoft, si le Logiciel ne respecte pas la garantie limitée de Microsoft et, dans la mesure maximale permise par les lois applicables, même si tout recours n'atteint pas son but essentiel, VOUS N'AVEZ DROIT À AUCUNS DOMMAGES, NOTAMMENT DES DOMMAGES INDIRECTS.** Les modalités de la clause «Exclusion des dommages accessoires, indirects et de certains autres dommages » sont également intégrées à la présente garantie limitée. Certains États ou territoires ne permettent pas l'exclusion ou la limitation des dommages indirects ou accessoires de sorte que la limitation ou l'exclusion cidessus peut ne pas s'appliquer à vous. La présente garantie limitée vous donne des droits légaux spécifiques. Vous pouvez avoir d'autres droits qui peuvent varier d'un territoire ou d'un État à un autre. **VOTRE RECOURS EXCLUSIF.** L'obligation intégrale de Microsoft et de ses fournisseurs et votre recours exclusif seront, selon le choix de Microsoft de

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Microsoft Country - USA

EXHIBIT E

## US eDIRECT Software Service Agreement

### Maintenance

This agreement entitles to automatic version upgrades in its period of validity. The Software Service Agreement covers all modules purchased and all optional modules purchased. Software releases are done on a quarterly basis. All updates can be obtained remotely and can be accomplished by US eDIRECT staff or by the local administrator or user. Updates are self-applying requiring no or very minor involvement from the user. *Updates will not be conducted without express consent from the user.* Bug fixes, performance improvements, new features and Update/Upgrade releases are included for the support period. All Updates & Upgrades (bug fixes, maintenance releases, and new feature versions) are included; any optional plug-ins, add-ons, and new product offerings are not included with this agreement.

### "Help Desk" Support

We will provide 24/7 phone support, after hours phone support is pager based and typically we will respond typically within 30 minutes. Live support is provided during working hours, after hour's support is by beeper service. US eDIRECT and/or the local representative will offer Help Desk Support remotely, by telephone, fax, e-mail, www or other electronic communication during normal business hours.

### Invoicing and Termination

The Software Service Agreement is invoiced annually in advance. The agreement is valid for one year after the payment receipt, and will be renewed automatically. The Customer can cancel the next automatic renewal, by notifying US eDIRECT of such termination before the end of the purchased Software Service Agreement contract period.

### Scope

Technical support is limited to the reporting and correction of product defects and installation and configuration assistance.

### Non-transferable

This Service Agreement cannot be transferred or assigned. It only applies to the specific covered product(s) duly licensed from US eDIRECT or an authorized US eDIRECT reseller.

### Third party products

This Agreement does not cover third party applications, hardware, or use of US eDIRECT software in unsupported environments.



**AMENDMENT NO. 1  
 TO  
 INDEPENDENT CONTRACTOR SERVICES AGREEMENT**

**POSITIVE TECHNOLOGY.COM. INC.**

Pursuant to Paragraph 17 of the Agreement for Independent Contractor Services dated June 10, 2008 (the "Agreement"), the COUNTY OF STANISLAUS ("County") and POSitive Technology.com, Inc. ("Contractor") hereby modify the Agreement as follows:

1. In Exhibit B – Rate Schedule, under the section titled "Equipment Prices" the tenth item on page 24 the Description, Unit Cost and Extended Total is changed to read:

Quantity	Model	Manufacturer	Description	Unit Cost	Extended
9	HARK1001	Obvios	Gladius Bundled 745iP4R consisting of a Gladius Terminal with HDD, MCR, 512MB, Win XP-Pro & MCR 123AL-15, PER1522 ScanSource USB Direct Interface Steel Cash Drawer with Media Slots, OBS 2200 Hand Held CCD Scanner & stand (STD-HHR), Generic PS/2 Keyboard, Generic PS/2 Mouse, 15" Touch – P4 2.0 GHz Dual, Scanner Cable, (CAB412)	\$2,634.00	\$23,706.00

2. In Exhibit B – Rate Schedule, under the section titled "Equipment Prices" the following item is added to page 25:

Quantity	Model	Manufacturer	Description	Unit Cost	Extended
15	APG-VPK-15B-1-BX	APG	Tray for APG Vasario Cash Drawer, 5 Bill Trays and 5 Coin Trays with metal (wire) bill hold-downs	\$38.00	\$570.00

3. In Exhibit B – Rate Schedule the "Total" equipment price on page 25 is changed to read: "\$97,575.80.
4. In Exhibit B – Rate Schedule the "Project Total Not To Exceed" amount on page 27 is changed to read: \$213,680.80
5. In Exhibit A, Section C "Limit of Expenditure" not to exceed amount is amended to read as follows:

"2. The parties hereto acknowledge that the maximum amount to be paid by the County for services provided shall not exceed **\$213,680.80**, including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Contractor to perform or to assist in the performance of its work under this Agreement."

6. In Exhibit C, the Project Timeline is amended to read as follows:

Task Description	Start Date	Completion Date
Business Process Consulting on site and remote	October 6, 2008	1-2 Weeks
Staging	October 20, 2008	30 Calendar days
Proof of Concept	November 20, 2008	45 Calendar days
HQ Training	January 5, 2009	2-3 Weeks
HQ Implementation	January 21, 2009	2-3 Weeks
Store Operation Training	February 9, 2009	1 Week
System Image	February 16, 2009	1 Week
Campground Rollout Preparation	October 6, 2008	5.5 months
Campground Rollout *	February 16, 2009	2.5 months

\*The system shall be fully functional and ready to "go live" by May 1, 2009.

7. In Exhibit A, Section Z "License Grant" item 1, third sentence is amended to read:  
"Statement of Work, Exhibit B and Exhibit D.
8. In Exhibit A, Section 1, item f, page 10, first bulleted item, the words "Exhibit D" is amended to read"  
"Exhibit F"
9. Exhibit F is attached and made a part of this Agreement.
10. Except as stated herein, all other terms and conditions of the Agreement remain unchanged.

In witness whereof, the parties have executed this Amendment on the date written above.

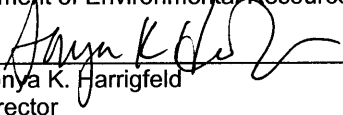

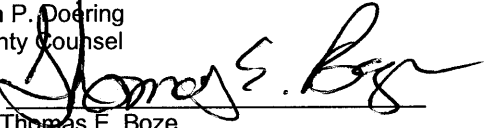
<p><b>COUNTY OF STANISLAUS</b>  Department of Environmental Resources</p> <p>By: <u></u>  Sonya K. Harrigfeld  Director</p> <p>Date: <u>9/8/08</u> "County"</p>	<p><b>POSITIVE TECHNOLOGY.COM, INC.</b></p> <p>By: <u></u>  Name <u>Brett Bennett</u>  Title <u>CEO</u>  "Contractor"</p> <p>Date: <u>9/2/08</u></p>
<p>APPROVED AS TO FORM:  John P. Doering  County Counsel</p> <p>By: <u></u>  Thomas E. Boze  Deputy County Counsel</p>	

EXHIBIT F



# Annual Support Contract Holders Service Level Agreement



Microsoft Business Solutions  
ISV/Software Solutions

## **Annual Support Contract Holder Service Level Agreement (SLA)**

POSitive Technology is committed to providing our customers with superior support and customer care services. This SLA is meant to communicate our commitment and to define the scope of the services we provide as part of our Support Contract Offerings.

### **Scope**

#### *Services Included in Annual Support Contract*

**Remote Support** – Telephone, Email, Fax, Remote Connect, and Web based support services in English.

**Software Support** – Remote support for software products purchased from POSitive Technology directly or contracted with POSitive Technology for support. POSitive Technology does not support third party products not purchased or contracted through POSitive Technology.

**Computer Hardware and Peripheral Support** – Remote support for hardware and peripheral products purchased from, and installed by POSitive Technology directly or contracted with POSitive Technology for support. POSitive Technology does not support third party products not purchased, installed or contracted through POSitive Technology.

**Networking Hardware** – Remote support for networking hardware purchased from, and installed by POSitive Technology directly or contracted with POSitive Technology for support. POSitive Technology does not support third party products not purchased, installed or contracted through POSitive Technology.

**Priority Technician Call Back** (see Case Classifications and Response Time section below) – Annual Support Contract Holders have priority call back over non-contract holders except in the case of Critical Priority calls where they are taken in the order received.

**Direct log in access to POSitive Technology's support web site** – Annual Support Contract Holders receive user ID and password access to log into POSitive's Support Case Management system for faster, more accurate responses and information relating to past cases.

**Free access to POSitive Technology's technical web site and knowledge base** - Annual Support Contract Holders receive user ID and password access to log into POSitive's Technical Web Site and Knowledge Base.

**15% off retail price on Supplies** (receipt paper, labels, and ribbons) – Annual Support Contract Holders receive an automatic 15% off on many supplies offered by POSitive Technology for your business, including many types of paper, labels, ribbons, tags, etc. Ask your sales representative for details and a list of items available for this discount.

**Discount training opportunities** – Annual Support Contract Holders have priority reservations and discounted tuition for many training courses offered by POSitive throughout the year.

*Services NOT INCLUDED in the Annual Support Contract SLA\**

**Installation and Consulting Services** – At the customer’s request, POSitive Technology can schedule a certified technician to install software, hardware and peripheral products purchased by client from POSitive Technology. The scheduling of such installations shall be on a best effort basis. Installation is billed at POSitive’s current hourly price (one day minimum, plus travel and accommodations if requested On-Site).

**On Site Support and Maintenance** – At the customer’s request, POSitive Technology can deploy a certified technician to domestic sites to install software, hardware and peripheral products purchased by client from POSitive Technology. The scheduling of such support and maintenance shall be on a best effort basis. Onsite support and maintenance is billed at POSitive’s current hourly price (one day minimum) plus any required parts as well as travel and accommodations.

**Training** – Training classes are offered to customers at POSitive Technology offices, online or on-site where appropriate. For on-site training, scheduling will be done on a best effort basis. Travel and accommodations are the customers responsibility. Training prices are published regularly at [www.positivetechnology.com](http://www.positivetechnology.com).

*\*This is not meant to be a complete list of service not included in the contract.*

## **Customer Responsibilities**

**Account in Good Standing** – Customer’s account must be kept in good standing at all times. Accounts that are past 60 days or more will go into a “no support” status until the customer’s account is brought up to date.

**Prompt, Polite, and Accurate Communications** – Customer must promptly notify POSitive Technology’s Support Department (see Contact Information below for support department and customer experience department phone numbers and email addresses) with clear and accurate information about any support issue. It is expected and required for the customer to be polite and patient with POSitive Technology’s support and customer experience staff. We fully understand the stress that can accompany some support issue, but it is very important to stay calm and respectful while our qualified technicians analyze the issue and assist in resolution.

**Prompt Response with Requested Information** – Many support cases rely on additional information that is required from you, the customer. In this situation, it is very important that you be prompt in obtaining the required information and responding to the appropriate support individual or department quickly and accurately.

**Case Classifications and Response Times**

	Business Hour Support: 8am to 8pm(EST), Monday - Friday	After Hours Support: 8pm to 8am(EST) Monday - Friday and All Day Sat and Sun and all National Holidays
<b>Critical:</b> A critical level issue is an issue where the client has a system DOWN situation. This is defined as "unable to take a sales transaction". This is only given to issues where TRANSACTIONS cannot be run.	<b>30 Minute</b>	<b>2 Hours</b>
<b>High:</b> A high level issue is an issue where the client can still do transactions, but is having a problem with a component of the system, like a printer, cash drawer, barcode scanner, etc. that makes transactions difficult. This level is only given to issues which relate to transactional issues.	<b>1 Hour</b>	<b>4 Hours</b>
<b>Medium:</b> A medium level issue is an issue where the client is having a non-transactional related problem or question. These are usually related to reporting, purchase orders, receiving, physical inventory, etc.	<b>6 Hours</b>	<b>Next Business Day</b>
<b>Low:</b> A low level issue is actually quite rare, but is generally given to issues that are more or less "what if" type questions.	<b>Next Business Day</b>	<b>Next Business Day</b>

**Case Handling and Escalations**

Tier One Support: Initial Contact / Response	Case is analyzed on the phone or via email by a support technician. Cases that are closed at this level are reviewed on a monthly basis and issues / answers are added to online knowledgebase. Target is to have 100% completion or escalation within 1 hour of initial contact by the support rep.
Tier Two Support Escalation: Investigation	Cases that require detailed data investigation and correction, or testing of specific scenarios before a response can be given are escalated to this level. A senior support technician is assigned. Target is to have 85% completion (or further escalation) within 1 business day of escalation to tier two.
Tier Three Support Escalation: Complex data / hardware correction	Cases that require complex data or hardware correction or manipulation are escalated to this level. Cases are assigned to a senior technician or product manager. Target is to have 85% completion (or further escalation) within 4 business days of escalation to tier three.
Tier Four Support Escalation: Software ISV or Hardware Manufacturer required for resolution	Cases that require escalation to an independent software vendor (ISV) or hardware manufacturer for analysis or repair are escalated to this level. The senior technician or product manager will work directly with the software or hardware company to come to a resolution. Target is to have 100% completion within 20 business days of escalation to tier four.
Tier Five Support Escalation: On hold / lengthy delay	Cases that fall into this category are generally awaiting customer availability, customer supply of information, data, or hardware, customer response, or re-occurrence of an inconsistent problem. Cases on this level will be evaluated every 5 business days and closed within 15 business days at the service manager's discretion.

**Contact Information**

*Contacting Support Department*





DEPARTMENT OF PARKS AND RECREATION  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Phone: (209) 525-6770  
Fax: (209) 525-6773

**AMENDMENT NO. 2  
TO  
INDEPENDENT CONTRACTOR SERVICES AGREEMENT  
POSITIVE TECHNOLOGY.COM. INC.**

This Amendment No. 2 to Independent Contractor Services Agreement ("Amendment No. 2") by and between the County of Stanislaus ("County") and Positive Technology.Com.Inc., ("Contractor") is made and entered into on May 18, 2009.

Whereas, the County and Contractor entered into an Independent Contractor Services Agreement dated March 15, 2003, (the "Agreement"); and

Whereas, Paragraph 17 of the Agreement provides for the Agreement to be amended, modified, changed, added or subtracted from by mutual consent of both parties; and

Whereas, Amendment 1 dated September 8, 2008 modified the hardware, decreasing the total not to exceed project amount to \$213,680.80, modified the project timeline, and added Exhibit F – Annual Support Service Level Agreement; and

Whereas, the Paragraph 3.1 of the Agreement provides that the contract terminates on the completion of the agreed upon services; and

Whereas, Exhibit A, Section B, items 1a through 1e, and items 1g through 1i, are not yet complete; and

Whereas, this amendment is for the mutual benefit of County and Contractor;

Now, therefore, the County and Contractor agree as follows:

- 1. Exhibit A, Section E is amended as follows:

"This shall be effective from May 13, 2008 or date of award; whichever is later, through December 31, 2009."

- 2. Except as stated herein, all other terms and conditions of the Agreement remain unchanged.

In witness whereof, the parties have executed this Amendment on the date written above.

<p><b>COUNTY OF STANISLAUS</b> Department of Environmental Resources</p> <p>By: <u><i>Sonya K. Harrigfeld</i></u> Sonya K. Harrigfeld Director</p> <p>Date: <u>6/18/09</u> "County"</p>	<p><b>POSITIVE TECHNOLOGY.COM, INC.</b></p> <p>By: <u><i>Leslie M. Savary</i></u> Name <u>Leslie M. Savary</u> Title <u>CFU</u> "Contractor"</p> <p>Date: <u>6/11/09</u></p>
<p>APPROVED AS TO FORM: John P. Doering County Counsel</p> <p>By: <u><i>Thomas E. Boze</i></u> Thomas E. Boze Deputy County Counsel</p>	



DEPARTMENT OF PARKS AND RECREATION  
 3800 Cornucopia Way, Suite C  
 Modesto, CA 95358  
 Phone: (209) 525-6770  
 Fax: (209) 525-6773

**AMENDMENT NO. 3  
 TO  
 INDEPENDENT CONTRACTOR SERVICES AGREEMENT  
 POSITIVE TECHNOLOGY.COM. INC.**

This Amendment No. 3 to Independent Contractor Services Agreement ("Amendment No. 3") by and between the County of Stanislaus ("County") and Positive Technology.Com.Inc., ("Contractor") is made and entered into on December 18, 2009.

Whereas, the County and Contractor entered into an Independent Contractor Services Agreement dated June 10, 2008, (the Agreement"); and

Whereas, Paragraph 17 of the Agreement provides for the Agreement to be amended, modified, changed, added or subtracted from by mutual consent of both parties; and

Whereas, Amendment 1 dated September 8, 2008 modified the hardware, decreasing the total not to exceed project amount to \$213,680.80, modified the project timeline, and added Exhibit F – Annual Support Service Level Agreement; and

Whereas, amendment 2 dated June 18, 2009 extended the term through December 31, 2009; and

Whereas, Exhibit A, Section B, items 1a through 1e and item 1g through 1i are not yet complete; and

Whereas, the County has a need to add web customization (for reservations to work with Metavante) to Exhibit A- Scope of Work of this Agreement; and

Whereas, the County has a need to increase this Agreement by \$8,500.00 for the web customization of reservations to work with Metavante; and

Whereas, this amendment is for the mutual benefit of County and Contractor;

Now, therefore, the County and Contractor agree as follows:

1. In Exhibit B – Rate Schedule, under the section titled "Equipment Prices – Add On" the following item is added:

Quantity	Model	Manufacturer	Description	Unit Cost	Extended
1		USE Direct	Web Customization – of Reservation System to work with Metavante	\$8,500.00	\$8,500.00

2. Exhibit A, Section E is amended as follows:

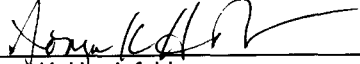
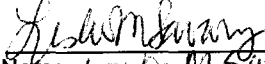
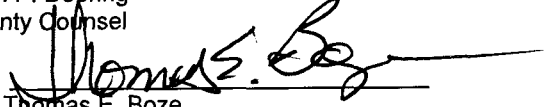
"This shall be effective from May 13, 2008 or date of award; whichever is later, through December 31, 2010."

3. In Exhibit B – Rate Schedule the "Project Total Not to Exceed" amount on page 27 is changed to read: \$222,180.80
4. In Exhibit A, Section C "Limit of Expenditure" the not to exceed amount is amended to read as follows:

"2. The parties hereto acknowledge that the maximum amount to be paid by the County for services provided shall not exceed **\$222,180.80**, including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Contractor to perform or to assist in the performance of its work under this Agreement."

5. Except as stated herein, all other terms and conditions of the Agreement remain unchanged.

In witness whereof, the parties have executed this Amendment on the date written above.

<p><b>COUNTY OF STANISLAUS</b> Department of Environmental Resources</p> <p>By:  Sonya K. Harrigfeld Director</p> <p>Date: <u>1/13/16</u> "County"</p>	<p><b>POSITIVE TECHNOLOGY.COM, INC.</b></p> <p>By:  Name <u>Leslie M. Savary</u> Title <u>CFO</u> "Contractor"</p> <p>Date: <u>1/11/2010</u></p>
<p>APPROVED AS TO FORM: John P. Doering County Counsel</p> <p>By:  Thomas E. Boze Deputy County Counsel</p>	



Agreement No. A00664

DEPARTMENT OF PARKS AND RECREATION  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Phone: (209) 525-6770  
Fax: (209) 525-6773

BOARD OF SUPERVISORS

2010 DEC 15 A 11: 39  
AMENDMENT NO. 4  
TO  
INDEPENDENT CONTRACTOR SERVICES AGREEMENT  
POSITIVE TECHNOLOGY.COM. INC.

This Amendment No. 4 to Independent Contractor Services Agreement ("Amendment No. 4") by and between the County of Stanislaus ("County") and Positive Technology.Com.Inc., ("Contractor") is made and entered into on December 9, 2010.

Whereas, the County and Contractor entered into an Independent Contractor Services Agreement dated June 10, 2008, (the Agreement"); and

Whereas, Paragraph 17 of the Agreement provides for the Agreement to be amended, modified, changed, added or subtracted from by mutual consent of both parties; and

Whereas, Amendment 1 dated September 8, 2008 modified the hardware, decreasing the total not to exceed project amount to \$213,680.80, modified the project timeline, and added Exhibit F – Annual Support Service Level Agreement; and

Whereas, amendment 2 dated June 18, 2009 extended the term through December 31, 2009; and

Whereas, amendment 3 dated December 18, 2009 extended the term through December 31, 2010; and

Whereas the County has a need to extend the Agreement to complete the project; and

Whereas, this amendment is for the mutual benefit of County and Contractor;

Now, therefore, the County and Contractor agree as follows:

- 1. Exhibit A, Section E is amended as follows:

"The initial term of the Agreement shall be from May 13, 2008, or date of award; whichever is later, through March 31, 2009. The second extended term of the Agreement shall be for a period commencing on April 1, 2009 and terminating on December 31, 2009. The third extended term of the Agreement shall be for a period commencing on January 1, 2010 and terminating on December 31, 2010. The final extended term of the Agreement shall be for a period commencing on January 1, 2011 through the completion of the project."

- 2. Except as stated herein, all other terms and conditions of the Agreement remain unchanged.

In witness whereof, the parties have executed this Amendment on the date written above.

<p><b>COUNTY OF STANISLAUS</b> Department of Environmental Resources</p> <p>By: <u>[Signature]</u> Sonya R. Harrigfeld Director</p> <p>Date: <u>12/9/10</u> "County"</p>	<p><b>POSITIVE TECHNOLOGY.COM, INC.</b></p> <p>By: <u>[Signature]</u> Name _____ Title _____</p> <p>Date: <u>12/7/10</u> "Contractor"</p>
<p>APPROVED AS TO FORM: John P. Doering County Counsel</p> <p>By: <u>[Signature]</u> Thomas E. Boze Deputy County Counsel</p>	



DEPARTMENT OF PARKS AND RECREATION  
3800 Cornucopia Way, Suite C  
Modesto, CA 95358  
Phone: (209) 525-6770  
Fax: (209) 525-6773

**AMENDMENT NO. 5  
TO  
INDEPENDENT CONTRACTOR SERVICES AGREEMENT  
POSITIVE TECHNOLOGY.COM. INC.**

This Amendment No. 5 to Independent Contractor Services Agreement ("Amendment No. 5") by and between the County of Stanislaus ("County") and Positive Technology.Com Inc., ("Contractor") is made and entered into on MARCH 27, 2015.

Whereas, the County and Contractor entered into an Independent Contractor Services Agreement dated June 10, 2008, (the Agreement"); and

Whereas, Paragraph 17 of the Agreement provides for the Agreement to be amended, modified, changed, added or subtracted from by mutual consent of both parties; and

Whereas, Amendment 1 dated September 8, 2008, modified the hardware, decreasing the total not to exceed project amount to \$213,680.80, modified the project timeline, and added Exhibit F – Annual Support Service Level Agreement; and

Whereas, Amendment 2 dated June 18, 2009, extended the term through December 31, 2009, because Exhibit A, Section B, Items 1a through 1e and items 1g through 1i were not yet completed; and

Whereas, Amendment 3 dated December 18, 2009, extended the term through December 31, 2010, because Exhibit A, Section B, Items 1a through 1e, and items 1g through 1i were not yet completed and the County needed to increase the Agreement by \$8,500 for the web customizations of reservations to work with Metavante; and

Whereas, Amendment 4 dated December 9, 2010, extended the term through the completion of the project; and

Whereas, the Agreement provided that the Contractor would provide both a Park Campground Reservation Web-Based System and Point of Sale Retail Management Reporting System (POS); and

Whereas, the Parties agree that the Park Campground Reservation Web-Based System is incompatible with the POS system; and

Whereas, the County has paid the Contractor \$102,897 of the not to exceed contract amount of \$213,680.80 and all Parties agree that all funds paid to date on the Agreement will be applied toward and attributed to the POS system; and

Whereas the Parties agree to modify the Agreement to eliminate the Park Campground Reservation Web-Based System; and

Whereas, the Parties agree that Contractor is relieved from the obligation to provide a Park Campground Reservation Web-Based System; and

Whereas the Parties agree that the County is relieved from any obligations to pay for any Park Campground Reservation Web-Based System; and

Whereas the Parties agree that the Settlement balance County shall pay to the Contractor is \$23,749.02; and

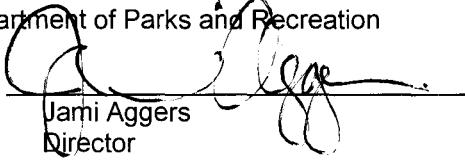
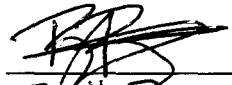
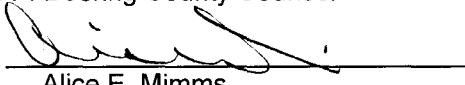
Whereas, this amendment is for the mutual benefit of County and Contractor;

Now, therefore, the County and Contractor agree as follows:

Upon execution of this Amendment No. 5, the County expects the Contractor to submit one final invoice in the amount of \$23,749.02 and the County will pay the amount of \$23,749.02, which shall be applied to any outstanding invoice relating to the Point of Sale Retail Management Reporting System and no additional amounts will be due and owing from the County..

Except as stated herein, this Amendment 5 finalizes the Agreement between the Parties.

In witness whereof, the parties have executed this Amendment on the date written above.

<p><b>COUNTY OF STANISLAUS</b> Department of Parks and Recreation</p> <p>By:  Jami Aggers Director</p> <p>"County"</p>	<p><b>POSITIVE TECHNOLOGY.COM, INC.</b></p> <p>By:  Name: Brett Bennett Title: CEO</p> <p>"Contractor"</p>
<p>APPROVED AS TO FORM: John P. Doering County Counsel</p> <p>By:  Alice E. Mimms Deputy County Counsel</p>	