

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

DEPT: General Services Agency, Purchasing Division BOARD AGENDA # *B-3

Urgent Routine

AGENDA DATE September 23, 2008

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Authorization for the General Services Agency Purchasing Division to Negotiate and Sign a Master Agreement for Security Services for Stanislaus County

STAFF RECOMMENDATIONS:

1. Approve the award of Master Agreement with Guardsmark, GP for security services.
2. Authorize the Purchasing Agent to negotiate and sign the Master Agreement, projects, and amendments with Guardsmark, GP.

FISCAL IMPACT:

Appropriations and estimated revenues to support the initial projects added under the Master Agreement has been included in the respective departments' Fiscal Year 2008-2009 Proposed Budget submission. The ongoing appropriations and revenues for any subsequent projects will be included in respective department's budget requests to the Board for the succeeding fiscal year. There is no additional cost to the County General Fund associated with the Master Agreement or any projects thereunder.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2008-670

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

Ayes: Supervisors: O'Brien, Grover, Monteith, and Vice-Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: Mayfield

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

FISCAL IMPACT (CONTINUED):

The total first year contract amount of the security services to be provided under the proposed Master Agreement is \$1,445,000. Appropriations and estimated revenues to support this agreement have been included in the respective department's approved budget for Fiscal Year 2008-2009. There is no additional impact to the General Fund as a result of this agreement.

Listed below are the recommended project amounts by department:

| <u>Requesting Department(s)</u> | <u>Proposed Annual Contract Amount</u> |
|--|--|
| Community Services Agency (CSA), Alliance WorkNet (AWN), and Department of Child Support Services (DCSS) | \$ 920,000 |
| Health Services Agency (HSA) | \$ 295,000 |
| Behavioral Health & Recovery Services (BHRS) | <u>\$ 230,000</u> |
| TOTAL: | \$1,445,000 |

It is anticipated that the total expenditure for these five departments will be \$2,258,750 over the initial term of the Master Agreement and \$5,418,750 should the parties opt to extend for two additional one-year terms.

DISCUSSION:

The County has had several security service vendors, varying from department to department. This created a system that was uneven and difficult to manage. Each contract was created with a separate scope of work, varied term and pricing as well as provider requirements.

During the 2007-2008 fiscal year, the Health Services Agency (HSA) and Behavioral Health and Recovery Services (BHRS) contacted the Stanislaus County General Services Agency Purchasing Division (Purchasing) to inquire about a competitive bid process to ascertain whether their current provider of security services offered the most competitive rates for the highest quality of service, especially since these two departments had contracted with their current provider for more than five (5) years.

In early May of 2008, four other departments, Alliance WorkNet (AWN), Community Services Agency (CSA) and Department of Child Support Services (DCSS), who had been jointly utilizing one security vendor made similar inquiries for the same reasons.

Rather than negotiate individual contracts across a variety of departments and agencies, it was determined that efficiencies could be gained by moving forward with a joint Request for Proposal (RFP) for security services. The RFP process focuses on a variety of award criteria as opposed to the bid process, which focuses solely on pricing; however price was still the most heavily weighted individual criteria at 45%. With the

Authorization for the General Services Agency Purchasing Division to Negotiate and Sign a Master Agreement for Security Services for Stanislaus County
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RFP process critical factors such as quality of service, health, safety, experience, background, financial status and other pertinent criteria are considered along with price.

Request for Proposal Process

On July 2, 2008, Purchasing issued Request for Proposal (RFP) No. 08-40-CB, Security Services. Included in the RFP was a general scope of work for County facilities. The scope of work was broadly worded so that contracting departments would have the ability to articulate a more detailed scope of services to meet the department's specific needs. The RFP was received by a total of nineteen vendors, with three responding.

An Evaluation Committee comprised of management level staff from BHRS, CSA and HSA was selected to perform the evaluations of each responsive proposal. Each committee member was provided with written Rules of Conduct governing the evaluation process and the evaluation criteria. Each member then rated the vendors individually.

The proposals were evaluated on the following categories and maximum weight for each category is listed below:

| <u>Evaluation Categories</u> | <u>Maximum Weight Possible</u> |
|------------------------------|--------------------------------|
| Vendor's Response | 5 |
| Qualifications | 25 |
| Understanding of the Project | 25 |
| Cost | <u>45</u> |
| Total | 100 |

Price was evaluated based upon a weighted average with the lowest price assigned 100% of the 45 points possible.

The table below represents the average of points awarded to the three proposers:

| Total Possible Points | Guardsmark | Securitas | Crime Tek |
|------------------------------|-------------------|------------------|------------------|
| 100.00 | 88.88 | 85.5 | 70.14 |

If approved, this Master Agreement would be available to all County departments and, if agreeable to all parties, to other government or publicly funded agencies.

It is anticipated that the contract will be effective October 1, 2008. The expiration date of the contract is estimated to be June 30, 2010. The contract will be a two-year contract with two one-year renewals.

POLICY ISSUES:

Approval of award of this agreement supports the Board's priority of Efficient delivery of public services.

STAFFING IMPACT:

There is no staffing impact associated with this request.

MASTER AGREEMENT FOR PROFESSIONAL SERVICES

This Master Agreement For Professional Services is made and entered into by and between the County of Stanislaus ("County") and Guardsmark, G.P, ("Consultant"), as of October 1, 2008 (the "Agreement").

Introduction

WHEREAS, the County has a need for professional services involving security services for various county departments; and

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

WHEREAS, the County and the Consultant wish to execute one agreement that shall govern all professional services provided by the Consultant during the term of this Agreement;

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 Consultant shall furnish to the County upon receipt of the County's written authorization to proceed, those services and work set forth in a separately approved scope of work for each project or task being provided by the Consultant, which scope of work, by this reference, is made a part hereof. Each project added to and to be performed under this Agreement shall be separately approved by the parties. Each project where the cost of services does not exceed \$100,000 shall be approved by purchase order issued by the County Purchasing Agent or designee; projects greater than \$100,000 shall be approved by resolution of the Board of Supervisors for the County.

1.2 All documents, drawings and written work product prepared or produced by the Consultant under this Agreement, including without limitation electronic data files, are the property of the Consultant; 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 Consultant may copyright the same, except that, as to any work which is copyrighted by the Consultant, 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. The County shall defend, indemnify and hold harmless the Consultant and its officers, employees, agents, representatives, subcontractors and consultants from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, arising out of or resulting from the County's reuse of the documents and drawings prepared by the Consultant under this Agreement.

1.3 Services and work provided by the Consultant under this Agreement will be performed in a timely manner in accordance with a schedule of work set forth in the scope of work for each separately approved project. If there is no schedule, the hours and times for completion of said services and work are to be set by the Consultant; provided, however, that such schedule is subject to review by and concurrence of the County.

1.4 The Consultant shall provide services and work under this Agreement consistent with the requirements and standards established by applicable federal, state and County laws, ordinances, regulations and resolutions. The Consultant represents and warrants that it will perform its work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and that are in effect at the time of performance of this Agreement. Except for that representation and any representations made or contained in any proposal submitted by the Consultant and any reports or opinions prepared or issued as part of the work performed by the Consultant under this Agreement, Consultant makes no other warranties, either express or implied, as part of this Agreement.

1.5 If the Consultant deems it appropriate to employ a consultant, expert or investigator in connection with the performance of the services under this Agreement, the Consultant will so advise the County and seek the County's prior approval of such employment. Any consultant, expert or investigator employed by the Consultant will be the agent of the Consultant not the County.

2. Consideration

2.1 Unless otherwise provided in an approved scope of work for a project, the Consultant shall be compensated on a time and materials basis not to exceed a specified amount as provided in each scope of work for a project that is approved by the parties.

2.2 Except as expressly provided in this Agreement or in an approved scope of work for a project, Consultant 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, including, but not limited to, meals, lodging, transportation, drawings, renderings or mockups. Specifically, Consultant 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 Unless otherwise provided in a scope of work for a project approved by the parties, the Consultant shall provide the County with a monthly or a quarterly statement, as services warrant, of fees earned and costs incurred for services provided during the billing period, which the County shall pay in full within 30 days of the date each invoice is approved by the County. A separate statement shall be provided for each scope of work approved by the parties. The statement will generally describe the services performed, the applicable rate or rates, the basis for the calculation of fees, and a reasonable itemization of costs. All invoices for services provided shall be forwarded in the same manner and to the same person and address that is provided for service of notices herein.

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

3. Term

3.1 The term of this Agreement shall be from the date of this Agreement until terminated as provided below. The term for each separately approved scope of work for a project shall begin on the date of approval until completion of the agreed upon services, or as otherwise specified in the approved scope of work.

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 Payment for performance by the Consultant shall be dependent upon the availability of appropriations by the County Board of Supervisors for the purposes of this contract. No legal liability on the part of the County for any payment may arise under this agreement until funds are made available and until the Consultant has received funding availability, which will be confirmed in writing. If funding for any fiscal year is reduced or deleted, or if the County loses funding for any reason, the County, in its sole discretion, shall have the option to either: (a) cause this Agreement to be canceled or terminated pursuant to applicable provisions of the Agreement; or (b) offer to amend the Agreement to reflect the reduced funding for this Agreement.

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

3.5 This Agreement shall terminate automatically on the occurrence of (a) bankruptcy or insolvency of either party, or (b) sale of Consultant's business.

4. Required Licenses, Certificates and Permits

Any licenses, certificates or permits required by the federal, state, county or municipal governments for Consultant to provide the services and work described in any Scope of Service approved by the parties and made part of this Agreement any Scope of Service approved by the parties and made part of this Agreement must be procured by Consultant and be valid at the time Consultant enters into this Agreement. Further, during the term of this Agreement, Consultant 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 Consultant at no expense to the County.

5. Office Space, Supplies, Equipment, Etc.

Unless otherwise provided in this Agreement or in separately approved scope of work for a project, Consultant shall provide such office space, supplies, equipment, vehicles, reference materials and telephone service as is necessary for Consultant to provide the services under this Agreement. The Consultant--not the County--has the sole responsibility for payment of the costs and expenses incurred by Consultant in providing and maintaining such items.

6. Insurance

6.1 Consultant 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 Consultant under this Agreement or the general aggregate limit shall be twice the required occurrence limit.

6.1.2 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 Consultant's work under this Agreement.

6.1.3 Automobile Liability Insurance. If the Consultant or the Consultant'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.

6.1.4 Workers' Compensation Insurance. Workers' Compensation insurance as required by the California Labor Code. In signing this contract, the Consultant certifies under section 1861 of the Labor Code that the Consultant 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 Consultant will comply with such provisions before commencing the performance of the work of 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 Consultant 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 Consultant 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 Consultant's defense and indemnification obligations as set forth in this Agreement.

6.3 The Consultant shall obtain a specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, 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 Consultant, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Consultant; (c) premises owned, occupied or used by the Consultant; and (d) automobiles owned, leased, hired or borrowed by the Consultant. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County 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 Consultant.

6.4 The Consultant'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 Consultant's insurance and shall not contribute with Consultant'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 and employees.

6.6 The Consultant'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 Consultant 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 of no less than A:VII; 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.

6.9 Consultant 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 Consultant begins performance of its obligations under this Agreement, Consultant 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 Consultant. 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 Consultant and Consultant's officers, employees, agents, representatives or subcontractors.

7. Defense and Indemnification

7.1 To the fullest extent permitted by law, Consultant 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 Consultant or Consultant'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. Notwithstanding the foregoing, Consultant's obligation to indemnify the County and its agents, officers and employees for any judgment, decree or arbitration award shall extend only to the percentage of negligence or responsibility of the Consultant in contributing to such claim, damage, loss and expense.

7.2 Consultant'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 Consultant to procure and maintain a policy of insurance.

7.3 To the fullest extent permitted by law, the County shall indemnify, hold harmless and defend the Consultant and its officers, employees, agents, representatives or subcontractors from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, including litigation costs and attorney's fees, arising out of or resulting from the negligence or wrongful acts of County and its officers or employees.

7.4 Subject to the limitations in 42 United States Code section 9607 (e), and unless otherwise provided in a scope of work for a project approved by the parties:

(a) Consultant shall not be responsible for liability caused by the presence or release of hazardous substances or contaminants at the site, unless the release results from the negligence of Consultant or its subcontractors;

(b) No provision of this Agreement shall be interpreted to permit or obligate Consultant to assume the status of "generator," "owner," "operator," "arranger," or "transporter" under state or federal law; and

(c) At no time, shall title to hazardous substances, solid wastes, petroleum contaminated soils or other regulated substances pass to Consultant.

8. Status of Consultant

8.1 All acts of Consultant and its officers, employees, agents, representatives, subcontractors and all others acting on behalf of Consultant relating to the performance of this Agreement, shall be performed as independent contractors and not as agents, officers or employees of County. Consultant, by virtue of this Agreement, has no authority to bind or incur any obligation on behalf of County. Except as expressly provided in any Scope of Service approved by the Parties, Consultant 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 Consultant. It is understood by both Consultant 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 Consultant 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 Consultant shall determine the method, details and means of performing the work and services to be provided by Consultant under this Agreement. Consultant 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 Consultant in fulfillment of this Agreement. Consultant has control over the manner and means of performing the services under this Agreement. If necessary, Consultant has the responsibility for employing other persons or firms to assist Consultant in fulfilling the terms and obligations under this Agreement.

8.4 Consultant is permitted to provide services to others during the same period service is provided to County under this Agreement; provided, however, such services do not conflict directly or indirectly with the performance of the Consultant's obligations under this Agreement.

8.5 If in the performance of this Agreement any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision and

control of Consultant. 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 Consultant.

8.6 It is understood and agreed that as an independent contractor and not an employee of County, the Consultant and the Consultant's officers, employees, agents, representatives or subcontractors do not have any entitlement as a County employee, and, except as expressly provided for in any scope of work made a part hereof, 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.

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

8.8 As an independent contractor, Consultant 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 Consultant 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 separately approved scope of work for a project. 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 Consultant. Further, County has the right at all reasonable times to audit, inspect or otherwise evaluate the work performed or being performed under this Agreement.

10. Confidentiality

The Consultant 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, Consultant 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 disability, medical condition (including genetic characteristics), marital status, age, political affiliation, sex, or sexual orientation. Consultant 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 Consultant. County has relied upon the skills, knowledge, experience and training of Consultant and the Consultant's firm, associates and employees as an inducement to enter into this Agreement. Consultant shall not assign or subcontract this Agreement without the express written consent of County; provided, however, the work under this Agreement may be completed by a wholly owned subsidiary of the Consultant. Further, Consultant shall not assign any monies due or to become due under this Agreement without the prior written consent of County.

13. 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 Consultant 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
GSA Purchasing Division
Attention: Purchasing Agent
PO Box 3229
Modesto, CA 95353-3229

To Consultant: Guardsmark, GP
Attn: General Counsel
22 South Second Street
Memphis, TN 38103
901.522.6000

14. 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.

15. Conflicts

Consultant 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. This Agreement is amended as set forth in the attached Exhibit A, incorporated herein by this reference.

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 as of the day and year first hereinabove written.

COUNTY OF STANISLAUS

GUARDSMARK, G.P.

By: _____
Julie Mefferd, GSA Director/Purchasing
Agent

By: _____

Name: _____

"County"

Title: _____

"Consultant"

APPROVED AS TO CONTENT:
Community Services Agency

By: _____
John Turner, Manager

APPROVED AS TO FORM:
John P. Doering, County Counsel

By: _____
Thomas E. Boze, Deputy County Counsel

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EXHIBIT A

A. SCOPE OF WORK

Paragraph 1.2 of the body of this Agreement is amended to read as follows:

a) All documents, drawings and written work product prepared or produced by the Consultant under this Agreement, including without limitation electronic data files, are the property of the Consultant; 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 Consultant may copyright the same, except that, as to any work which is copyrighted by the Consultant, the County is hereby granted 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. The County shall defend, indemnify and hold harmless the Consultant and its officers, employees, agents, representatives, subcontractors and consultants from and against all claims, damages, losses, judgments, liabilities, expenses and other costs, arising out of or resulting from the County's reuse of the documents and drawings prepared by the Consultant under this Agreement.

B. TERM

Paragraph 3.1 of the body of this Agreement is amended to read as follows:

3.1 The term of this Agreement shall be from the date of this Agreement through June 30, 2010 (the "Initial Term") unless otherwise terminated as provided below. This Agreement will not automatically renew but may be renewed for two (2) additional one-year terms (each a "Renewal Term") by mutual, written agreement of the parties. Such renewal shall be in the form of an amendment to the Agreement. In no such case shall the renewal extend beyond two (2) years from the expiration of the Initial Term of Agreement.

Paragraphs 3.3 and 3.4 of the body of this Agreement are amended to read as follows:

3.3 Payment for performance by the Consultant shall be dependent upon the availability of appropriations by the County Board of Supervisors for the purposes of this contract. No legal liability on the part of the County for any payment may arise under this agreement until funds are made available and until the Consultant has received funding availability, which will be confirmed in writing. Consultant's obligations hereunder are limited to the extent funds are available for the performance of services. County shall notify Consultant not less than thirty (30) days before County anticipates existing authorized funding will be exhausted. If funding for any fiscal year is reduced or deleted, or if the County loses funding for any reason, the County, in its sole discretion, shall have the option to either: (a) cause this Agreement to be canceled or terminated

pursuant to applicable provisions of the Agreement; or (b) offer to amend the Agreement to reflect the reduced funding for this Agreement.

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

C. INSURANCE

Paragraph 6.3 of the body of this Agreement is amended to read as follows:

6.3 The Consultant shall obtain a blanket or specific endorsement to all required insurance policies, except Workers' Compensation insurance and Professional Liability insurance, naming the County and its officers, officials and employees as additional insureds to the extent of the negligence of Consultant and with no coverage for the act(s) or omission(s), negligent or otherwise, of any 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 Consultant, including the insured's general supervision of its subcontractors; (b) services, products and completed operations of the Consultant; (c) premises owned, occupied or used by the Consultant; and (d) automobiles owned, leased, hired or borrowed by the Consultant. For Workers' Compensation insurance, the insurance carrier shall agree to waive all rights of subrogation against the County 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 Consultant.

D. FORCE MAJEURE

The following is added as Section 22 to the Body of this Agreement:

22. Force Majeure

Neither party shall be liable for and shall be excused from performance hereunder if such failure to perform arises out of causes beyond the control and without the fault or negligence of the non-performing party. Such causes may include, but are not limited to, labor dispute, strike, war, nuclear disaster, riot, insurrection, terrorist act, fire, flood, accident, storm, act of God. This provision shall become effective only if the party failing to perform notifies the other party of the extent and nature of the problem as soon as reasonably possible after it becomes aware, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the non-performing party or any other cause beyond Consultant's control.

E. PUBLIC AGENCY PARTICIPATION

The following is added as Section 23 to the Body of this Agreement:

23. Public Agency Participation

If mutually agreeable to all parties, this Agreement may be extended to other government or publicly funded agencies. It shall be understood that all terms and conditions as specified herein shall apply.

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GUARDSMARK, LLC
PROJECT NO. 2008-001

A. Terms and Conditions

Except as hereinafter provided, the services provided by the Consultant under this Project shall be subject to the terms and conditions set forth in the Master Agreement for Professional Services (the "Master Agreement") made and entered into by and between the County of Stanislaus ("County") and Guardsmark, LLC ("Consultant"), on October 1, 2008.

B. Scope of Work

The Consultant shall provide uniformed security guards at the County's Community Services Agency in accordance with the Standard Shifts agreed to by the parties, which have become a part of the Mission Partnership Statement ("MSP") described below, is incorporated herein by reference and made a part hereof. Initially, such Standard Shifts shall include approximately 117.50 hours per day for a total of 514.50 hours per week. Each shift shall be staffed with a guard classified as Security Officer I, except for Post 4 at Hackett Road, Modesto which shall be staffed by a Site Supervisor I.

The parties agree that the Standard Shift represents the initial schedule requested by the County's Community Services Agency and agreed to by the Consultant. The parties further agree that this schedule may, from time to time, be revised as the needs of the County's Community Services Agency may change or in accordance with Consultant's recommendations. The parties agree that any such revision shall be discussed by and agreed to in writing by the parties' respective Project Managers as identified in Paragraph D below., and shall become a part of the MSP.

In addition to the Standard Shifts, the County may, from time to time, request additional evening and weekend coverage for special events. County, by and through its Project Manager (designated below), shall make such requests to Consultant's Project Manager (designated below) at least one week (seven days) in advance.

All security guards shall be required to:

- Wear security standard class "A" uniform with badge (no tie required).
- Always be professional, but courteous.
- Have good communication and conflict resolution skills.
- Communicate effectively in English, both verbally and in writing.
- Cooperate with law enforcement when circumstances require. Each Guard must understand that this is an "observe and report" position.
- Act reasonably and expeditiously in determining what constitutes an emergency situation.
- Be diligent and dependable.

- Pass county-administered criminal background checks.

Duties include, but are not limited to:

- Patrolling parking lots and interior public spaces of the facilities.
- Assisting visitors, and serve as concerned public relations representatives.
- Enforcing a "no weapons allowed" policy in the buildings.
- Ensuring that only authorized personnel are permitted access to restricted areas.
- Responding to staff requests for assistance in dealing with potentially irate individuals.
- Assisting with evacuating the buildings during evacuation alarms.
- Staffing a motor-pool desk for the checking in and out of county vehicles by staff.
- Checking fluids and report problems on approximately eighty (80) county vehicles per month.
- Operating a magnetometer and X-ray machine.
- Monitoring a bank of 12 security cameras.
- Raising and lowering flags at designated hours.
- Locking/unlocking doors and gates at designated times.
- Operating an employee shuttle service from the parking lot at Hackett.
- Checking local fire alarm stations, and monthly checking of 65 fire extinguishers.
- Checking other safety equipment and report safety hazards found on rounds.
- Providing daily reports on activities, as well as specific reports on incidents.

The County will furnish cell phones for on-site communication between Guards and staff, and for the lead guard to contact law enforcement.

Consultant shall provide any/all additional services described in Consultant's responding proposal to County's RFP #08-40-CB including but not limited to:

1. A Mission Partnership Statement ("MSP"), also known as post orders, for each and every assignment serviced by Consultant which shall be incorporated herein by reference and made a part hereof. Such MSP shall provide, at a minimum, instructions for each duty at the designated site; information on all emergency procedures; any general instructions necessary for the County; and all specific post instructions necessary at the various assignments. Prior to implementation, these instructions and requirements will be verified and agreed to in writing by the County's Project Manager. The parties' respective project managers shall collaborate to continuously revise the MSP as the County's security needs at the above-referenced site evolves. All such revisions shall be made in writing and approved by County's Project Manager.
2. Consultant shall, from time to time, conduct a Risk Assessment Review of the above-referenced sites in a formal report to be presented to County's Project Manager.
3. Upon the execution of the Master Agreement and this Project, Consultant shall coordinate with County's Project Manager to develop a transition plan in order to assure a smooth transition of the existing security arrangement to Consultant.

C. Compensation

The Consultant shall be compensated for the services provided under this Agreement on a lump sum basis. The hourly rates are as follows:

| <u>Classification</u> | <u>Hourly rate (straight time)</u> |
|-----------------------|------------------------------------|
| Security Officer I | \$15.91 |
| Security Officer II | \$16.67 |
| Site Supervisor I | \$19.73 |
| Site Supervisor II | \$20.49 |

Consultant shall submit monthly invoices in arrears for security services under this exhibit as follows:

For all posts except for DCSS Post:

Stanislaus County
Community Services Agency
Attn: Carol Stinnett, C4F
PO Box 42
Modesto CA 95353

For DCSS Post:

Stanislaus County
Department of Child Support Services
Attn: Vicki Griffith-Gardner
PO Box 4189
Modesto, CA 95352

Each invoice shall clearly show by individual name and job classification hours worked, the total charge for the services, and the appropriate County department being charged.

Overtime and holiday pay shall only be paid if approved by County in advance via email exchange between the parties' respective Project Managers or designee. With respect to overtime, Consultant shall manage staffing and schedules so as to eliminate the need for overtime work/charges to the extent possible. Pre-approved overtime shall be paid by County at one and one-half (1-½) times the base rate (the "Overtime Rate") for hours worked in excess of eight (8) hours per day. "Base rate" shall be defined as the hourly rate of pay, exclusive of benefits and overhead. With respect to holiday pay, guards may be paid the Overtime Rate for work approved in advance by County and performed on any of the following six holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

The parties hereto acknowledge the maximum amount to be paid by the County for services provided shall not exceed \$920,000 over the Initial Term of this Agreement as defined in the Master Agreement including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Consultant to perform or to assist in the performance of its work under this Agreement.

D. REPRESENTATIVES

The County's Project Manager with respect to this Project No. 2008-001 shall be:

John Turner, Manager
Community Services Agency
251 E. Hackett Road
Modesto, CA 95358
(209) 558-2931

The Consultant's Project Manager shall be:

Ronald Resurreccion, Relationship Manager
Guardsmark, LLC
101 College Avenue, Suite 3
Modesto, CA 95330
(209) 575-4972

The Project Managers shall be responsible for maintaining and periodically updating the Post Orders as well as the Standard Shifts as described in Paragraph B above.

[SIGNATURES SET FORTH ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Project No. 2008-001 as of October ____, 2008.

COUNTY OF STANISLAUS

GUARDSMARK, LLC

By: _____
Julie Mefferd, GSA Director/Purchasing Agent

"County"

By: _____

Name: _____
Title: _____

"Consultant"

APPROVED AS TO CONTENT:
Community Services Agency

By: _____
John Turner, Manager

APPROVED AS TO FORM:
John P. Doering, County Counsel

By: _____
Thomas Boze, Deputy County Counsel

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