

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

DEPT: Strategic Business Technology *me*

BOARD AGENDA # \*B-4

Urgent

Routine

AGENDA DATE February 25, 2014

CEO Concurs with Recommendation YES  NO

4/5 Vote Required YES  NO

(Information Attached)

SUBJECT:

Approval of a Contract with Oracle America, Inc. for Public Sector Technical Support Services Provided to Stanislaus County

STAFF RECOMMENDATIONS:

1. Approve the contract with Oracle America, Inc. for public sector technical support services provided to Stanislaus County.
2. Authorize the County Purchasing Agent, or his/her designee, to execute the contract and any related renewal contracts for technical support services with this contract.

FISCAL IMPACT:

The County's Adopted Final Budget for Fiscal Year 2013-2014 includes appropriations in the Strategic Business Technology and ICJIS budgets in the amount of \$517,506 for existing technical support services. The annual technical support services costs for Budget Year 2014-2015 are estimated to be \$532,747 and will be budgeted as part of the Strategic Business Technology and ICJIS proposed budgets.

BOARD ACTION AS FOLLOWS:

No. 2014-71

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

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

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.

Approval of a Contract with Oracle America, Inc. for Public Sector Technical Support Services Provided to Stanislaus County  
Page 2

**DISCUSSION:**

On August 12, 1997, the Stanislaus County Board of Supervisors (Board) approved the Dove Project to implement the Oracle Financial Management System (FMS) and contract with Solbourne (consultant) and Oracle Corporation for software licenses and technical support services in the amount of \$3,177,179. On September 23, 1997, the Board approved a contract with PeopleSoft Inc. for software license and technical support services in the amount of \$644,030 for the County's Human Resources Management System (HRMS). The HRMS includes the County's time, labor, benefits, human resource, and payroll applications.

Under the original purchases, technical support services were purchased directly from each Oracle Corporation and PeopleSoft Inc. Several years ago, Oracle Corporation purchased PeopleSoft Inc. and then became Oracle America Inc. All software licensing and technical support services agreements have been renewed annually with Oracle America Inc. under the original license and technical support services agreements. Since 1997, Stanislaus County has contracted directly with Oracle America Inc. for software license and technical support services rather than purchasing technical support services from a reseller. The County has the following application and database technical support service contracts with Oracle America Inc. for a cumulative total of \$517,506 for Fiscal Year 2013-2014:

Responsible Department	Application or Database	Description of Separate Renewal Contracts	Support Cost FY 2013-2014
SBT	FMS	Oracle Financial Management System (FMS)	\$151,680
SBT	FMS/HRMS	Oracle Enterprise Database licenses and Partitioning	\$13,802
SBT	FMS/HRMS	Oracle Enterprise Database Diagnostics licenses	\$67,170
SBT	FMS/HRMS	Oracle Unbreakable LINUX licenses for servers	\$5,310
SBT	FMS/HRMS	Oracle Micro Focus International LINUX licenses	\$6,580
SBT	HRMS	PeopleSoft Enterprise Human Resources Management (HRMS) application	\$237,450
SBT	HRMS	PeopleSoft Enterprise eBenefits application	\$10,875
SBT	HRMS	PeopleSoft Enterprise eDevelopment	\$6,545
ICJIS	ICJIS Data	Oracle Standard database licenses	\$18,094
<b>Technical Service/Support Costs for FY 2013-2014</b>			<b>\$517,506</b>

In September 2013 Oracle America Inc. deemed that the 1997 PeopleSoft and Oracle license and technical support service agreements are no longer valid. Entering into the Oracle Public Sector Technical Support Services Agreement (see Appendix A) will allow the County to purchase technical support services directly from Oracle America Inc. for the next three years. This agreement does not contain any pricing. However, it serves as the umbrella agreement that defines the terms for the technical support services to be delivered for the separate application and database renewal contracts listed in the chart above.

Approval of a Contract with Oracle America, Inc. for Public Sector Technical Support  
Services Provided to Stanislaus County  
Page 3

Absent this agreement, the County will not be able to purchase support directly from Oracle America Inc. It is important to note that signing this agreement does not preclude the County from purchasing technical support services from an Oracle reseller should the pricing be better from a reseller versus purchasing directly from Oracle America Inc.

Eight Northern California counties have signed the Oracle Public Sector Technical Support Services Agreement, including Contra Costa, Marin, Monterey, San Mateo, Sacramento, San Joaquin, Solano, and Yolo.

It is recommended that an agreement be entered into with Oracle America Inc. for technical support services.

**POLICY ISSUES:**

Approval of this agreement supports the Board's priority of Efficient Delivery of Public Services by providing technical support services to support the County's mission critical applications and databases.

**STAFFING IMPACT:**

Existing staff from the General Services Agency and Strategic Business Technology will process the Oracle Public Sector Technical Support Services Agreement and related renewal contracts.

**CONTACT INFORMATION:**

Marcia Cunningham, Director of Strategic Business Technology – (209) 525-4357

# ORACLE

## ORACLE PUBLIC SECTOR TECHNICAL SUPPORT SERVICES AGREEMENT

### A. Agreement Definitions

"You" and "your" refers to the individual or entity that has executed this agreement ("agreement") and ordered services from Oracle America, Inc. ("Oracle"). The term "programs" refers to the software products owned or distributed by Oracle for which you have a license, program documentation, and any program updates acquired through technical support. The term "hardware" refers to the hardware equipment (including components, options and spare parts), operating system (as defined in your configuration) and integrated software. Hardware includes hardware documentation. Operating system and integrated software include any software updates acquired through technical support. The hardware equipment or parts of it may be new or like new. The term "services" refers to technical support services which you have ordered in accordance with this agreement.

### B. Applicability of Agreement

This agreement is valid for the technical support renewal order(s) which this agreement accompanies. You may place orders under this agreement for 3 years from the effective date of this agreement.

### C. Rights Granted

Upon payment for services, you have the non-exclusive, non-assignable, royalty free, perpetual, limited right to use for your internal business operations anything developed by Oracle and delivered to you under this agreement. You may allow your agents and contractors to use the deliverables for such purpose and you are responsible for their compliance with this agreement. The services provided under this agreement are related to your license to use programs and/or your use of hardware, which you acquired under a separate order. The agreement referenced in that order ("order agreement") shall govern your use of such programs and/or hardware.

### D. Ownership and Restrictions

Oracle or its licensors retain all ownership and intellectual property rights to the programs and hardware (including the operating system and integrated software). Oracle retains all ownership and intellectual property rights to anything developed and delivered under this agreement resulting from services. All restrictions on your use of the programs and/or hardware as set forth in the agreement under which you initially acquired the programs and/or hardware, as applicable, shall apply to updates to the program(s), operating system and integrated software as part of the services acquired under this agreement.

### E. Warranties, Disclaimers and Exclusive Remedies

Oracle warrants that services will be provided in a professional manner consistent with industry standards. You must notify Oracle of any services warranty deficiencies within 90 days from performance of the deficient services.

**FOR ANY BREACH OF THE ABOVE WARRANTY, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE THE REPERFORMANCE OF THE DEFICIENT SERVICES; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE RELEVANT SERVICES AND RECOVER THE FEES YOU PAID TO ORACLE FOR THE DEFICIENT SERVICES.**

**TO THE EXTENT NOT PROHIBITED BY LAW, THIS WARRANTY IS EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

### F. Indemnification

If a third party makes a claim against either you or Oracle ("Recipient" which may refer to you or Oracle depending upon which party received the Material), that any information, design, specification, instruction, software, data, operating system, integrated software, hardware or material ("Material") furnished by either you or Oracle ("Provider" which may refer to you or Oracle depending on which party provided the Material), and used by the Recipient infringes its intellectual property rights, the Provider, at its sole cost and expense and to the extent not prohibited by law, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
- gives the Provider sole control of the defense and any settlement negotiations; and
- gives the Provider the information, authority, and assistance the Provider needs to defend against or settle the claim.

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If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any fees the Recipient may have paid to the other party for it. Notwithstanding the previous sentence and with respect to hardware only, if the Provider believes or it is determined that the hardware (or portion thereof) may have violated a third party's intellectual property rights, the Provider may choose to either replace or modify the hardware (or portion thereof) to be non-infringing (while substantially preserving its utility or functionality) or obtain a right to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may remove the applicable hardware (or portion thereof) and refund the net book value. If you are the Provider and such return materially affects Oracle's ability to meet its obligations under the relevant order, then Oracle may, at its option and upon 30 days prior written notice, terminate the order. The Provider will not indemnify the Recipient if the Recipient alters the Material or uses it outside the scope of use identified in the Provider's user documentation or if the Recipient uses a version of the Materials which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, operating system, integrated software, hardware or material not furnished by the Provider. Oracle will not indemnify you to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by Oracle. Oracle will not indemnify you for infringement caused by your actions against any third party if the Oracle program(s) or the operating system or integrated software (as applicable) as delivered to you and used in accordance with the terms of this agreement would not otherwise infringe any third party intellectual property rights. Oracle will not indemnify you for any infringement claim that is based on: (1) a patent that you were made aware of prior to the effective date of this agreement (pursuant to a claim, demand, or notice); or (2) your actions prior to the effective date of this agreement. This section provides the parties' exclusive remedy for any infringement claims or damages.

#### G. Technical Support

For the programs for which you order annual technical support, such technical support (including first year and all subsequent renewal years) is provided under Oracle's technical support policies in effect at the time the services are provided. The technical support policies, incorporated in this agreement, are subject to change at Oracle's discretion; however, Oracle policy changes will not result in a material reduction in the level of services provided for supported programs during the period for which fees for technical support has been ordered. You should review the policies prior to executing an order for the applicable services. You may access the current version of the technical support policies at <http://oracle.com/contracts>. If you decide to purchase technical support for any license within a license set, you are required to purchase technical support at the same level for all licenses within that license set. You may desupport a subset of licenses in a license set only if you agree to terminate that subset of licenses. The technical support fees for the remaining licenses will be priced in accordance with the technical support policies in effect at the time of termination. Oracle's license set definition is available in the current technical support policies. If you decide not to purchase technical support, you may not update any unsupported program licenses with new versions of the program.

Oracle Hardware and Systems Support (including first year and all subsequent years) is provided under Oracle's Hardware and System Support Policies in effect at the time the services are provided. You agree to cooperate with Oracle and provide the access, resources, materials, personnel, information, and consents that Oracle may require in order to perform the services. The Oracle Hardware and System Support Policies, incorporated in this agreement, are subject to change at Oracle's discretion; however, Oracle will not materially reduce the level of services provided during the period for which fees for Oracle Hardware and Systems Support have been ordered. You should review the policies prior to executing an order for the applicable services. You may access the current version of the Oracle Hardware and System Support Policies at <http://oracle.com/contracts>.

Technical support is effective upon the effective date of the order unless otherwise stated in your order.

#### H. End of Agreement

1. Termination for Cause. If either of us breaches a material term of this agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate this agreement. If Oracle ends this agreement as specified in the preceding sentence or under Section F (Indemnification), you must pay within 30 days all amounts which have accrued prior to such end, as well as all sums remaining unpaid for services received under this agreement plus related taxes. If you are exempt from sales tax, Oracle will not invoice you for applicable sales tax provided a copy of a valid sales tax certificate of exemption is provided to Oracle simultaneously with the execution and return of your order. Except for nonpayment of fees, the non-breaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if you are in default under this agreement, you may not use those services ordered. Provisions that survive termination or expiration are those relating to limitation of liability, infringement indemnity, payment, and others which by their nature are intended to survive.

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2. **Termination for Convenience.** You may terminate performance of services under this agreement for your sole convenience. In the event you elect to terminate this agreement pursuant to this provision, you shall provide Oracle written notice at least ten (10) days prior to the termination date. The termination shall be effective as of the date specified in the notice. If you end this agreement as specified in this paragraph, you agree that (i) you must pay within 30 days all amounts which have accrued prior to the end of this agreement, as well as all sums remaining unpaid for services received under this agreement; and (ii) you may not use any services ordered as of the effective date of such termination.

**I. Fees and Taxes**

All fees payable to Oracle are due within 30 days from the invoice date. You agree to pay any sales, value-added or other similar taxes imposed by applicable law that Oracle must pay based on the services you ordered, except for taxes based on Oracle's income. Fees for services listed in an ordering document are exclusive of taxes. You agree that you have not relied on the future availability of any hardware, programs or updates in entering into the payment obligations in your ordering document; however, the preceding sentence does not relieve Oracle of its obligation to provide updates under your ordering document, if-and-when available, in accordance with Oracle's then current technical support policies.

**J. Nondisclosure**

By virtue of this agreement, the parties may have access to information that is confidential to one another ("confidential information"). We each agree to disclose only information that is required for the performance of obligations under this agreement. Confidential information shall be limited to the terms and pricing under this agreement and all information clearly identified as confidential at the time of disclosure.

A party's confidential information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

We each agree to hold each other's confidential information in confidence for a period of three years from the date of disclosure. Also, we each agree to disclose confidential information only to those employees or agents who are required to protect it against unauthorized disclosure. Nothing shall prevent either party from disclosing the terms or pricing under this agreement or orders submitted under this agreement in any legal proceeding arising from or in connection with this agreement or disclosing the confidential information to a federal or state governmental entity as required by law.

**K. Entire Agreement**

You agree that this agreement and the information which is incorporated into this agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable order, are the complete agreement for the services ordered by you, and that this agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such services. If any term of this agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of this agreement. It is expressly agreed that the terms of this agreement and any Oracle order shall supersede the terms in any purchase order or other non-Oracle document and no terms included in any such purchase order or other non-Oracle document shall apply to the services ordered. This agreement and applicable order(s) may not be modified and the rights and restrictions may not be altered or waived except in a writing signed by authorized representatives of you and of Oracle. Any notice required under this agreement shall be provided to the other party in writing.

**L. Limitation of Liability**

**NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE. ORACLE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID ORACLE UNDER THIS AGREEMENT, AND IF SUCH DAMAGES RESULT FROM DEFICIENT SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID ORACLE FOR THE DEFICIENT SERVICES GIVING RISE TO THE LIABILITY.**

**M. Export**

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to any services deliverables provided under this agreement, and you agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, program and/or materials resulting from services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

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Page 3 of 4

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N. Other

1. If you have a dispute with Oracle or if you wish to provide a notice under the Indemnification section of this agreement, or if you become subject to insolvency or other similar legal proceedings, you will promptly send written notice to: Oracle America, Inc., 500 Oracle Parkway, Redwood City, California, United States, 94065, Attention: General Counsel, Legal Department.
2. You may not assign this agreement or give or transfer any services or an interest in them to another individual or entity. If you grant a security interest in any services deliverables, the secured party has no right to use or transfer any services deliverables.
3. Except for actions for nonpayment or breach of Oracle's proprietary rights, no action, regardless of form, arising out of or relating to this agreement may be brought by either party more than two years after the cause of action has accrued.
4. The Uniform Computer Information Transactions Act does not apply to this agreement or orders placed under it. You understand that Oracle's business partners, including any third party firms retained by you to provide computer consulting services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for nor bound by any acts of any such business partner, unless the business partner is providing services as an Oracle subcontractor on an engagement ordered under this agreement.

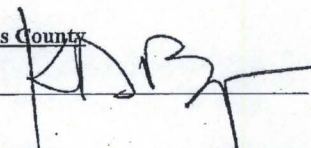
O. Force Majeure


Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 90 days, either of us may cancel unperformed services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or your obligation to pay for services provided.

The effective date of this agreement shall be March 12, 20 14.

Customer Name: Stanislaus County

Oracle America, Inc.

Authorized Signature: 

Authorized Signature: 

Name: Keith D. Boggs

Name: David T. Atkins

Title: Asst. Executive Officer/GSA Director/County Purchasing Agent

Title: Contracts Manager

Signature Date: 3.4.14

Signature Date: March 12, 2014

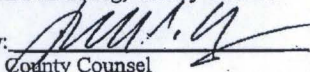
APPROVED AS TO CONTENT:  
Auditor-Controller

By:  2/10/14  
Lauren Klein, Auditor-Controller

APPROVED AS TO CONTENT:  
Strategic Business Technology

By:  2/10/14  
Marcia Cunningham, Director

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

By:   
County Counsel

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