

**MEMORANDUM OF UNDERSTAND
BETWEEN
COUNTY OF TULARE
AND
SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE
FOR
COUNTY ACCESS TO SUSTAIN**

This Memorandum of Understanding ("MOU") is hereby made and entered into by and between County of Tulare, hereinafter referred to as "County," and Superior Court of California, County of Tulare, hereinafter referred to as "Court."

RECITALS

WHEREAS, Court uses the SUSTAIN application as its case management system; and

WHEREAS, County and Court have determined that the tasks of each will be significantly facilitated by providing County access to certain aspects of that software; and

WHEREAS, County and Court wish to document the terms and conditions under which aspects of this software will be made available to County;

THEREFORE, the parties hereto agree as follows:

AGREEMENT

I. PURPOSE AND INTENT

The purpose of this Agreement is to set forth the terms and conditions governing County's access to Court's case management system, SUSTAIN.

II. SCOPE OF SERVICES

County will be permitted to purchase from Court access to the SUSTAIN application sufficient to allow County staff to complete case management activities. In exchange for this access, County will pay costs as billed and those costs will include the SUSTAIN licenses necessary for access. County Information Technology (IT) department will provide the telecommunication lines between each County department and Court, including any data drops necessary for SUSTAIN access by County.

III. STANDARDS OF SERVICE

The administration of County's access to SUSTAIN will be managed by this Memorandum of Understanding as follows:

A. Court:

1. Qualified services to be provided by Court would be directly limited to allowing and administering access to the SUSTAIN application:
 - a. County staff will be allowed inquiry to the SUSTAIN application based on agreed upon security profiles.
 - b. No circumstances exist under which County staff will be allowed to modify the SUSTAIN data in any form or at any time.

B. County:

1. County agrees to accept invoices all costs associated with the delivery of SUSTAIN access and administration of that access.
2. County agrees to pay said invoices, in full, within 45 days of the date on Court invoice.
3. County agrees to provide telecommunications between each County agency and Court and to provide all on-going costs associated with said telecommunications necessary for SUSTAIN access by County.
4. County shall submit to Court the number of licenses required by December 15th of the preceding year.

C. Mutual:

1. Court and County agree to establish mutually satisfactory parameters necessary to provide for secure access to appropriate data within the SUSTAIN application.

IV. TERM OF AGREEMENT

The term of this Agreement shall commence effective December 15, 2010, and shall continue in effect through and terminate on September 7, 2012 unless earlier terminated or extended by an amendment in accordance with the terms and conditions set forth in this Memorandum of Understanding. This Agreement supersedes any and all prior Agreements among the Parties with respect to the subject matter hereof, and contains the sole and entire Agreement among the Parties with respect to the subject matter hereof. Court or County may terminate this Memorandum of Understanding upon ninety (90) days advance written notice to other.

V. AMENDMENTS AND REVIEW

This Agreement may be modified or amended only upon written mutual consent of the Parties hereto. No Party shall assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other Party.

VI. COST OF SERVICES

The total cost and number of licenses required by County are provided in the attached Exhibit A.

VII. GENERAL PROVISIONS

A. Independent Contractor Status

In the performance of services under this Agreement, Court and their respective officers, agents and/or employees shall be deemed independent contractors and not officers, agents and/or employees of County; No employer-employee relationship exists between Court and County. All such personnel provided by Court under this Agreement are under the direct and exclusive supervision, direction and control of Court and Court assumes full responsibility for the actions of such personnel in the performance of services hereunder.

Court shall not act or attempt to act or represent itself directly or by implication as an agent of County, or in any manner assume or create or attempt to assume or create any obligation on behalf of or in the name of County. County shall not act or attempt to act, or represent itself directly or by implication as an agent of Court, or in any manner assume or create or attempt to assume or create any obligation on behalf of or in the name of the Court.

B. Non-Discrimination

Court agrees to comply with the Civil Rights Act of 1964 as amended, Executive Order 11246 and Regulation issued by the United States Department of Labor contained in 41 Code of Federal Regulations Part 60. In addition, Court agrees to comply with the Rehabilitation Act of 1973 and Regulation issued pursuant thereto contained in 45 CFR Part 84 entitled "NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE."

C. Indemnification

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, to the maximum extent permitted by law, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead Court and County agree that each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents harmless from any and all claims, expenses or costs, product infringement, copyright or trade secrets, damage to or destruction of tangible property, damages or liabilities imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other parties thereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Agreement.

D. Insurance

Court and County shall each maintain their own liability insurance coverage against any claim of civil liability arising out of the performance of this Agreement and provide appropriate evidence of such coverage to the other party, upon request.

E. Right to Audit

Court agrees to maintain adequate records and an audit trail to support the charges made to County. All such records shall be prepared in accordance with generally accepted accounting principles (GAAP), shall be clearly identified and shall be kept readily accessible. Upon request, Court shall make such records available within Tulare County to the Auditor of County and to their agents and representatives for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under the Agreement.

F. Confidentiality

County hereby agrees that: (a) the SUSTAIN software and all other products received by County from Court under this Agreement, whether received orally, in writing or in any other medium, is and shall be treated as the confidential property of SUSTAIN; and (b) County shall take all necessary action to protect and ensure the confidentiality of the SUSTAIN software and, without limiting the foregoing, will exercise at least the same degree of care to safeguard the confidentiality of the SUSTAIN software as County would exercise to safeguard County's confidential property. County shall specifically advise its employees, agents, subcontractors and representatives having access to SUSTAIN's confidential property of its confidential nature. County acquires no right in

intellectual property rights belonging to SUSTAIN by virtue of entering into this Agreement.

G. Exhibits and Recitals

The Exhibits and the Recitals to this Agreement are fully incorporated into and are integral parts of this Agreement.

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

COUNTY OF TULARE

Date: _____

By: _____
Chairman, Board of Supervisors

ATTEST: JEAN ROUSSEAU
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

By: _____
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF TULARE

Date: _____

By: _____
LaRayne Cleek, Court Executive Officer

Approved as to Form
County Counsel

By: U. Kuf _____

Date: 12/15/10 _____

EXHIBIT A

Cost of Services

Cost per Annual License: \$1,358.00/license

Licenses Requested by County Department:

County Counsel	4
District Attorney	13
District Attorney (Grant)	2
DCSS	45
Probation	43
Public Defender	25
Sheriff	17
HHSA	7

Total Number of Licenses Requested: 156

Total Reimbursement to Court per Year: \$211,848.00