

**SERVICE AGREEMENT
WITH OD SECURITY NORTH AMERICA FOR
SYSTEM UPGRADE, MAINTENANCE AND SUPPORT SERVICES**

THIS SERVICE AGREEMENT is made and entered into as of this 30th day of January, 2023, by **Santa Fe County**, hereinafter "County", a political subdivision of the state of New Mexico, and **OD Security North America**, 416 Island Park Drive, Daniel Island, South Carolina 29492, hereinafter "Contractor".

RECITALS

WHEREAS, Santa Fe County Corrections Department requests the services of this Contractor to calibrate and provide system upgrade and continue maintenance support services for body scanners; and

WHEREAS, the Procurement Manager has determined that due to the services provided by this Contractor in the past, and due to the proprietary nature of the Contractor's software, the services to be provided by the Contractor under this Agreement meet the requirements of NMSA 1978, Section 13-1-126 (A) therefore these services may be procured without competitive sealed proposals; and

WHEREAS, the County requires the services of the Contractor, and the Contractor is willing to provide these services and both parties wish to enter into this Agreement.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties agree as follows:

1. SCOPE OF SERVICES

- A. Upgrade to include shipping, installation, calibration, and testing new staff training with a two-year full manufacturer warranty.
- B. Provide a 24/7 toll free support line and on-line help desk.
- C. Provide same day technical/engineering support with New Mexico based technicians.
- D. Provide provision of Jail Management System capability through a web service interface.
- E. Provide bi-annual preventative maintenance inspections.
- F. Provide annual full system re-calibration.
- G. Provide all software upgrades.
- H. Provide provisions of biometric hardware/software upgrades.
- I. Provide provisions of PREA compliant software upgrades.
- J. Provide 1 SOTER RS handheld tablet.
- K. Contractor's services shall be consistent with Exhibit A (Contractor's proposal).

2. COMPENSATION, INVOICING, AND SET-OFF

A. Contractor shall be compensated for services as follows.

- 1) Services in Year 1
 - a) Scanner \$ 76,250.00
 - b) Table Hardware \$ 2,950.00

c) Tablet Software	\$ 2,100.00
d) ADA Platform	\$ 7,500.00
e) Thermal Scanner	<u>\$ 22,000.00</u>
TOTAL YEAR 1	\$110,800.00
2) Services in Year 2	
a) Table Software	<u>\$ 2,100.00</u>
TOTAL YEAR 2	\$ 2,100.00
3) Services in Year 3	
a) Year 3 Maintenance	\$ 10,750.00
b) Table Software	<u>\$ 2,100.00</u>
TOTAL YEAR 3	\$ 12,850.00
TOTAL FOR SERVICE IN YEARS 1-3	\$125,750.00 <i>inclusive of NM GRT</i>

- B. Contractor shall submit a written request for payment to County whenever payment is due under this Agreement. Within 15 days of the County’s receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. Contractor acknowledges and agrees that County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. Within 30 days of the issuance of a written certification accepting the contractual items or services, County shall tender payment for the accepted items or services. In the event County fails to render payment within 30 days of the written certification accepting the items or services, County shall pay late payment charges of 1.5% per month, until the amount due is paid in full.
- C. In the event Contractor breaches this Agreement, County may, without penalty, withhold any payments due Contractor for the purpose of set-off until such time as County determines the exact amount of damages it suffered as a result of the breach.
- D. Payment under this Agreement shall not foreclose the right of County to recover excessive or illegal payment.

3. EFFECTIVE DATE AND TERM

This Agreement shall become effective upon the date of last signature by the parties and shall terminate three years from such date, unless earlier terminated pursuant to Section 4 (Termination) or Section 5 (Appropriations and Authorizations) below.

4. TERMINATION

- A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination.

The termination shall be effective 30 days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If however, the breach cannot with due diligence be cured with 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 30 days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

- B. Termination for Convenience of County, County may, in its discretion terminate this Agreement at any time for any reason by giving Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than 15 days from Contractor's receipt of the notice. The County shall pay Contractor for acceptable services performed before the effective date of the termination but shall not be liable for any services and work performed after the effective date of termination. Such termination shall be without penalty to County, and County shall have no duty to reimburse Contractor for expenditures made in the performance of this Agreement.

5. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Santa Fe County Board of County Commissioners and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

6. INDEPENDENT CONTRACTOR

Contractor and its agents and employees are independent contractors and are not employees or agents of the County. Accordingly, Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of County. Except as may be expressly authorized elsewhere in this Agreement, Contractor has no authority to bind, represent, or otherwise act on behalf of County and agrees not to purport to do so.

7. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without County's advance written approval shall be null and void and without any legal effect.

8. SUBCONTRACTING

Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without County's advance written approval shall be null and void and without any legal effect.

9. PERSONNEL

- A. All services performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with County and (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such services or work.

10. RELEASE

Upon its receipt of all payments due under this Agreement, Contractor releases the County, its Elected Officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

11. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without prior approval from the County.

12. PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT

- A. County has the unrestricted right to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other material prepared under or pursuant to this Agreement.
- B. Contractor acknowledges and agrees that any material produced in whole or in part under or pursuant to this Agreement is a work made for hire. Accordingly, to the extent that any such material is copyrightable in the United States or in any other country the County shall own any such copyright.

13. CONFLICT OF INTEREST

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

14. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. Contractor specifically acknowledges and agrees that County shall not be responsible for any changes to any Section of this Agreement unless such change is set forth in a written amendment.

15. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties concerning the subject matter, and all such agreements, covenants and understandings have been merged into this Agreement. No prior or contemporaneous agreement, covenant or understandings verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

16. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes felony penalties for bribes, gratuities, and kickbacks.

17. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

- A. Contractor agrees to abide by all Federal, State, and local laws, ordinances, and rules and regulations pertaining to equal opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, Contractor specifically agrees not to discriminate against any person with regard to employment with Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.
- B. Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

18. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A. In performing its obligations hereunder, Contractor shall comply with all applicable laws, ordinances, and regulations.
- B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules.

19. RECORDS AND INSPECTIONS

- A. To the extent their books and records relate to (i) their performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, Contractor agrees to (i) maintain such books and records during the term of this Agreement for a period of six years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (“GAAP”).
- B. To the extent their books and records relate to (i) their performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under the subcontract; (ii) to allow the County or its designee to audit such books and records at reasonable times and upon reasonable not notice; and (iii) to keep such books and records in with GAAP.

20. INDEMNIFICATION

- A. Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgements, costs or expenses (including but not limited to court costs and attorneys’ fees) resulting from or directly or indirectly arising out of the Contractor’s performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor’s breach of any representation or warranty made herein.
- B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County’s consent, such consent not to be unreasonable withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County’s interest.
- C. The Contractor’s obligation under this Section shall not be limited by the provisions of any insurance policy the Contractor’s is required to maintain under this Agreement.

21. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

22. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County
 Attention: Derek Williams, Warden
 28 Camino Justicia
 Santa Fe, New Mexico 87508

To the Contractor: OD Security North America
 Attention: John Shannon
 416 Island Park Drive
 Daniel Island, South Carolina 29492

23. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

- A. Contractor is a corporation duly organized and in good standing under the laws of the state of New Mexico.
- B. This Agreement has been duly authorized by Contractor, the person executing this Agreement has authority to do so, and once executed by Contractor, this Agreement shall constitute a binding obligation of Contractor.
- C. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's articles of incorporation or by-laws or any corporate resolution adopted by Contractor.

24. LIMITATION OF LIABILITY

County's liability to Contractor for any breach of this Agreement by County shall be limited to direct damages and shall not exceed the maximum amount of potential compensation specified in Section 2 (Compensation, Invoicing and Set-Off) of this Agreement. In no event shall County be liable to Contractor for special or consequential damages, even if County was advised of the possibility of such damages prior to entering into this Agreement.

25. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons or entity not a party hereto.

26. INSURANCE

- A. General Conditions. Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- B. General Liability Insurance, Including Automobile. Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy and liability limits in amounts not less than \$1,000,000 combined single limits of bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for County by Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment both on and off work; and contractual liability coverage under which this Agreement is an insured contract. Santa Fe County shall be named additional insured on the policy.
- C. Workers' Compensation Insurance. Contractor shall comply with the provisions of the Workers' Compensation Act.
- D. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29, as amended), Contractor shall increase the maximum limits of any insurance required herein.

27. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

28. FACSIMILE OR ELECTRONIC SIGNATURES

The parties hereto agree that a facsimile or electronic signature has the same force and effect as an original for all purposes.

29. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees: at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

30. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous and execution of this Agreement a Campaign Contribution Disclosure form approved by the County.

31. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

The Contractor hereby irrevocably appoints High Desert Corporate Filings, LLC, 530-B Harkle Road, Suite 100, Santa Fe, New Mexico 87505, as its agent upon whom process and writs in any action or proceeding arising out of or related to this Agreement may be served. The Contractor acknowledges and agrees that service upon its designated agent shall have the same effect as though the Contractor were actually and personally served within the state of New Mexico.

32. SURVIVAL

The provisions of following paragraphs shall survive termination of this Agreement: INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE; CONFIDENTIALITY; PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COPYRIGHT; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; and SURVIVAL.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of last signature by the parties hereto.

SANTA FE COUNTY



Gregory S. Shaffer
Santa Fe County Manager

1-30-2023

Date

Approved as to form:


Roberta D. Joe for J.Y.

Jeff Young
Santa Fe County Attorney

January 25, 2023

Date

Finance Division:

 For YSH

Yvonne S. Herrera
Finance Director

January 27, 2023

Date

CONTRACTOR – OD SECURITY NORTH AMERICA

DocuSigned by:
John Shannon
Signature _____
150C78ACE2DA474...

1/24/2023
Date _____

John Shannon President

Print name and title