

**SOFTWARE IMPLEMENTATION AND LICENSE AGREEMENT
BETWEEN SIMPLER SYSTEMS, INC. AND THE COUNTY OF SANTA BARBARA**

This Software Implementation and License Agreement (Agreement), dated November 18, 2008 is between the County of Santa Barbara, California (**County**), located at 105 E Anapamu Street, Santa Barbara, CA 93101 and Simpler Systems, Inc., a California corporation (**Simpler Systems**), with a principal place of business at 210 West Cota Street, Santa Barbara, California 93101. (Any reference to either party or to the parties is intended to include the heirs, successors, assigns, agents, officers, directors, shareholders, and employees of the party or parties.)

SUMMARY

Simpler Systems owns and markets licenses to use software called **Simpler 3.0 Search Engine (Simpler 3.0)** and has expertise in integrating Simpler 3.0 with existing financial applications. **County** desires to contract with **Simpler Systems** to provide Simpler 3.0 services and licenses to **County** and **Simpler Systems** desires to provide those services and licenses.

Through this Agreement, Simpler Systems will provide to **County** (Auditor-Controller's Office) Simpler 3.0 and associated professional services to assist in the in-house development of the **County's** FIN system. The services and products in this Agreement will augment needed development areas in the FIN project.

AGREEMENT

County and **Simpler Systems**, intending to be legally bound, agree as follows:

1. SERVICES

- 1.1. Simpler 3.0 implementation services to be provided.** **Simpler Systems** agrees to provide to **County** Simpler 3.0 implementation services (not to exceed 500 hours at \$150 per hour) in accordance with Exhibit A attached hereto and incorporated herein by reference.
- 1.2. Simpler 3.0 license to be provided.** **Simpler Systems** agrees to provide to **County** Simpler 3.0 license (License) more specifically described in Sections 3 through 9 below.
- 1.3. Best Efforts.** **Simpler Systems** agrees that it will perform the implementation services to the best of its ability, experience, and talents. **Simpler Systems** agrees to perform all services in a professional manner and in accordance with ordinary business standards and customs. **Simpler Systems** will correct or revise any errors or omissions, at **County's** request.
- 1.4. County to Provide.** Subject to the terms of Section 11 and applicable law, **County** will provide any items (e.g., equipment, software, records, and documents) to **Simpler Systems** that are deemed necessary by **County** and **Simpler Systems** to enable **Simpler Systems** to perform the implementation and services as set forth in the relevant portion of Exhibit A.

Simpler Systems is not responsible for any damage to such items unless such damage is caused by or a result of **Simpler Systems**' negligence, or intentional acts. **Simpler Systems** will return such items to **County** upon termination of this Agreement except that **Simpler Systems** may retain one archival copy of documents regarding the services and the implementation software.

- 1.5. **Records, Audit and Review.** **Simpler Systems** shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of **Simpler Systems**' profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. **County** shall have the right to audit and review all such documents and records at any time during **Simpler Systems**' regular business hours or upon reasonable notice.
- 1.6. **Property Rights and License.** **Simpler Systems** retains all rights to any information, work, invention, or development in any form or medium, including all materials, documents, information, software, or technology, created by **Simpler Systems** as a result of performing the services except as otherwise provided in Section 3 of this Agreement.
- 1.7. **Product Delivery and Acceptance.** **Simpler Systems** will deliver implementation services to **County** in accordance with instructions as provided in Exhibit A. Product specifications and acceptance procedures will be subject to **County's** good faith approval. The **County's** written acceptance of the implemented software establishes the acceptance date and constitutes an unqualified acceptance of **Simpler 3.0**.
- 1.8. **Nonexclusive Agreement.** **Simpler Systems** understands that this is not an exclusive Agreement and that **County** shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by **Simpler Systems** as the **County** desires.

2. COMPENSATION

- 2.1. **County** will compensate **Simpler Systems** for the **Simpler 3.0** implementation services and License as set forth in Exhibit A.
- 2.2. **Billing and Payment Terms for Implementation Services.** **Simpler Systems** will submit an invoice to **County's** Designated Representative at least quarterly during the implementation of **Simpler 3.0**. **County's** Designated Representative shall evaluate the quality of the services performed and if they are found to be satisfactory shall initiate payment processing and such invoices will be due within 30 days of receipt by **County**.
- 2.3. **Billing and Payment Terms for License.** Once **Simpler 3.0** is installed and accepted by **County**, **Simpler Systems** will begin invoicing **County** on a monthly basis for the software license in accordance with Exhibit A and such invoices will be due within 30 days of receipt by **County**. License fees will be invoiced monthly until the agreement is terminated in

accordance with Section 4 below. Invoices shall include the contract number assigned by the **County** and delivered to the address give in Section 12.1 Notices and Designated Representatives.

- 2.4. **CPI Increase.** Annually, on the anniversary of the acceptance date license fees will change in accordance with the Consumer Price Index (CPI-U) for the Los Angeles-Riverside-Orange County area.
- 2.5. **Taxes.** All payments required by this Agreement are exclusive of all national, state, municipal or other governmental excise, sales, value-added, use, personal property, and occupational taxes, excises, taxes and obligations and other levies now in force or enacted in the future, all of which **County** will be responsible for and will pay in full.

3. GRANT OF RIGHTS

- 3.1. **License.** For the duration of this Agreement, **Simpler Systems** hereby grants to **County** a non-exclusive, nontransferable License to use, load, run, have run, copy, adapt, display and create derivative works from the Simpler 3.0 software and documentation to provide reporting services to users of **County's** FIN system. **County** may transfer Simpler 3.0 to any hardware that is owned or controlled by **County**, at any time without the prior consent of or notice to **Simpler Systems**.
- 3.2. **Source Code.** **Simpler Systems** will provide **County** the source code to the Simpler 3.0 software, including all updates, fixes, and/or upgrades to the source code and documentation (collectively referred to as "updates"). **County** agrees that the source code and documentation provided by **Simpler Systems** is confidential, and agrees to take all reasonable precautions to protect the source code and documentation, and preserve its confidential, proprietary and trade secret status in perpetuity. Continuous access to the source code and updates by **County** is available via the Internet through an independent version-control apparatus. Separate licensing is required for this access capability. Currently, the version control mechanism is CodeCo-op which is available through the web site www.relisoft.com. In lieu of continuous access, periodic copies of the source code and updates shall be transferred electronically to **County** by **Simpler Systems** whenever requested by **County**, but not more frequently than semi-annually. If **Simpler Systems** ceases operations, becomes insolvent or commits any affirmative act of insolvency, generally fails to pay, or admits in writing its inability to pay, its debts as they become due, makes a general assignment for the benefit of creditors, has a receiver appointed for its business or assets, becomes subject to any proceeding under, or case in, bankruptcy or insolvency law, is voluntarily or involuntarily liquidated or wound up, or is either unwilling or unable to provide technical support pursuant to the Agreement, then **Simpler Systems** hereby grants to **County**, at no additional charge, a perpetual, non-exclusive, irrevocable, enterprise-wide, license to use, modify, display, copy, enhance and create derivative works

from the source code, to compile it into object code, and to use, run, copy and display the object code.

3.3. Limitations. Apart from the License Rights set forth in this Agreement, the License does not include a grant to **County** to engage in any other licensable activity, nor any ownership right, title or interest, nor any security interest or other interest, in any intellectual property rights relating to Simpler 3.0 nor in any copy of Simpler 3.0. **Simpler Systems** shall retain all rights, title, and interest, including all copyrights, in and to Simpler 3.0. All rights not specifically transferred by this Agreement are reserved to **Simpler Systems**.

3.4. License Term. Notwithstanding any provision to the contrary, this License is effective when executed by both parties and the license granted to Simpler 3.0 remains in force until **County** stops using Simpler 3.0 or until **Simpler Systems** terminates this Agreement because of **County's** failure to comply with any of the agreement's terms and conditions.

4. TERMINATION

4.1. Termination. This Agreement may be terminated as follows:

County may terminate the license and/or the entire Agreement at the end of the current monthly billing cycle by providing written notice at least five (5) calendar days prior to the end of the month. Termination notice must be sent in accordance with Section 12.1 below. The continuation of this Agreement after June 30th of the **County's** fiscal year is subject to appropriation by the **County's** Board of Supervisors for the necessary funding hereof. In the event of non-appropriation of funds for the monthly fee or any other consideration payable to **Simpler Systems** hereunder, **County** may immediately terminate this Agreement without notice in whole or in part for any amount for which no appropriation was approved.

4.1.1. Material Breach by Simpler Systems. In the event that **Simpler Systems** is in default of this Agreement, **County** may terminate this Agreement by giving **Simpler Systems** ten (10) calendar days prior written notice thereof; provided, however, that this Agreement shall not terminate at the end of said ten (10) days notice period if **Simpler Systems** has cured the breach of which it has been notified prior to the expiration of said ten (10) days.

4.1.2. Material Breach by County. In the event **County** is in default of this Agreement **Simpler Systems** may terminate this Agreement by giving **County** ten (10) calendar days prior written notice thereof; provided however, that this Agreement shall not terminate at the end of said ten (10) days notice period if **County** has cured the breach of which it has been notified prior to the expiration of said ten (10) days.

4.2. No Liability for Termination. Neither party will be liable to the other for any termination or expiration of this Agreement in accordance with its terms.

4.3. Effect of Termination. Upon the expiration date or termination of this Agreement: (a) **Simpler Systems** will immediately cease providing to the **County** Simpler 3.0 License; and

(b) any and all payment obligations of **County** made under this Agreement will become due immediately.

5. APPLICATION MAINTENANCE AND VERSION UPGRADES

- 5.1. Upgrades.** **County** acknowledges that **Simpler 3.0** upgrades, enhancements and bug fixes may be required periodically and that the need for such enhancements or fixes is not indicative of defects in the software or services provided. Any version upgrades, or enhancements or bug fixes incorporated into **Simpler 3.0** will be provided at no additional license charge to the **County**. **Simpler Systems** reserves the right to modify or replace **Simpler 3.0** at any time with a newer version of **Simpler 3.0** in order to incorporate any or all upgrades, enhancements and bug fixes. **Simpler Systems** is not obligated to provide or incorporate into **Simpler 3.0**, upgrades, enhancements or bug fixes unless failure to do so infringes upon the execution of **Simpler Systems'** other material obligations within this Agreement.
- 5.2. Compatibility.** It is the intention of **Simpler Systems** to maintain backwards compatibility with existing databases and it will make reasonable efforts to do so. This intention and effort notwithstanding, **Simpler Systems** does not guarantee that all application features and functions will continue to be available, or that backwards compatibility of databases will be maintained. In the event that backwards compatibility to databases can not be maintained during upgrade or application maintenance, **Simpler Systems** will at **County's** request, provide a means for migrating data forward.

6. INTELLECTUAL PROPERTY

- 6.1. License and Services Contract only.** This is an Agreement to provide implementation and licensing, for a limited time only, and in no way establishes an obligation upon **Simpler Systems** to sell **Simpler 3.0** or any modifications to the application to the **County** or to make **Simpler 3.0** available to the **County** beyond the term of the Agreement.
- 6.2. Intellectual Property.** The application is the property of **Simpler Systems** and **Simpler Systems** retains, apart from the license rights granted pursuant to this Agreement, all intellectual property rights to **Simpler 3.0**, or any modifications thereof, or enhancements created as part of customization services performed on behalf of the **County**.

7. REPRESENTATIONS

- 7.1. County Representations.** **County** represents and warrants that:
- 7.1.1. County** has the legal capacity and authority to enter into Agreement, and that by entering into or performing under this Agreement it will not breach any agreement to which it is currently a party.
- 7.1.2. County** has no prior commitments or agreements with third parties that might interfere with or preclude the carrying out of his obligations under this Agreement.

7.1.3. To the extent that **County** provides **Simpler Systems** with software or other tangible property to perform the services contemplated by this Agreement, **County** is the owner or authorized user of that property and has full power, free of any rights of any nature whatsoever in anyone that might interfere therewith, to grant the rights conveyed to **Simpler Systems** to perform **Simpler Systems**' obligations under this Agreement and that any use by **Simpler Systems** of that material does not and will not, infringe upon any proprietary right at common law, or any statutory copyright, or trademark right, or any other right whatsoever. By use of any software provided by **County**, there is no intent to transfer any ownership rights in that software to **Simpler Systems**. **Simpler Systems** shall not reverse engineer or otherwise interfere with any intellectual property rights held by any third party owner of any software or other tangible property provided by **County** to **Simpler Systems** in connection with this Agreement.

7.2. **Simpler Systems Representations.** **Simpler Systems** represents and warrants that:

7.2.1. **Simpler Systems** has the legal capacity and authority to enter into this Agreement, and that by entering into or performing under this Agreement **Simpler Systems** will not breach any agreement to which **Simpler Systems** is currently a party.

7.2.2. **Simpler Systems** has no prior commitments or agreements with third parties that might interfere with or preclude the carrying out of **Simpler Systems**' obligations under this Agreement.

7.2.3. **Simpler Systems** has the skills, expertise, knowledge, and experience necessary to perform the all of the services contemplated by this Agreement. **Simpler Systems** will exercise professional judgment and use the same degree of care and skill ordinary exercised by reputable consultants in similar circumstances performing comparable services.

7.2.4. **Simpler Systems** shall get **County**'s approval prior to retaining any expert or consultant to assist with any matter covered by this Agreement.

7.2.5. **Simpler Systems** covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. **Simpler Systems** further covenants that in the performance of this Agreement, no person having any such interest shall be employed by **Simpler Systems**.

7.2.6. Any materials, services, or deliverables, including the **Simpler 3.0** software, provided under this Agreement are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If materials, services, or deliverables provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, **County** shall have the right, in its sole discretion, to require **Simpler**

Systems to produce, at **Simpler Systems**' own expense, new non-infringing materials, services, or deliverables as a means of remedying any claim of infringement in addition to any other remedy available to the **County** under law or equity. **Simpler Systems** further agrees to indemnify and hold harmless the **County**, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, or services provided under this Agreement infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). As of the effective date of this Agreement, there are no existing or threatened Third Party Claims of Infringement. If a Third Party Claim of Infringement is threatened or made before **Simpler Systems** receives payment under this Agreement, **Simpler Systems** shall notify **County** in writing and **County** shall be entitled, upon written notice to **Simpler Systems**, to withhold some or all of such payment.

7.2.7. **Simpler 3.0** and its updates do not contain any viruses, Trojan horses, worms, malicious logic or other similar devices and will not erase, alter, render unusable or damage any computer programs or data and will not duplicate or activate all or part of themselves without specific user instructions directing them to do so.

7.2.8. **Simpler Systems** shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of **Simpler Systems** in any action or proceeding against **Simpler Systems**, whether **County** is a party thereto or not, that **Simpler Systems** has violated any such ordinance or statute, shall be conclusive of that fact as between **Simpler Systems** and **County**.

8. PRODUCT WARRANTY

8.1. **Product Acceptance.** **County**'s acceptance of **Simpler 3.0** pursuant to this Agreement constitutes an unqualified acceptance of **Simpler 3.0** as is, consistent with the provisions of Section 1.7 of this Agreement.

8.2. **County's Responsibilities.** Without limiting the generalities of any exclusion set forth in this Agreement, **County** will be exclusively responsible as between the parties for and **Simpler Systems** expressly makes no warranty or representation with respect to:

- A. determining that **Simpler 3.0** will achieve the results (such as organizational efficiencies) desired by **County**;
- B. selecting, procuring, installing, operating and maintaining computer hardware to run **Simpler 3.0**;
- C. ensuring the accuracy of any input data used with **Simpler 3.0**;

D. establishing adequate backup provisions for backing up **County's** data used in connection with Simpler 3.0.

8.3. Maximum Liability. SIMPLER SYSTEMS' MAXIMUM LIABILITY TO COUNTY, OTHER THAN FOR BREACHES OF CONFIDENTIALITY (AS PROVIDED IN SECTION 9) OR INFRINGEMENT OF INTELLECTUAL PROPERTY (AS PROVIDED IN SECTION 7.2.6) WHETHER BY CONTRACT, TORT, BY WAY OF INDEMNIFICATION OR UNDER STATUTE, SHALL BE LIMITED TO DIRECT DAMAGES WHICH SHALL NOT EXCEED (A) THE TOTAL AMOUNT PAID TO **SIMPLER SYSTEMS** UNDER THIS AGREEMENT OR (B) IN THE CASE OF BODILY INJURY, PERSONAL INJURY OR PROPERTY DAMAGE FOR WHICH DEFENSE AND INDEMNITY COVERAGE IS PROVIDED BY CONTRACTOR'S INSURANCE CARRIER, THE COVERAGE LIMITS OF SUCH INSURANCE. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIFIC, INDIVIDUAL, OR CONSEQUENTIAL DAMAGES.

8.4. Disclaimer by Simpler Systems. THE EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT ARE IN LIEU OF AND **SIMPLER SYSTEMS** EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), WITH RESPECT TO THE SERVICES, ANY PRODUCTS DEVELOPED AS A RESULT OF THE SERVICES, OR ANY ACTIVITIES UNDERTAKEN BY ANYONE AS A RESULT OF THE SERVICES, INCLUDING ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER **SIMPLER SYSTEMS** KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OR CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. IN ADDITION, **SIMPLER SYSTEMS** EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN **COUNTY** WITH RESPECT TO THE SERVICES, ANY PRODUCTS DEVELOPED AS A RESULT OF THE SERVICES, OR ANY ACTIVITIES UNDERTAKEN BY ANYONE AS A RESULT OF THE SERVICES.

8.5. Remedies Not Exclusive. No remedy herein conferred upon or reserved to **County** is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

9. PROTECTION OF CONFIDENTIAL INFORMATION

Nondisclosure of Confidential Information. These obligations of confidentiality and nondisclosure survive the termination of this Agreement. Either party may disclose to other party information, data, concepts, ideas, processes, methods, techniques, formulas, know-how, trade secrets, and improvements which are confidential and proprietary to the disclosing party (hereinafter referred to as "**Confidential Information**") so that **Simpler Systems** can perform the Services. Confidential Information shall remain the property of the disclosing party. The receiving party agrees to hold all Confidential Information in confidence and will exercise the same degree of care to prevent disclosure to others as it takes to preserve and safeguard his/its own Confidential Information, but not less than a reasonable degree of care. The receiving party agrees not to disclose or otherwise disseminate the Confidential Information to others. The receiving party will not reproduce Confidential Information nor use Confidential Information commercially or for any purpose other than the performance of his or its obligations under this Agreement. **Simpler Systems** hereby acknowledges that this Agreement shall be a public record under state law.

9.1. Exceptions. Excepted from these obligations of confidentiality and nondisclosure is information which:

- A. was already known to receiving party as evidenced by written records or other proof prior to disclosure;
- B. was provided in good faith to the receiving party by an independent third party who has the right to disclose the same;
- C. was public knowledge or becomes public knowledge independently of the parties; or
- D. is disclosed with the prior written approval of the party providing such Confidential Information.

9.2. Third Party Request for Information. A party shall immediately notify the other party of any private or governmental request for information pertaining to the other party. That party shall inform the requesting third party of the confidential and proprietary nature of the material and the other party shall have the right to participate in the response to any such request. If a party receives any legal instrument requiring production of data, work papers, reports, or other materials related to the other party, this Agreement, or the Services provided by pursuant to this Agreement then the receiving party shall:

- A. give the other party, if possible, the opportunity to participate in quashing, modifying or otherwise responding to any compulsory process in an appropriate and timely manner; and

B. cooperate fully with the other party's efforts to narrow the scope of any such compulsory process, to obtain a protective order limiting use or disclosure of the information sought, or in any other lawful way to obtain continued protection of the confidentiality of the other party's information.

It shall not be a violation of the obligations of confidentiality set forth in this Section 9 ("Protection of Confidential Information") to make a disclosure of Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body, or as otherwise required by law.

10. INDEMNIFICATION AND INSURANCE

10.1. Simpler Systems to Indemnify. Simpler Systems shall indemnify, defend, and hold County harmless from claims, demands, liabilities, losses, causes of action, damages, penalties, judgments, costs or expenses (including reasonable attorneys' fees) (collectively referred to as "Claims") for tangible personal property damage, bodily injury or death, caused by or arising from the negligent acts or omissions or willful misconduct of Simpler Systems or its subcontractors, including but not limited to Claims arising out of or relating to the implementation services or the installed software, including the Simpler Systems' activities or business practices in connection with the implementation services or the installed software, or any products developed or services provided as a result of the implementation services or the installed software.

10.2. Notification of Claims. Simpler Systems will notify County in writing of Claims within thirty (30) days of receipt of the claim. Simpler Systems shall, at County's request, cooperate in the defense of any such claim.

10.3. Insurance. Simpler Systems shall procure and maintain insurance in accordance with the provisions of Exhibit B attached hereto and incorporated herein by reference.

11. INDEPENDENT CONTRACTOR

11.1. Relationship as Independent Contractor. This Agreement does not create an employer/employee relationship between Simpler Systems and County. Simpler Systems agrees that all services rendered are as an independent contractor and not as a partner, joint venturer, or employee of County. County has no right to control or direct the manner, details, or means by which Simpler Systems accomplishes or performs the services. Simpler Systems has no right to any County information about its business or performance, including its profits, fees, or client data except as provided in this Agreement in connection with County's obligations to Simpler Systems. Simpler Systems shall bear any risk of loss associated with its business.

11.2. Conduct as Independent Contractor. **Simpler Systems** shall conduct itself as an independent contractor and shall not make any representations, promises, or warranties on behalf of **County** without its prior written authorization. **Simpler Systems** shall not, without **County's** prior written authorization, sign **County's** name to any contract, purchase order, agreement, or enter into any other obligation (written or oral) binding the **County**.

11.1. Simpler Systems Responsible for Benefits. Because **Simpler Systems** is an independent contractor, **County** will not provide and has no obligation to provide **Simpler Systems** any benefits granted by **County** to its employees, (including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure). **Simpler Systems** will be solely responsible for all state and federal employee taxes including, but not limited to, Social Security, FICA, Medicare, arising as a result of this Agreement. **Simpler Systems** will obtain all licenses and permits necessary to conduct its business.

11.2. Simpler Systems will provide workers' compensation insurance and any other insurance required by law. **Simpler Systems** agrees that the **County** does not cover **Simpler Systems'** employees and agents for any insurance, benefits, or compensation.

11.3. Simpler Systems will obtain any employer identification number incident to the operation of **Simpler Systems'** business and provide **County** with that number before any work is conducted. **County** will provide **Simpler Systems** with appropriate tax forms for any amounts paid to **Simpler Systems** for services.

12. GENERAL PROVISIONS

12.1. Notices and Designated Representatives. Notice required by this Agreement must be in writing and shall be sufficient if:

- A. personally delivered to the other party,
- B. sent by facsimile or email to the other party followed by a hard copy of that notice sent by any other method allowed by this section,
- C. delivered by a major commercial delivery service to the other party at the address set forth in the signature block below, or
- D. mailed by certified or registered mail (return receipt requested) to the other party:

Simpler Systems
Brian Fahnestock
Auditor-Controller
Simpler Systems, Inc.
210 West Cota Street
303
Santa Barbara, CA 93101

County
Theo Fallati, Assistant
County of Santa Barbara
105 E Anapamu Street Room
Santa Barbara, CA 93101

The individuals listed above are the designated representatives for the parties and will administer the Agreement on behalf of the parties. Changes in designated representatives shall be made only after advance written notice to the other party.

- 12.2 Entire Agreement.** In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. Each party waives its future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.
- 12.3 Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the parties, and their respective legal representatives, successors, and assigns.
- 12.4 Amendment and Waiver.** The parties may amend any provision of this Agreement or waive the observance of any provision only by their written consent. Either party's failure to enforce any provisions of this Agreement shall not be construed as a waiver of that party's right to enforce such provisions.
- 12.5 Assignment.** Neither party may assign or otherwise dispose of its rights or obligations under this Agreement without the prior written consent of the other party.
- 12.6 Governing Law.** This Agreement shall be governed by the laws of the State of California. Any legal action related to the interpretation or performance of this Agreement shall be filed only in the Superior Court for the State of California or the US District Court located nearest Santa Barbara County, California. Prior to filing any legal action, the parties may agree to attend a mediation session before a neutral mediator in an attempt to resolve the issue.
- 12.7 Force Majeure.** Either party shall be temporarily excused from performing under this Agreement if any force majeure or other occurrence beyond the reasonable control of either party makes such performance impossible. Under such circumstances, performance under this Agreement related to the delay shall be suspended for the duration of the delay. Once the delaying event subsides, the delayed party shall resume performance of its obligations with due diligence. The parties shall use their best efforts to overcome the cause and effect of any such suspension.
- 12.8 Nondiscrimination.** County hereby notifies **Simpler Systems** that **County's** Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and **Simpler Systems** agrees to comply with said ordinance.

12.9 Time is of the Essence. Time is of the essence in this Agreement and each covenant and term is a condition herein.

12.10 Execution of Counterparts. This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

12.11 Precedence. In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions contained in the numbered sections shall prevail over those in the Exhibits.

12.12 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by any court of competent jurisdiction, that provision will be limited or eliminated to the minimum extent necessary so this Agreement shall otherwise remain enforceable in full force and effect.

12.13 Performance of Necessary Acts. Each party, without further consideration, agrees to execute and deliver any documents or take such other actions as may be necessary to give full effect to the terms and intent of this Agreement and to effectively consummate the purposes and subject matter of this Agreement.

12.14 Construction. Headings and captions are only for convenience and are not to be used in the interpretation of this Agreement. Whenever the context requires, words used in the singular shall be construed to include the plural and vice versa, and pronouns of any gender shall be deemed to include the masculine, feminine, or neuter gender. No provision of this Agreement shall be construed against and interpreted to the disadvantage of any party because that party having or been deemed to have structured or drafted the

Agreement. The term "include" or any variation of that word shall be deemed to be inclusive and mean "including—but not limited to—."

12.15 Effective Date and Term of Agreement. The County shall be the last signatory to this Agreement, it shall be effective on the date it is executed by the County, and it shall be effective until termination.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

COUNTY OF SANTA BARBARA

By: _____
Chair, Board of Supervisors

Date: _____

ATTEST:

MICHAEL F. BROWN
CLERK OF THE BOARD


SIMPLER SYSTEMS, INC.

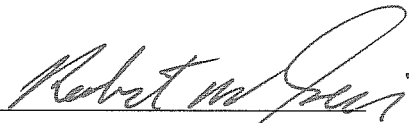
By: _____
Deputy

By: 

APPROVED AS TO FORM:
DENNIS MARSHALL
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING FORM:
ROBERT W. GEIS, CPA
AUDITOR-CONTROLLER

By: 
_____ Deputy County Counsel

By: 
_____ Deputy

APPROVED AS TO FORM:
RISK PROGRAM ADMINISTRATOR

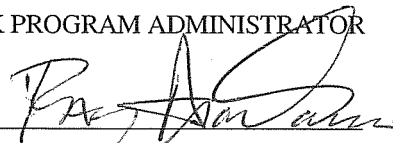
By: 
_____ Risk Program Administrator

EXHIBIT A

Introduction

Simpler Systems will provide to the County of Santa Barbara Auditor-Controller's Office Simpler 3.0 and associated professional services to assist in the in-house development of the County's FIN system. The services and products will augment needed development areas that are not readily available with the project's current resource availability or knowledge base.

The services and products intend to provide for seamless and rapid integration with the FIN system already under development and with components already installed and will be based on Simpler Systems' proven reporting technology.

Simpler 3.0 Search Engine

Implementation and integration of Simpler 3.0 with FIN will give the County a truly dynamic search tool for any set of available data within FIN and related systems. This feature will work much like internet search engines. For example, any number or text reference can be entered and anything that has a matching reference, be it a purchase order, Board contract, invoice, claim, journal entry, etc. will be immediately returned in a list and as a link for further inquiry. The need for knowledge of which report might contain such a link is no longer necessary. Plus, the dynamic return of any document or transaction that would have the queried item makes information access virtually limitless.

Professional Services – Image Capture & Retrieval

Simpler Systems will research, develop, and integrate image capture and retrieval for County FIN documents as part of the FIN system. Simpler Systems will assist in defining user needs for image (and associated data) capture and retrieval and can provide and recommend solution(s) surrounding:

- Image capture software
- Image storage & associated hardware needs
- Image retrieval functionality
- An integrated user interface with FIN
- Accommodation of centralized or decentralized image capture

Simpler 3.0

Simpler 3.0 is an advanced, yet easy to use web-based search engine designed for the extraction, composition, and presentation of information from large ER-type applications. Simpler 3.0 can be used to aggregate data from different modules within an ERP or from separate systems altogether. Its innovative concept and design has increased the efficiency and broadened the capabilities for all of our clients. The intuitive user interface enables employees of all backgrounds ask almost any question and to generate reports and charts. These dynamically-generated reports can be printed, emailed, downloaded into Excel, and shared among users.

Simpler 3.0 includes the following features and capabilities:

Reporting

- Intuitive user interface for report creation
- Simple criteria selection and dynamic editing via drop-down lists (by range or text fields)
- Hyperlinks on displayed data elements allowing drill-down to detailed transactions
- Wildcard option for further criteria expansion
- Display of report data in HTML format in web browser
- Dynamic creation and download of printable reports in PDF format
- Dynamic creation and download of displayed data in Microsoft Excel (.xls) format
- Multi-period reporting and charting

User Management and Security

- Secure user ID/password-based authentication mechanism to identify users, or integration with an existing Microsoft Active Directory or other LDAP-compliant directory
- Role or report based data filtering to limit user access to balances and transactions based on chart of account segments
- Administration pages for maintaining users, roles, report filters, and notifications
- Secure Sockets Layer (SSL) encryption for all client communication

Data Management

- Fully automated and scheduled data transfer process requiring no user interaction
- Simple data file formats (fixed-length, delimited, or xml)
- Built-in data compression to minimize bandwidth usage

Simpler 3.0

Item	Frequency	Price
Simpler 3.0 Initial Subject Area License		
Includes Simpler 3.0 Present, Compose, Select and Synchronize server software and API license for one subject area.		
<ul style="list-style-type: none"> Initial Subject Area License (Documents) 	One-Time	\$0
User License and Support		
Includes user licenses, technical support, and version upgrades, enhancements, training, documentation and bug fixes for server software.		
<ul style="list-style-type: none"> Unlimited User License 	Monthly	\$2,083.33

Professional Services

Professional Services fees will be billed on a time and materials basis, and will not exceed the estimates without approval from the County. Simpler Systems will provide Professional Services at a rate of \$150/hour and estimates 500 hours to complete the project. Simpler Systems will complete the project by October 31, 2010. Simpler Systems will provide monthly invoices for actual hours worked to deliver the services.

Company

Simpler Systems is a developer and publisher of high performance software that is easy to use. We have diverse skill sets in a variety of markets. We incorporated in 1998 with the vision of creating simple and elegant technology for business problems. We have implemented many applications for local governments, K-12 schools, and higher education. Our systems are simple to use, easy to implement and scale to any size organization. Our Simpler Suite combines financial experience with extensive software engineering in the interest of elegant, simple, and powerful software.

Executive Team

Rick Schaffer, President and Chief Technology Officer

Rick is widely recognized as a leading architect and software engineer. He has been a developer of enterprise software for over 20 years. Rick has designed and implemented web-based and client/server systems for financial accounting, budgeting, and payroll departments. He has led a variety of projects for both commercial clientele and government agencies. Rick is known for his ability to understand and solve business process problems with simple yet powerful applications. Rick earned a bachelor's degree in Business Economics at the University of California, Santa Barbara and attended Rensselaer Polytechnic Institute.

Brian Fahnestock, Vice President, Business Development

Brian has been an executive in several large organizations, and brings extensive skills in project management, sales, and marketing. Prior to joining Simpler Systems, Brian was the Chief Business Officer and Vice President of Santa Barbara City College. Brian received a bachelor's degree from the University of Illinois and earned a master's degree at the Navy Postgraduate School in Monterey, California. Brian is also a member of the Board of Directors for the Santa Barbara Metropolitan Transit District.

Barry Taugher, Vice President, Partners

Barry has over 20 years in information technology. He has a broad background in marketing, software development, channel management, and business development. He has been successful at all levels of the industry, from start-ups to the Fortune 200. Mr. Taugher was most recently Vice President of National Marketing for Novacoast, an IT professional services firm, where he directed expansion from a regional firm to the delivery of professional services nationally. Barry has a bachelor's degree in Political Science from the University of California, Santa Barbara.

EXHIBIT B

INSURANCE

For purposes of this Exhibit B, **Simpler Systems** shall be referred to as CONTRACTOR and **County** shall be referred to as COUNTY.

Without limiting the CONTRACTOR's indemnification of the COUNTY, CONTRACTOR shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the COUNTY. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place CONTRACTOR in default. Upon request by the COUNTY, CONTRACTOR shall provide a certified copy of any insurance policy to the COUNTY within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all CONTRACTOR's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the COUNTY. In the event CONTRACTOR is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if CONTRACTOR has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and CONTRACTOR submits a written statement to the COUNTY stating that fact.
2. General Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of CONTRACTOR and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed cross liability by the CONTRACTOR in the indemnity and hold harmless provisions [above] of the Indemnification Section of this Agreement between COUNTY and CONTRACTOR. CONTRACTORS shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. COUNTY, its officers, agents, and employees shall be Additional Insured status on any policy. A clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the COUNTY.

Said policy or policies shall include a severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and non-contributory to the full limits stated in the declarations, and if the COUNTY has other valid and collectible insurance for a loss covered by this policy, that other insurance shall be excess only."

If the policy providing liability coverage is on a 'claims-made' form, the CONTRACTOR is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that the COUNTY shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

CONTRACTOR shall submit to the office of the designated COUNTY representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. COUNTY shall maintain current certificate(s) of insurance at all times in the office of the designated COUNTY representative as a condition precedent to any payment under this Agreement. Approval of insurance by COUNTY or acceptance of the certificate of insurance by COUNTY shall not relieve or decrease the extent to which the CONTRACTOR may be held responsible for payment of damages resulting from CONTRACTOR'S services of operation pursuant to the contract, nor shall it be deemed a waiver of COUNTY'S rights to insurance coverage hereunder.

The above insurance requirements are subject to periodic review by the COUNTY. The COUNTY's Risk Program Administrator is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.