June 18, 2013

Board of Supervisors
Kern County Administrative Center
1115 Truxtun Avenue
Bakersfield, CA 93301

REQUEST FOR APPROVAL OF PROPOSED AGREEMENT WITH INTERGRAPH CORPORATION FOR COMPUTER AIDED DISPATCH SYSTEM UPGRADE CONTAINING NON STANDARD TERMS AND CONDITIONS
(Fiscal Impact: $279,180; Budgeted; Discretionary)

The Kern County Sheriff's Office is requesting approval to enter into an Agreement with Intergraph Corporation for a Computer Aided Dispatch (CAD) System software upgrade. Your Board has continued to approve the expenditure of funds for software maintenance agreements and costs associated with system and interface upgrades. This support has provided the means to stay current with regard to the latest versions of software. Significant enhancements have been made to the product since the last upgrade, which would warrant upgrading the current version of CAD. New computer hardware has been purchased for the planned upgrade.

County Counsel reviewed the proposed Agreement with Intergraph Corporation and identified areas of concern that County policy requires we bring to your Board's attention. Specifically, the Agreement contains the following non-standard terms and conditions:

Page 22, Attachment A-1, under "Warranty," provides for the waiver of all warranties except for the limited warranty provided by Intergraph. Intergraph's limited warranty is very short in duration, 30 days from installation. This section goes on to state that this limited warranty "represents the full and total obligation and/or liability of Intergraph."

Page 23, Attachment A-1, under "Disclaimer," places limitations on Intergraph's liability by precluding the County from recovering "incidental, consequential or special damages, arising out of or in connection with any services or deliverables" provided under the agreement, "even if Intergraph has been advised of the possibility of such damages." Intergraph's sole liability would be the value of the Agreement.

PLEASE ADDRESS ALL COMMUNICATIONS TO THE SHERIFF
Page 33, Attachment A-4, section 6.2.2 “Indemnification by You,” requires the County to defend and indemnify Intergraph in any lawsuit arising from its use of the software “in combination with other products not furnished by Intergraph.” There is no provision in the Agreement for Intergraph to defend and indemnify the County for Intergraph’s intentional or negligent acts or omissions.

Page 39, Attachment A-4, section 11.11 “Injunctive Relief; Cumulative Remedies,” requires the County to agree in advance that Intergraph would be entitled to an injunction in the event of a breach of contract, and that the County would waive any objection that Intergraph has an adequate remedy at law with respect to any such breach.

Intergraph will not compromise on these portions of the Agreement.

Intergraph Corporation is recognized provider for Computer Aided Dispatch systems (CAD) and the Sheriff's Office has had a long and positive business relationship with the Intergraph Corporation. The upgrade to the latest version of Intergraph's CAD/Mobile software would benefit the agency. The Sheriff's Office believes the potential risk to the County is outweighed by the benefits to the Sheriff's Office, Fire Department and the citizens of Kern County.

The County Administrative Office concurs with this request.

Therefore, IT IS RECOMMENDED that your Board approve the proposed Agreement with Intergraph Corporation for the CAD upgrade in an amount not to exceed $279,180, and authorize the Chairman to sign.

Sincerely,

DONNY YOUNGBLOOD, Sheriff-Coroner

By: Kevin Zimmermann, Chief Deputy Law Enforcement Bureau

cc: Auditor-Controller –County Clerk
CAO
County Counsel