



**CONTRACT MA-031-22011497**  
**BETWEEN**  
**THE COUNTY OF ORANGE**  
**AND**  
**NEAL KELLEY**  
**FOR**  
**CONSULTANT SERVICES**

THIS Contract **MA-031-22011497** for Consultant Services (“Contract”) is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (“County”) and Neal Kelley, with a place of business at 16537 Citrus View Circle, Riverside, CA 92504 (“Contractor”), with County and Contractor sometimes referred to individually as “Party” or collectively as “Parties”.

**ATTACHMENTS**

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work

Attachment B – Compensation and Pricing

**RECITALS**

**WHEREAS**, Contractor and County are entering into this Contract for Consultant Services; and

**WHEREAS**, Contractor agrees to provide Consultant Services to County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and

**WHEREAS**, Contractor agrees to accept payment based on the pricing set forth in Compensation and Pricing, attached hereto as Attachment B and incorporated herein; and

**NOW THEREFORE**, the Parties mutually agree as follows:

**ARTICLES**

**GENERAL TERMS AND CONDITIONS**

- A. Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. Entire Contract:** This Contract, including Attachments which are attached hereto and incorporated herein by this reference, contains the entire contract between the Parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. Electronic acceptance of any additional terms, conditions or supplemental contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or

binding on County unless accepted in writing by County's Purchasing Agent or designee.

- C. Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. Taxes:** Unless otherwise provided herein or by law, the price stated in Attachment B does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to Contractor.
- E. Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed scope of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. Acceptance/Payment:** Unless otherwise agreed to in writing by County: 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears pursuant to Attachment B after County's satisfactory acceptance.
- G. Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and County Indemnitees, as more fully described in Paragraph Z, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in Paragraph Z, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses and attorney's fees.
- I. Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express prior written consent of County. Contractor shall provide County no less than sixty (60) calendar days' written notification of its intent to assign, sell, delegate or otherwise dispose of the rights and obligations of this Contract. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express prior written consent of County shall be void and invalid and shall constitute a material breach of this Contract.
- J. Non-Discrimination:** In the performance of this Contract, Contractor must comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in

discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

- K. Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to immediately terminate this Contract without penalty for cause or after thirty (30) calendar days' written notice without cause, unless otherwise specified. Cause shall include, but not be limited to, any material breach of contract, any misrepresentation or fraud on the part of Contractor, and any assignment, subcontracting or change of ownership without County's express prior written consent. County's decision to exercise the right to terminate the Contract shall relieve County of all further obligations under this Contract. The Parties may mutually terminate this Contract by written agreement at any time. The rights, obligation, and conditions, that by their express terms or nature and context are intended to survive the termination or expiration of this Contract, survive any termination or expiration of this Contract.
- L. Consent to Breach Not Waiver:** Any action or inaction by County or failure of County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to enforce any right or provision contained herein shall not be construed as a waiver or relinquishment by County of its rights hereunder and shall not prevent County from enforcing such provision or right on any future occasion. Further, no term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. Performance:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
- O. Intentionally Omitted**
- P. Changes:** Contractor shall make no changes in the work or perform any additional work without County's express prior written consent.
- Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County.

County reserves the right to immediately terminate the Contract in the event County determines that the assignee is not qualified or is otherwise unacceptable to County for the provision of services under the Contract.

In addition, Contractor must notify County in writing of any change in Contractor's status with respect to name changes that do not require an assignment of the Contract. Contractor also must notify County in writing if Contractor becomes a party to any litigation against County, or a party to litigation that may reasonably affect Contractor's performance under the Contract, as well as any potential conflicts of

interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor must provide this information without prompting from County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to County of its status in these areas whenever requested by County.

Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to Contractor, this obligation applies to Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. Contractor's efforts shall include, but not be limited to, establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract to the extent such delay is caused by any act of God, war, civil disorder, employment strike or other cause beyond Contractor's reasonable control, provided Contractor gives written notice of the cause of the delay to County within thirty-six (36) hours of the start of the delay and Contractor avails itself of any available remedies to end the delay and minimize the effects of such delay. County may terminate this Contract by written notice to Contractor if the delay continues substantially uninterrupted for a period of five (5) business days or more.
- S. Confidentiality:** Contractor must maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Paragraph Z, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. Freight:** Intentionally Omitted.
- V. Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each Party shall bear its own attorney's fees, costs and expenses.
- X. Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of its own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that it has not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.
- Y. Employee Eligibility Verification:** Contractor warrants that it is and will remain in full compliance with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. Contractor shall obtain, from all employees performing work

hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

**Z. Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

**AA. Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. County will provide reasonable notice of such an audit or inspection.

County reserves the right to audit and verify Contractor's records before final payment is made.

Contractor must maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor must include in each subcontract a similar right to County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should Contractor cease to exist as a legal entity, Contractor's records pertaining to this Contract shall be forwarded to County's project manager.

**BB. Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

**CC. Expenditure Limit:** Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach seventy-five percent (75%) of the dollar limit on the Contract. County is not responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

#### **ADDITIONAL TERMS AND CONDITIONS**

**1. Scope of Contract:** This Contract, including attachment(s), specifies the contractual terms and conditions by which Contractor will provide Consultant Services as described in Attachment A, Scope of Work, under a fixed price Contract, as set forth herein.

2. **Term of Contract:** This Contract shall commence on May 1, 2022 and shall continue through April 30, 2023, unless otherwise terminated by County.
3. **Intentionally Omitted**
4. **Breach of Contract:** The failure of Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event, County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract, do any of the following:
  - a. Afford Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach.
  - b. Discontinue payment to Contractor for and during the period in which Contractor is in breach and offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to the breach.
  - c. Terminate the Contract for cause immediately without penalty pursuant to Paragraph K, Termination.
5. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Title II of the Americans with Disabilities Act of 1990; and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
6. **Conflict of Interest:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
7. **Conditions Affecting Work:** Contractor is responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to County. County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents during or prior to the execution of this Contract, unless such understanding or representations by County are expressly stated in the Contract and the Contract expressly provides that County assumes the responsibility.
8. **Contingent Fees:** Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of Contractor or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.

For breach or violation of this warranty, County has the right to immediately terminate this Contract for cause in accordance with Paragraph K, Termination, and, at its sole discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from Contractor.
9. **Contractor's Expense:** Contractor is responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. County will not provide free parking for any service in the County Civic Center.
10. **Contractor's Project Manager:** Contractor's Project Manager, as specified in Paragraph 28, Notices, will direct Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by County and shall not be changed without the written consent of County's Project Manager, which consent shall not be unreasonably withheld. Contractor's Project Manager and key personnel shall be assigned for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines.

- 11. County's Project Manager:** County's Project Manager, as specified in Paragraph 28, Notices, will act as liaison between County and Contractor during the term of this Contract.
- County's Project Manager has the right, in its sole discretion, to require the removal and replacement of Contractor's Project Manager and Contractor personnel from providing services to County under this Contract. County's Project Manager shall notify Contractor in writing of such action. Contractor shall accomplish the removal of Contractor's Project Manager and Contractor personnel within three (3) calendar days after written notice by County's Project Manager. County's Project Manager shall review and approve the appointment of the replacement for Contractor's Project Manager and Contractor personnel. Said approval shall not be unreasonably withheld. County is not required to provide any information, reason or rationale in the event it requires the removal of Contractor's Project Manager or Contractor personnel.
- 12. Contractor's Records:** Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from County. Storage of records in another county will require written consent from the County of Orange DPA.
- Contractor and Contractor's subcontractor(s) also must comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.
- 13. Contractor Personnel – Reference Checks:** Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to adequately perform the work under this Contract. Contractor's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
- 14. Contractor Work Hours and Safety Standards:** Contractor shall ensure compliance with all safety and hourly requirements for employees in accordance with federal, state and County safety regulations and laws.
- 15. Contractor Personnel – Uniform/Badges/Identification:** Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility under this Contract.
- All Contractor's employees shall be required to wear uniforms, badges, or other means of identification which are to be furnished by Contractor and must be worn at all times while working on County property. The assigned Deputy Purchasing Agent must be notified in writing, within seven (7) calendar days of notification of award of Contract of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven (7) calendar days prior to any changes in this procedure.
- 16. County of Orange Disabled Veteran Business Enterprise Preference Requirements:** Contractor certifies it is in compliance, and will remain in compliance, with County of Orange Disabled Veteran Business Enterprise Preference requirements at the time this Contract is executed.
- 17. County of Orange Local Small Business Preference Requirements:** Contractor certifies it is in compliance, and will remain in compliance, with County of Orange Local Small Business Preference requirements at the time this Contract is executed.
- 18. Data – Title To:** All materials, documents, data or information obtained from County data files or any County medium furnished to Contractor in the performance of this Contract will at all times remain the property of County. Such data or information may not be used or copied for direct or indirect use by Contractor after completion or termination of this Contract without the express prior written consent of County. All materials, documents, data or information, including copies, must be returned to County at the end of this Contract.

- 19. Default – Reprocurement Costs:** In case of Contract breach by Contractor, resulting in termination by County, County may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying County the difference between the Contract cost and the price paid, and County may deduct this cost from any unpaid balance due Contractor. The price paid by County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.
- 20. Drug-Free Workplace:** Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. Contractor must:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
  - b. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
    1. The dangers of drug abuse in the workplace;
    2. The organization’s policy of maintaining a drug-free workplace;
    3. Any available counseling, rehabilitation and employee assistance programs; and
    4. Penalties that may be imposed upon employees for drug abuse violations.
  - a. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
    1. Will receive a copy of the company’s drug-free policy statement; and
    2. Will agree to abide by the terms of the company’s statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and Contractor may be ineligible for award of any future County contracts if County determines that any of the following has occurred:

- b. Contractor has made false certification, or
  - c. Contractor violates the certification by failing to carry out the requirements as noted above.
- 21. Disputes – Contract:**
- a. The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by Contractor’s Project Manager and County’s Project Manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:
    1. Contractor shall submit to the agency/department assigned DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless County, on its own initiative, has already rendered such a final decision.
    2. Contractor’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which Contractor believes County is liable.
  - b. Pending the final resolution of any dispute arising under, related to, or involving this Contract, Contractor must diligently proceed with the provision of services under this Contract. Contractor’s failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If County fails to render a decision within



ninety (90) calendar days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. Nothing in this paragraph shall be construed as affecting County's right to terminate the Contract for cause or for convenience as provided in Paragraph K, Termination.

- 22. Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by County, state or federal government, this Contract may be subjected to unusual usage. Contractor shall service County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing in Attachment B shall apply to serving County's needs regardless of the circumstances. If Contractor is unable to supply the goods/services under the terms of the Contract, then Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from Contractor shall show both the emergency purchase order number and the Contract number.
- 23. Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager, prior to submission to County. Contractor agrees that County review is discretionary and Contractor shall not assume that County will discover errors and/or omissions. If County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
- 24. Equal Employment Opportunity:** Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity", as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

- 25. Gratuities:** Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, County has the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by County in procuring on the open market any services which Contractor agreed to supply

shall be borne and paid for by Contractor. The rights and remedies of County provided in this paragraph are not exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

- 26. Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 27. News/Information Release:** Contractor shall not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and written consent of said news media contact from County through County DPA. Any requests for interviews or information received by the media should be referred directly to County. Contractors are not authorized to serve as a media spokesperson for County projects without first obtaining permission from County.
- 28. Notices:** Any and all notices, request, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: Neal Kelley  
16537 Citrus View Circle  
Riverside, CA 92504  
Phone: 951-858-3108  
Email: [myphonedied567@gmail.com](mailto:myphonedied567@gmail.com)

County: County of Orange  
County Executive Office/County Procurement Office  
Attn: Kevin Work, County DPA  
1300 S. Grand Ave., Bldg. A, 2<sup>nd</sup> Floor  
Santa Ana, CA 92705-4434  
Phone: 714-567-7312  
Email: [kevin.work@ocgov.com](mailto:kevin.work@ocgov.com)

- 29. Ownership of Documents:** County has permanent ownership of all directly connected and derivative materials produced under this Contract by Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of County and may be used by County as it may require without additional cost to County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by Contractor without the express written consent of County.
- 30. Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.

- 31. Price Increase/Decrease:** No price increases will be permitted during the initial term of the Contract. County requires documented proof of cost increases on contracts prior to any price adjustment. A minimum of thirty (30) business days advance notice in writing is required to request such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. County may enforce, negotiate, or cancel escalating price contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing Contractor's profit are not allowed.
- 32. Promotional/Advertisement:** County owns all rights to the name, trademarks, logos and symbols of County. The use and/or reproduction of County's name, trademark, logo and/or symbol for any purpose, including commercial advertisement, promotional purposes, announcements, displays or press releases, without County's express prior written consent is expressly prohibited. No use or reproduction may state or imply that County endorses Contractor's products or services.
- 33. Publication:** No copies of sketches, schedules, written documents, computer-based data, photographs, maps or graphs, including graphic artwork, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without County's express prior written consent, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered by County or only after County approval.
- 34. Reports/Meetings:** Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. County's Project Manager and Contractor's Project Manager shall meet on reasonable notice to discuss Contractor's performance and progress under this Contract. If requested, Contractor's Project Manager and other project personnel shall attend all meetings. Contractor shall provide such information that is requested by County for the purpose of monitoring progress under this Contract.
- 35. Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to subcontract any performance of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

In the event that Contractor is authorized by County to subcontract, this Contract shall take precedence over the terms of the Contract between Contractor and subcontractor and shall incorporate by reference the terms of this Contract. County shall look to Contractor for performance and indemnification and not deal directly with any subcontractor. All work performed by a subcontractor must meet the approval of the County of Orange.

- 36. Security Requirements:** Upon request by County department, Contractor shall with the respect to all employees of Contractor performing services hereunder:
- a. Perform background checks as to past employment history, Contractor may not rely on County's background security clearance as set forth in Paragraph 40, Background Clearance.
  - b. Inquire as to past criminal felony convictions.
  - c. Ascertain that those employees who are required to drive in the course of performing services hereunder have a valid California driver's license and no DUI convictions within two (2) years prior to commencement of services hereunder.
- 40. Background Clearance:** Upon request by County department, at least thirty (30) calendar days prior to the start of the Contract, or as soon as possible thereafter, Contractor shall email a list of current employees who will be assigned to perform services under this Contract to the corresponding department Project Manager so that the department can conduct background investigations of those assigned employees as required by this Contract. While clearance may be denied for many reasons based on information obtained in a background investigation, an omission of false statement made by the employee, regardless of the nature of magnitude of the omission or false statement, may also be ground for denying clearance.

- 41. Termination – Orderly:** If County terminates this Contract, Contractor may submit to County a termination claim, if applicable, after receipt of the termination notice. Contractor’s claim must be submitted promptly, but in no event later than sixty (60) calendar days from the effective date of the termination, unless one or more extensions in writing are granted by County upon written request of Contractor. County agrees to pay Contractor for all services satisfactorily performed prior to the effective date of the termination that meet the requirements of the Contract according to the compensation provisions contained in this Contract; provided, however, that such compensation combined with previously paid compensation must not exceed the total compensation set forth in this Contract. Upon termination or other expiration of this Contract, each party must promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of execution and performance of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
- 42. Usage:** No guarantee is given by County to Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon past usage. Contractor agrees to supply services requested, as needed by County, at rates/prices listed in the Contract, regardless of quantity requested.
- 43. Usage Reports:** Contractor shall submit usage reports on an annual basis to the assigned Deputy Purchasing Agent of the County of Orange user agency/department. The usage report shall be in a format specified by the user agency/department and shall be submitted ninety (90) calendar days prior to the expiration date of the contract term, or any subsequent renewal term, if applicable.
- 44. California Public Records Act:** Contractor and County agree and acknowledge that all information and documents related to the award and performance of this Contract may be subject to disclosure pursuant to the California Public Records Act, California Government Code Section 6250 et seq.

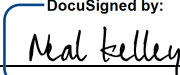
**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

**NEAL KELLEY**

\* If Contractor is a corporation, signatures of two (2) specific corporate officers are required as further set forth. The first corporate officer signature must be one of the following: 1) the Chairman of the Board, 2) the President or 3) any Vice President. The second corporate officer signature must be one of the following: 1) Secretary, 2) Assistant Secretary, 3) Chief Financial Officer or 4) Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signator to bind the corporation.

Neal Kelley	Consultant
_____ Print Name	_____ Title
<small>DocuSigned by:</small>  Signature	4/6/2022 Date
<small>CC85C45E22A94B8...</small>	

_____ Print Name	_____ Title
_____ Signature	_____ Date


\*\*\*\*\*

**COUNTY OF ORANGE A political subdivision of the State of California**

_____ Print Name	Deputy Purchasing Agent Title
_____ Signature	_____ Date

**APPROVED AS TO FORM, County Counsel, County of Orange, California**

Mark Batarse  
Senior Deputy County Counsel

DocuSigned by:  
  
4/7/2022  
BC5CA9BED31F40A...

**ATTACHMENT A  
SCOPE OF WORK**

**I. INTRODUCTION**

Former Orange County Registrar of Voters (ROV) Neal Kelley (Consultant) shall provide services that are advisory and technical in nature as related to the conduct, administration and management of local, state and federal elections. Consultant's services shall be rendered on an "on-call" or "as needed" basis, on a broad range of issues and topics as identified and directed by the Orange County Board of Supervisors (Board), or as requested by the County Executive Officer (CEO) and the current ROV.

No specified amount of work is guaranteed to Consultant. However, the amount of contracted work that will be required on an "on call" or "as needed" basis shall not exceed \$80,000 during the term of the Contract, unless otherwise amended by mutual written agreement of the parties.

**II. DELIVERABLES**

By bringing professional and functional expertise through years of experience as Orange County ROV, Consultant shall provide objective analyses and strategic assessments of issues of interest and concern as may be identified and directed by the Board, or as requested by the CEO and the ROV. Consultant shall communicate his findings on such issues, and offer recommendations as proposed solutions for implementation by the County.

Consultant shall submit a schedule for completion of work along with a list of deliverables, within two weeks of being notified to begin work under the Contract. The work schedule shall allow sufficient time for Consultant meetings with County to review the work progress, obtain policy direction, and prepare reports.

**ATTACHMENT B  
COMPENSATION AND PRICING**

**I. COMPENSATION**

This is fixed fee Contract between County and Contractor for Consultant Services as provided in Attachment A, Scope of Work.

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services. Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. County has no obligation to pay any sum in excess of total Contract amount specified unless authorized by an amendment in accordance with Paragraphs “C” – Amendments and “P” – Changes of County’s General Terms and Conditions, which may require approval by the County Board of Supervisors.

**II. PRICING**

Hourly rates shall include all work, profit, overhead, supplies, transportation, and other items, that is necessary to and appropriate for the performance of services under this Contract. Payment shall be as follows:

Hourly Rate	\$108.00
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**III. INVOICE INSTRUCTIONS**

Contractor must provide an invoice on Contractor’s letterhead for goods delivered and/or services rendered. In the case of goods, Contractor must leave an invoice with each delivery. Each invoice must have a number and must include the following information:

- A. Contractor’s name and address;
- B. Contractor’s remittance address if different from above;
- C. Name of County Department;
- D. Contract number must be referenced on all invoices;
- E. Service date(s) – Month of Service;
- F. Service description, including job classifications and hourly rates;
- G. Contractor’s Tax Identification Number (TIN) or Employer’s Identification Number (EIN);
- H. Total

The responsibility for providing an acceptable invoice to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to Contractor for correction. County’s Project Manager, or designee, is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing of payment.

**IV. PAYMENT TERMS**

Invoices must be submitted to the user department to the ship-to address, unless otherwise directed in this Contract. Contractor must reference Contract Number on invoice. Payment will be net thirty (30) calendar days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the department and subject to routine processing requirements.

Billing shall cover services not previously invoiced. Contractor must reimburse the County of Orange for any monies paid to Contractor for services not provided or when services do not meet the Contract requirements.

Payments made by County shall not preclude the right of County from thereafter disputing any items or services involved or billed under this Contract and shall not be constructed as acceptance of any part of the services.

**V. ELECTRONIC FUNDS TRANSFER (EFT)**

The County of Orange offers Contractors the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. An email address will need to be provided to the County of Orange via an EFT Authorization Form. To request a form, please contact the DPA.