



**CONTRACT # MA-003-21010760**  
**BETWEEN**  
**COUNTY OF ORANGE/AUDITOR-CONTROLLER**  
**AND**  
**SYCOMP, A TECHNOLOGY COMPANY, INC.**  
**FOR**  
**PROVISION, INSTALLATION, SOFTWARE**  
**AND SUPPORT OF AN IBM V7200**

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**CONTRACT MA-003-21010760  
WITH  
SYCOMP, A TECHNOLOGY COMPANY, INC.  
FOR  
PROVISION, INSTALLATION, SOFTWARE AND SUPPORT OF AN IBM V7200**

This Contract MA-003-21010760 ("Contract") is made and entered into as of the date fully executed by and between the County of Orange and on behalf of the Office of the Auditor-Controller, a political subdivision of the State of California, ("County") and **Sycomp, a Technology Company, Inc.** with a place of business at **950 Tower Lane, Suite 1785, Foster City, CA 94404** ("Contractor"), which are sometimes referred to individually as a "party" or collectively as the "parties".

**ATTACHMENTS**

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

Attachment A – Statement of Work

Attachment B – Payment/Compensation

Attachment C – Company Profile

**RECITALS**

WHEREAS, Contractor and County are entering into this Contract for provision, installation, software and support of an IBM FlashSystem V7200 network storage system under a fixed price Contract; and

WHEREAS, County solicited Contractor for provision, installation, software and support of an IBM FlashSystem V7200 network storage system as set forth herein, and Contractor represented that it is qualified to provide, install an IBM FlashSystem V7200 network storage system, its software and support to the County as further set forth here; and

WHEREAS, Contractor agrees to provide, install an IBM FlashSystem V7200 network storage system, its software and support to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Payment/Compensation, attached hereto as Attachment B;

NOW, THEREFORE, the parties mutually agree as follows:

## ARTICLES

- 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 contains the entire agreement 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. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. 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 quoted does not include California state sales or use tax. If Contractor is located outside of California, Contractor shall indicate its 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 the 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 statement 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 after satisfactory acceptance. Late payments for undisputed amounts shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, until paid in full.
- 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 its indemnittees as identified in **paragraph "Z"** below, and 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:** Contractor agrees that, in accordance with the more specific requirement contained in **paragraph "Z"** below, 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 but not including 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 written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will 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, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be 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 Warranty and Safety Requirements:** Contractor shall warrant all services related 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 the 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. County shall be obligated to provide a safe and secure working environment for Contractor and its employees and/or subcontractors and shall indemnify and hold Contractor harmless for any injuries or death of any Contractor party in breach of this sentence.

## O. Insurance Provisions:

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

### **Qualified Insurer**

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<b><u>Coverage</u></b>	<b><u>Minimum Limits</u></b>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy*	\$1,000.00 per claims-made Liability
Technology Errors & Omissions*	\$1,000,000 per claims-made \$1,000,000 aggregate

#### **Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

#### **Required Endorsements**

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange its elected and appointed officials, officers, agents and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT.***

2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

1) An Additional Insured endorsement naming the ***County of Orange, its elected and appointed officials, officers, agents and employees*** as Additional Insureds for its vicarious liability.



2) A primary and non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, agents and employees** or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

If Contractor's Technology Errors & Omissions and/or Network Security & Privacy Liability are "Claims-Made" policy(ies), Contractor shall agree to maintain coverage for two (2) years following the completion of the Contract. (Only include this provision when Professional Liability, Technology Errors & Omissions and/or Network Security & Privacy Liability Insurance are required. Only reference the type(s) of insurance required in the contract.)

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

**P. Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

**Q. Change in 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 the County agrees to an assignment of the Contract, the new owners shall be

required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract, however any fees or payments due under the Contract will continue to be due and payable to Contractor.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the 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 will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The 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 the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The 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 caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- S. Confidentiality:** Contractor agrees to 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. If Contractor is compelled by law to disclose Confidential Information of County, it shall provide County with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the County's cost, if the County wishes to contest the disclosure. In no event will the foregoing require Contractor to violate any court order or order received from any governmental or administrative agency
- 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"** below, 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. County agrees to comply with any and all applicable standards, laws,

statutes, restrictions, ordinances, requirements, and regulations, including any anti-bribery or anti-corruption laws or regulations including the Federal Corrupt Practices Act ("FCPA").

- U. Freight:** Prior to the County's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- 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 their own attorney's fees, and reasonable 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 had been represented by experienced and knowledgeable independent legal counsel of their 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 they have 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:** The Contractor warrants that it fully complies 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. The 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. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold the County, its agents, officers, and employees harmless from employer sanctions and any other liability which may be assessed against the Contractor or the 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. Limitation of Liability and Indemnification:** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR STATUTORY DAMAGES RELATED TO ANY CAUSE OF ACTION ARISING OUT OF THIS AGREEMENT, EVEN IF A PARTY IS INFORMED OF THE POSSIBILITY THEREOF IN ADVANCE. 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 body ("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 unmodified services, unmodified 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 the 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. The County will provide reasonable notice of such an audit or inspection.

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

Contractor agrees to maintain such records for possible audit for a minimum of three 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 agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the 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, however, payment for any services or products delivered and accepted by County shall remain due and payable by County.

**CC. Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be 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 Work:** This Contract, including its attachments, specifies the terms and conditions by which the Contractor will provide, install an IBM FlashSystem V7200 network storage system, its software and support to the County as further detailed in the Statement of Work identified and incorporated herein by this reference as **Attachment A**.
2. **Contract Term:** This Contract shall commence upon execution of all necessary signatures and will continue for 3 calendar years from that date.
3. **Precedence:** This Contract documents consist of this Contract and its attachments and exhibits. 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 its attachments.

4. **Compensation:** Compensation shall be paid to Contractor for services provided under this Contract as specified at the pricing listed in **Attachment B** hereto, which includes full compensation for providing all services to be provided under this Contract. Late payments for undisputed amounts shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, until paid in full. No price increases will be permitted.
5. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
6. **Work Performed per Specifications – Exceptions:** All work will be performed in accordance with the scope/statement of work. Should any exceptions be necessary, these exceptions will be negotiated and must be mutually agreed to by both parties and noted in writing in the resultant Contract.
7. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder, including but not limited to identifying labels and bar codes, shall become and remains the sole property of the County and may be used by the County as it may require without additional cost to the County.
8. **Title to Data:** All materials, documents, data or information obtained from the County or by any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
9. **Publication:** No copies of schedules, written documents, and computer based data, photographs, maps or graphs, 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 prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.
10. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Contractor's and third parties associated with accomplishing services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
11. **Breach of Contract:** The failure of the Contractor to comply with any of the terms, provisions, covenants or conditions of this Contract shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

1. Afford the Contractor written notice of the breach and thirty (30) calendar days or such shorter time that may be specified in this Contract within which to cure the breach; and/or
  2. Terminate the Contract immediately, without penalty to the County.
12. **Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If a dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Principal Contact and the County's project manager, such matter shall be brought to the attention of the County's Purchasing Agent by way of the following process:
- A. The Contractor shall submit to the Auditor-Controller 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 the County, on its own initiative, has already rendered such a final decision.
  - B. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the 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 amount for which the Contractor believes the County is liable.
  - C. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of his Contract, including the provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract. Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County's Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions.
13. **Orderly Termination:** Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each party will assist the other party in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each party. Contractor shall not remove any bar codes or identifying labels used or provided by the Contractor in providing services under this Contract.
14. **Parking:** The County will **not** provide free parking for any service in the County Civic Center.
15. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the 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, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
16. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this agreement without first obtaining review and written approval of said news releases from the County through the County's project manager.

17. **Validity:** The invalidity in whole or in part of any provision of this Contract shall not void or affect the validity of any other provision of the Contract.
18. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the County's project manager and Contractor's Principal Contact 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 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:** Sycomp, A Technology Company  
Attn: Lori Lemos  
950 Tower Lane, Ste. 1785  
Foster City, CA 94404

**Cc:** Sycomp, A Technology Company  
Attn: General Counsel  
950 Tower Lane, Ste. 1785  
Foster City, CA 94404

**County's Project Manager:** Office of the Auditor-Controller  
Attn: Larry McCabe  
1770 N. Broadway  
Santa Ana, CA 92706  
Phone: (714) 796-0310  
Email: [Laurence.McCabe@ac.ocgov.com](mailto:Laurence.McCabe@ac.ocgov.com)

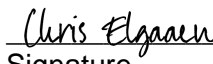
**Cc:** Office of the Auditor Controller/Procurement  
Attn: Lorena Bogarin, DPA  
1770 N. Broadway  
Santa Ana, CA 92706  
Phone: (714) 834-3504  
Email: [Lorena.Bogarin@ac.ocgov.com](mailto:Lorena.Bogarin@ac.ocgov.com)

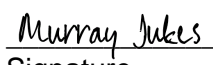
*[Signature Page Follows.]*

**SIGNATURES**

The Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

**CONTRACTOR\*: Sycomp, A Technology Company, Inc.**

Chris Elgaaen	Vice President, Global Operations
Print Name	Title
	1/27/2021   11:51:07 AM PST
Signature	Date

Murray Jukes	Chief Financial Officer
Print Name	Title
	1/27/2021   12:14:16 PM PST
Signature	Date

Pursuant to California Corporations Code Section 313, If the Contracting party is a corporation,  
**(2) two signatures are required:**

**1) The document must be signed by two people. One of them must be the chairman of the board, the president or any vice-president. The other must be the secretary, any assistant secretary, the chief financial officer or any assistant treasurer.**

**2) One corporate officer may sign the document, providing that written evidence of the officer's authority to bind the corporation with only his or her signature must be provided. This evidence would ideally be a corporate resolution.**

\*\*\*\*\*

**COUNTY OF ORANGE, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA:**

Print Name	Title
Signature	Date

Approved by Board of Supervisors on:      Date \_\_\_\_\_

**County of Orange, Office of the County Counsel**

APPROVED AS TO FORM:

\_\_\_\_\_  
 James D. P. Steinmann  
 Deputy County Counsel



## **ATTACHMENT A**

### **Statement of Work**

The purpose of this Contract is for Contractor to provide County with an IBM V7200 Utility Model under a 3-year lease-to-purchase option with 178TB of usable storage, with a total of 89TB enabled and a charge of \$45 per TB per month beyond the first 89TB used.

The FS7200 includes the following benefits for the ACIT team:

- The FS7200 is the 2nd refresh of the V7000/V9000 family. It leverages the latest FPGAs, Server Chip, and optimized SVC software stack.
- The FPGA technology provides integrated Compression and Encryption at rest that's designed to maintain high throughput of the NVMeS.
- Ease of migration and little training as ACIT moves off the existing V7000 and V9000 leverages the same storage software stack that ACIT has been running on for 5 years.
- Because it's the same software stack migration will be performed in the background with no interruption. During cutover the boot partitions will be repointed at the new storage for a short outage window.
- HACMP HA software is integrated with IBM storage to flush caches and have a seamless failover within the HA Cluster
- Tuning and optimization of the FS7200 is the same process as implemented on V9000. Integration with AIX, the new FibreChannel Adapters, and storage, enables the SAIC team to parallelize access to the storage and maximize the value and throughput of the NVMe array.

FS7200 all NVMe storage includes:

- 2.3m IOP IBM rated performance
- 178TB Usable, with 89TB activated: 24x 9.6TB NVMe drives, with Distributed Rate, and a hot spare drive
- Utility Model Pricing, enabling 89TB usable and \$45/TB/month flexible pricing if average utilization exceeds 89TB
- FPGA enabled Compression and Encryption for data at rest: for high performance IO
- Dual active and redundant heads
- 6 x 32Gb FC adapters
- IBM SVC software with 3 years of support
- 24x7 onsite storage support for 3 years
- Two new 32Gb FC switches, enabling a faster, isolated, network for migration and positioning for the CAPS++ upgrade in 2022.
- CTS for the 7200
- Retiring CTS on the V7 and V9

**ATTACHMENT B****Pricing/Compensation/Invoicing**

This is a fixed-price contract between the County and Contractor for product and services provided in the Product Specification and Statement of Work.

Total amount of this Contract shall not exceed **\$257,827.83**

Sycomp onsite and remote migration planning and assistance to retire the current V7000s and V9000s. Utilizing the annual maintenance savings toward IBM Leasing Payments to minimize net incremental expense for this upgrade.

List price: \$853,260.00

Cost to County: \$257,827.83

Total Lease/Financing Payment (Semi-Annual): \$41,011.21

Hardware Lease USE Tax-9.25%: \$1,960.09

Total Lease/Financing Payment with Use Tax: \$42,971.30

Total Sum of Lease/Financing Payments: \$257,827.83

	<u>FY 20-21</u>	<u>FY 21-22</u>	<u>FY 22-23</u>	<u>FY 23-24</u>		<u>Total Payments:</u>
Estimated Lease/Financing Payments by Fiscal Year:	\$42,971.30	\$85,942.61	\$85,942.61	\$42,971.30		\$257,827.83
Estimated Total Lease/Financing Payments by Fiscal Year:	1	2	2	1		6
FY Period:	01/01/21 to 06/30/21	07/01/21 to 06/30/22	07/01/22 to 06/30/23	07/01/23 to 12/31/23		

**Invoicing:** Invoices shall be submitted to County as provided below. Contractor shall reference the Contract number, **MA-003-21010760** on each invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County and verified and approved by the Auditor-Controller and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor in consultation and agreement with County. Late payments for undisputed amounts shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, until paid in full.

Billing shall cover services and/or goods not previously invoiced.

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

Invoices shall be mailed to the following address:

**Orange County Auditor-Controller/Financial Services**  
**Attention: Christine Nguyen**  
**1770 N. Broadway, 4<sup>th</sup> Floor**  
**Santa Ana, CA 92706**

Notwithstanding the foregoing and for the avoidance of doubt, the parties intend this Contract to be financed through an agreement between the County and IBM Credit LLC (aka IBM Global Financing or IGF, hereinafter "IBM"). Accordingly, County agrees to enter into that certain Lease/Purchase Master Agreement and related contract documents identified by IBM as Agreement No. 009657602L (collectively the "IBM Agreement"). The IBM Agreement refers to Contractor as "Supplier."

Contractor agrees that any and all payments made by County under either this Contract or the IBM Agreement will satisfy the payment obligations of both as allocated and detailed in this Attachment B of the Contract. County's total payment obligation under the contracts shall be the amount set forth in this Attachment B as paid in a timely fashion to the applicable parties. Except as arising out of County's gross negligence or willful misconduct, Contractor shall make to IBM any payments, or penalties invoiced or claimed by IBM in excess of the amounts set forth in this Attachment B that would be due under this Contract. Additionally, and separate from this obligation, County retains the option to purchase the products described in Attachment A at the end of the lease option period in accordance with the IBM Agreement.

Contractor agrees to accept timely payment as contained herein as full remuneration for performing all services and furnishing all staffing and materials required, and for performance by the Contractor of all its duties and obligation hereunder. The County shall have no obligation to pay any sum in excess of set price unless authorized by Amendment in accordance with **Article P** of the General Terms and Conditions.

**ATTACHMENT C****COMPANY PROFILE**

Company Name: Sycomp, a technology company

Business Address: 950 Tower Lane, Suite 1785, Foster City, CA 94404

Address for mailed funds: Same

Telephone Number: (650) 312-8174 Facsimile Number: (650) 312-8175

Email Address: amadeley@sycomp.com

Length of time the firm has been in business: 24 years

Length of time at current location: 20 years

Is your firm the sole proprietor doing business under a different name:        Yes   X   No

If yes, please indicate sole proprietors name and the name you are doing business under:

Indicate your firm's federal tax-exempt I.D. number: 77-0417085

Is your firm incorporated:   X   Yes        No State of Incorporation: California

Contractor license number: SR-BHA-97-799841

Regular business hours: 24/7

Regular holidays and hours when business is closed: No planned downtime

Contact's name in reference to this bid: Ashton Madeley

Telephone Number: (831) 246-4387 Facsimile Number: (    )

Email Address: amadeley@sycomp.com

Name of service manager: Ken Halbrecht

Telephone Number: (925) 437-1943 Facsimile Number: (    )

Email Address: Khalbrecht@sycomp.com

Name and telephone number of administrator to whom customer service problems should be directed: Lori Lemos

Telephone Number: (650) 619-4456