

PRICE AGREEMENT No. N1000008488 Contract #MA-299-11011462

**MAINTENANCE & SUPPORT SERVICES
OF PARADIGM SOFTWARE, L.L.C.**

TERMS AND CONDITIONS

1. SCOPE OF PRICE AGREEMENT

This Price Agreement specifies the terms and conditions by which the County will acquire maintenance and support services for Paradigm Software Compuweigh and Weighstation. The detailed Scope of Work is fully set forth in Attachment A and incorporated herein by reference.

2. TERM OF PRICE AGREEMENT

The Contractor shall commence work on the date this ~~Price~~ Agreement is executed, ~~and shall continue for a three-year period, renewable for two additional one-year periods.~~

3. COMPENSATION, TERMS OF PAYMENT, INVOICING INSTRUCTIONS

Compensation

This is a Fixed Price Agreement maintenance agreement, with support provided on an as-needed hourly basis. Contractor agrees to accept the specified compensation set forth herein as full remuneration for performing all services and furnishing all staffing and materials called for; and for any reasonably foreseeable difficulties which may arise or be encountered in the execution of the services until acceptance; and for risks connected with the services; and for performance by the Contractor of all of its duties and obligations hereunder.

Terms of Payment

Contractor shall submit an invoice in arrears for hourly time and materials services provided for optional enhancements, support, and on-going training, billable monthly in arrears. Payment due to the Contractor will be made within thirty (30) days after receipt of a correctly submitted invoice.

Annual maintenance and escrow fee payable annually in advance.

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

Invoicing Instructions

Invoices and supporting documentation are to be sent to:
County Of Orange
FWMD-OC Waste & Recycling Accounts Payable
320-300 N. Flower Street, Suite 400
Santa Ana, CA 92703

The County's Project Manager is responsible for approval of invoices and subsequent submittal of invoices to the Auditor-Controller for processing payment.

Acceptable invoicing format:

The Contractor may bill on their standard invoice form but the following references must be made:

1. County Contract PA#
2. Contractor's Federal I.D. Number
3. Total Price Agreement amount; including adjustments
4. Amount expended to date
5. Amount being invoiced
6. Price Agreement balance

The responsibility for providing an acceptable invoice to the County Of Orange for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

4. AVAILABILITY OF FUNDS

This Price Agreement is subject to and contingent upon applicable budgetary appropriations being approved by the County Board of Supervisors for each fiscal year during the term of this Price Agreement. If such appropriations are not approved, the contract will be terminated without penalty to the County.

5. CHANGES/EXTRA WORK/MODIFICATIONS

The Contractor shall make no changes in this Price Agreement without the County's written consent. In the event that there are new or unforeseen requirements, the County with the Contractor's concurrence has the discretion to request official changes at any time without changing the intent of this Price Agreement.

If County-initiated changes affect price, the Contractor's ability to deliver services or the project schedule, the Contractor shall give the County written notice no later than seven (7) calendar days from the date the Contractor was notified of the proposed change. Such changes shall be agreed to in writing and incorporated into a Price Agreement Modification before becoming effective. Said Modification shall be issued by the Deputy Purchasing Agent or his designee and may be subject to approval by the County Board of Supervisors.

Except for the rights of the County to terminate this Price Agreement and/or the work, nothing herein shall prohibit the Contractor from proceeding with the work set forth in Exhibit A, Scope of Work.

All extra services are by mutual consent of all parties and may be subject to the approval of the County Board of Supervisors.

6. **TERMINATION**

Termination for Convenience

The County may terminate performance of work under this Price Agreement for its convenience in whole, or, from time to time, in part if the user agency/department determines that a termination is in the County's interest. The agency/department assigned buyer shall terminate this Price Agreement by delivering to the Contractor a written notice of termination specifying the extent of the termination and the effective date thereof. The parties agree that, as to the terminated portion of this Price Agreement, the contract shall be deemed to remain in effect until such time as the termination settlement, if any, is concluded and this Price Agreement shall not be void.

After receipt of a notice of termination and, except as directed by the assigned buyer, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:

1. Stop work as specified in the notice of termination;
2. Place no further subcontracts or orders for materials, services, or facilities, except as necessary to complete the continued portion of the contract;
3. Terminate all orders and subcontracts to the extent they relate to the work terminated;
4. Settle all outstanding liabilities and termination settlement proposals arising from the termination of any subcontracts, the approval or ratification of which will be final for purposes of this clause;
5. As directed by the assigned buyer transfer title and deliver to the County (a) fabricated or unfabricated parts, work in process, completed work, supplies, software, codes and other material produced or acquired for the work terminated, and (b) completed or partially completed plans, drawings, information, and other property that, if this Price Agreement had been completed, would be required to be furnished to the County;
6. Complete performance of the work not terminated; and
7. Take any action that may be necessary or as the County may direct for the protection and preservation of the property related to this Price Agreement that is in the possession of the Contractor and in which the County has or may acquire an interest and to mitigate any potential damages or requests for contract adjustment or termination settlement to the maximum practical extent.

At the completion of the Contractor's termination efforts, the Contractor may submit to the assigned buyer a list indicating quantity and quality of termination inventory not previously disposed of and request instructions for disposition of the residual termination inventory.

After termination the Contractor shall submit a final termination settlement proposal to the user agency/department in a format acceptable to the County. The Contractor shall submit the proposal promptly, but no later than 60 days from the effective date of the termination, unless extended in writing by the County upon written request of the Contractor within the 90-day period. However, if the agency/department determines that the facts justify it, a termination settlement proposal may be received and acted on after the expiration of the filing period or any extension.

The Contractor and the County may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done, including a reasonable amount for accounting, legal, clerical and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data, and storage, transportation and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. However, the agreed amount may not exceed the total Price Agreement amount as reduced by (a) the amount of payment previously made and (b) the Price Agreement amount of work not terminated. This Price Agreement shall be amended and the Contractor paid the agreed amount.

If the Contractor and the County fail to agree on the whole amount to be paid because of the termination of work, the County shall pay the Contractor the amounts determined by the County as follows, but without duplication of any amounts agreed on as set forth above:

- a. The Price Agreement price for supplies and services made, incurred or performed by the Contractor, or for which the Contractor is liable, and for which the Contractor has not previously been paid, adjusted for any savings of freight and other charges; and
- b. Except for normal spoiling and except to the extent that the County expressly assumes the risk of loss, the County shall exclude from the amounts payable to the Contractor the fair value, as determined by the agency/department, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the County.

The County and the Contractor shall use generally accepted accounting principles and sound business practices in determining all costs claimed, agreed to, or determined under this clause. Such costs shall be allocable to the terminated Price Agreement or portion thereof, allowable under applicable laws, regulations, generally accepted accounting principles and good business judgment and objectively reasonable.

The Contractor shall have the right to appeal, under the County's protest procedure, any determination made by the County, except that if the Contractor failed to submit the termination settlement proposal within the time provided and failed to request a time extension, there is no right of appeal.

In arriving at the amount due the Contractor under this clause, there shall be deducted:

- a. All payment to the Contractor under the terminated portion of this Price Agreement;
- b. Any claim which the County has against the Contractor under this or any other contract; and
- c. The agreed price for or proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the County.

If the termination is partial, the Contractor may file a proposal with the agency/department for an equitable adjustment of the price(s) of the continued portion of the contract. The agency/department shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 30 days from the effective date of termination unless extended in writing by the agency/department.

The County may:

- a. Under the terms and conditions it prescribes, make partial payment and payments against costs incurred by the Contractor for their terminated portion of the contract, if the County believes that the total of these payments will not exceed the amount to which the Contractor will be entitled; and
- b. If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the County upon demand.

In determining the amount payable to the Contractor and notwithstanding any other provision, if it appears that the Contractor would have sustained a loss on the entire Price Agreement had it been completed, the County shall allow no profit and shall reduce the settlement to reflect the indicated rate of loss.

Unless otherwise provided in this Price Agreement or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Price Agreement for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Price Agreement. The Contractor shall make these records and documents available to the County, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the County, photographs, microphotographs, electronic storage, or other authentic reproductions may be maintained instead of original records and documents.

Termination for Default

If Contractor is in default of any of its obligations under this Price Agreement and has not commenced cure within ten (10) days after receipt of a written notice of default from County and cured such default within the time specified in the notice, the County shall immediately be entitled to either commence resolution in accordance with this paragraph or to terminate this Price Agreement by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this Price Agreement, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the work as agreed to herein, or otherwise substantially violating any provision of this Price Agreement. Upon termination of the Price Agreement with the Contractor, the County may begin negotiations with third-party Contractor to provide goods and/or services as specified in this Price Agreement.

The right of either party to terminate this Price Agreement hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

Orderly Termination

After receipt of a termination notice from the County, the Contractor shall submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of this Price Agreement, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in this Price Agreement. Upon termination or other expiration of this Price Agreement, 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 Price Agreement and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each party.

7. PROJECT ADMINISTRATION

The Contractor shall appoint a Project Manager to direct the efforts in fulfilling the Contractor's obligations under this Price Agreement. This Project Manager shall be subject to the approval of the County and shall not be changed without the written consent of the County's agent(s) which consent shall not be unreasonably withheld.

The County's Deputy Purchasing Agent shall act as liaison with the Contractor during the term of this Price Agreement.

The Contractor's Project Manager and assigned staff shall be assigned to this project for the duration of this Price Agreement and shall diligently pursue all work and services to meet the project time-lines. Key personnel are those individuals who report directly to the Contractor's Project Manager.

The County's Deputy Purchasing Agent shall have the right to require the removal and replacement of the Contractor's Project Manager and assigned staff. The County's Deputy Purchasing Agent shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County's Project Manager. The County's Deputy Purchasing Agent shall review and approve the appointment of the replacement the Contractor's Project Manager and assigned staff. Said approval shall not be unreasonably withheld.

8. REPORTS/MEETINGS

The County's Project Manager and the Contractor's Project Manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Price Agreement. If requested, other assigned project personnel shall attend meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Price Agreement.

9. INDEPENDENT CONTRACTOR

The Contractor, and its agents and employees, shall be and act at all times during the term of the Price Agreement as independent Contractors vis-à-vis the County and shall not be, nor shall it or they be construed in any manner as being, an agent, officer or employee of the County. The Contractor shall solely be responsible for the services performed under the terms of this Price Agreement. The Contractor shall assume full responsibility for the actions of its employees as related to the services provided under this Price Agreement. The County shall not directly supervise the Contractor's employees in the performance of their duties, but shall look to the Contractor for contract performance as related to the tasks and services required in Attachment A, Scope of Work. The County shall look to the Contractor for results only. The Contractor shall assume full responsibility for payments on account of its agents, servants and employees of Federal, State and local taxes or contributions imposed or required under the Social Security, Workers' Compensation and applicable income and employment tax laws. In this regard, the Contractor certifies to the County that it is aware of the laws of the State of California requiring employers to be insured against liability for Workers' Compensation and shall comply with such laws during the term of this Price Agreement. Nothing contained herein shall be construed as creating the relationship of employer/employee or principal/agent.

10. RESPONSIBILITY OF THE CONTRACTOR

The Contractor shall perform such Contractor services as may be necessary to accomplish the work required to be performed under this Price Agreement and in accordance with this Price Agreement.

The Contractor, if required by the County, shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in Attachment A, Scope of Work.

The Contractor warrants that all persons employed by Contractor have satisfactory past records indicating their ability to accept the kind of responsibility anticipated in this type of work.

11. CONFLICT OF INTEREST

The Orange County Board of Supervisors' policy prohibits its public employees from engaging in activities involving conflict of interest. The Contractor shall not during the term of this Price Agreement employ any County employee for any purpose in relation to performance hereunder.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interest of the County. This obligation shall apply to Contractor, Contractor's employees, agents, relatives, sub-tier Contractors, and third parties associated with accomplishing work and services hereunder.

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 interest of the County.

12. ASSIGNMENT/SUBCONTRACTING

No performance of this Price Agreement or any portion thereof may be assigned or subcontracted without the express written consent of the County, such Consent shall not be unreasonably withheld. Any attempt by the Contractor to assign or subcontract any performance of this Price Agreement without the express written consent of the County shall be invalid and shall constitute a breach of this Price Agreement.

In the event the Contractor is allowed to subcontract, the County shall look to the Contractor for results of its sub-tier. The Contractor agrees to be responsible for all the subcontractor's acts and omissions to the same extent as if the subcontractors were employees of the Contractor. No subcontracts shall alter in any way any legal responsibility of the Contractor to the County. Whenever the Contractor is authorized to subcontract or assign, the terms of this Price Agreement shall prevail over those of any such subcontract or assignment.

13. INDEMNITY

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.

14. **INSURANCE PROVISIONS**

Prior to the provision of services under this contract, the contractor agrees to purchase all required insurance at contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Price Agreement have been complied with and to keep such insurance coverage and the certificates therefore 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 Price Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for contractor.

All insurance policies required by this Price Agreement shall declare any deductible or self-insured retention (SIR) in an amount in excess of \$25,000 (\$5,000 for automobile liability), which shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management. Contractor shall be responsible for reimbursement of any deductible to the insurer. Any self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance.

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 licensed to do business in the state of California (California Admitted Carrier).

Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure Best's Rating) and VIII (Financial Size Category).

If the carrier is a non-admitted carrier in the state of California, CEO/Office of Risk Management retains the right to approve or reject 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:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability with broad form property damage and contractual liability	\$1,000,000 combined single limit per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence

All liability insurance required by this Price Agreement shall be at least \$1,000,000 combined single limit per occurrence. Professional Liability may also be provided on a "Claims Made" basis. The minimum aggregate limit for the Commercial General Liability policy shall be \$2,000,000.

The County of Orange shall be added as an additional insured on all insurance policies required by this Price Agreement with respect to work done by the Contractor under the terms of this Price Agreement (except Workers' Compensation/Employers' Liability). An additional insured endorsement evidencing that the County of Orange is an additional insured shall accompany the Certificate of Insurance.

All insurance policies required by this Price Agreement shall be primary insurance, and any insurance maintained by the County of Orange shall be excess and non-contributing with insurance provided by these policies. An endorsement evidencing that the contractor's insurance is primary and non-contributing shall specifically accompany the Certificate of Insurance for the Commercial General Liability.

All insurance policies required by this Price Agreement shall give the County of Orange 30 days notice in the event of cancellation. This shall be evidenced by an endorsement separate from the Certificate of Insurance. In addition, the cancellation clause must include language as follows, which edits the pre-printed ACORD certificate:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENT OR REPRESENTATIVE.

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

The Commercial General Liability policy shall contain a severability of interests clause.

The Contractor is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Workers' Compensation or be self-insured in accordance with provisions of that code. The Contractor will comply with such provisions and shall furnish the County satisfactory evidence that the contractor has secured, for the period of this contract, statutory Workers' Compensation insurance and Employers' Liability insurance with minimum limits of \$1,000,000 per occurrence.

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 days of receipt of such notice, this Price Agreement 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.

The County of Orange Certificate of Insurance and the Special Endorsement for the County of Orange can be utilized to verify compliance with the above-mentioned insurance requirements in place of commercial insurance certificates and endorsements.

15. PATENT/COPYRIGHT MATERIALS

Unless otherwise expressly provided in this Price Agreement, the Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Price Agreement.

16. TITLE TO DATA

All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Price Agreement 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 Price Agreement. All materials, documents, data or information, including copies, must be returned to the County at the end of this Price Agreement.

17. CONFIDENTIALITY OF CONTRACTOR'S RECORDS

The Contractor agrees to maintain the confidentiality of its records pursuant to all statutory laws relating to privacy and confidentiality as now in existence or as hereafter amended or changed. All records and information concerning any and all matters referred to the Contractor by the County shall be considered and kept confidential by the Contractor and the Contractor's staff, agents, subcontractors, and employees. Information obtained by the Contractor in the performance of this Price Agreement shall be treated as strictly confidential and shall not be used by the Contractor for any purpose other than the performance of this Price Agreement.

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 parties' Project Managers' routine exchange of information and cooperation during the term of the work and services, and shall be deemed to have been duly given (a) upon actual in-person delivery, if delivery is by direct hand; or (b) upon delivery agreed to as the actual day of receipt or no greater than four (4) calendar days after being mailed (the date of mailing shall count as the first day), whichever occurs first by United States certified or registered mail, return receipt requested, postage prepaid, addressed to the appropriate party at the following address or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid:

For Contractor: Name: Paradigm Software, L.L.C.
 Address: 1202 York Road
 Lutherville, MD 21093
 Attn: Jackie W. Barlow, II
 Telephone: (410) 828-9223
 Fax: (410) 828-1888

For County: Name: County of Orange
 Integrated Waste Management Department
OC Waste & Recycling
 Address: 320-300 N. Flower St., Ste. 400
 Santa Ana, CA 92703
 Attn: Diane Dodson, Purchasing Manager
 Telephone: (714) 834-4145
 Fax: (714) 834-4136

19. INTERPRETATION

In the event of conflict or question involving the provisions of the main body of this Price Agreement (i.e., those provisions set forth in the Recitals and Articles of this Price Agreement) and the provisions of the Attachments, interpretation and clarification as necessary shall be determined by the County's Deputy Purchasing Agent or his designee.

20. DISPUTE AS TO PRICE AGREEMENT REQUIREMENTS

If any dispute concerning a question of fact or interpretation of the rights and obligations arising under the terms of this Price Agreement is not disposed of within a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County's Deputy Purchasing Agent or his designee. If agreement cannot be reached through this application, either party may assert its other rights and remedies within this Price Agreement or within a court of competent jurisdiction.

The County and the Contractor agree that, in the event of a dispute notwithstanding, they will continue without delay to carry out all their responsibilities under this Price Agreement that are not affected by the dispute.

21. BREACH OF AGREEMENT

The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Price Agreement shall be a material breach of this Price Agreement. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Price Agreement:

1. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Price Agreement within which to cure the breach;
2. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
3. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.

The failure of the County to comply with any of the provisions, covenants or conditions of this Agreement may be a material breach of this Agreement. In such an event the Contractor may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement:

1. Afford the County written notice of the breach and ten calendar days within which to cure the breach; and

2. Contractor may suspend performance of the Work. In the event of the suspension of the Work resulting from a material breach by County, Contractor shall have no liability to the County for delay or damage incurred by the County because of such suspension of the Work.

22. CONSENT TO BREACH NOT WAIVER

No term or provision of this Price Agreement shall be deemed waived and no breach excused, unless such waiver of 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 a consent to, waiver of, or excuse for any other different or subsequent breach.

23. WARRANTIES AND REMEDIES EXCLUSIVE

The warranties and remedies for any breach set forth in this Price Agreement are exclusive. The warranties and remedies set forth in paragraph 24 and Attachment 4 are the sole and exclusive warranties and remedies under this Price Agreement.

24. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Price Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

For breach or violation of this warranty, the County shall have the right to terminate this Price Agreement in accordance with the termination clause and, at its sole discretion, to deduct from the Price Agreement's price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from the Contractor.

25. GENERAL AUDIT

The County's duly authorized representative shall have access, at reasonable times, to all reports, Price Agreement records, documents, files and personnel necessary to audit and verify the Contractor's fees to the County hereunder. The Contractor agrees to retain reports, records, documents and files related to fees hereunder for a period of three (3) years following the date of final payment for the Contractor's services hereunder. The County reserves the right to audit and verify the Contractor's records before final payment is made. The County's representatives shall have the right to reproduce any of the aforesaid documents.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Price Agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

26. CONTRACTOR'S SAFETY STANDARDS AND WORK HOURS

The Contractor will ensure compliance with all safety and hourly requirements for employees in accordance with Federal, State, and County safety and health regulations and laws.

27. NONDISCRIMINATION

The Contractor shall comply with all Federal and State laws relating to civil rights. The Contractor agrees that no person shall be excluded from employment on the grounds of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex.

28. 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 Articles 13 and 14 above, 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.

29. CHOICE OF LAW AND FORUM

The formation, interpretation, and performance of this Price Agreement shall be governed by the laws of the State of California, provided that no provision of this Price Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Price Agreement shall be construed as if jointly prepared by the parties. No lawsuit pertaining to any matter arising under or growing out of this Price Agreement shall be instituted in any state other than California. Any legal proceeding with respect to this Price Agreement shall be filed in the appropriate court of the State of California in Orange County, California.

30. NEWS AND INFORMATION RELEASE

The Contractor agrees that it will not issue any news releases in connection with either the award of this Price Agreement, or any subsequent Modification of or effort under this Price Agreement, without first obtaining review and approval of said news releases from the County through the County's Project Manager.

31. HEADINGS NOT CONTROLLING

Headings used in this Price Agreement are for reference purposes only and shall not be considered in construing this Price Agreement.

32. VALIDITY

The invalidity in whole or in part of any provision of this Price Agreement shall not void or affect validity of any other provision of this Price Agreement.

33. ENTIRE AGREEMENT

This Price Agreement, when accepted by the Contractor, 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. 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 his designee, hereinafter "Purchasing Agent."

This Price Agreement includes the following Attachments that are incorporated by this reference:

- Attachment 1 Child Support Enforcement Requirements
- Attachment 2 EDD Independent Contractor Requirements
- Attachment 3 Paradigm Software, L.L.C., Support Services Terms and Conditions Agreement
- Attachment 4 Paradigm Software, L.L.C., Escrow Agreement
- Attachment A Scope of Work

34. STANDARD SUPPORT SERVICES.

Pursuant to the Scope of Work set forth in Attachment A, the Contractor is required to provide to the County standard support services for the WeighStation and CompuWeigh System. The terms and conditions for the provision of such standard support services are set forth in Attachment 3 attached hereto and incorporated herein by reference thereto ("Support Services Terms and Conditions Agreement"). If there are any discrepancies between this Agreement and the Support Services Terms and Conditions Agreement, the provisions of the County Price Agreement shall govern.

35. ESCROW AGREEMENT

Contemporaneous with the execution of this Price Agreement, County will enter into and be bound by an Escrow Agreement governing the right of the County to access the

Source Code for the Paradigm Software (Escrow Agreement). The Escrow Agreement is intended by the Parties to govern the rights and obligations of the parties concerning the right of the County to access Paradigm's source code. A copy of this Escrow Agreement is attached as Attachment 4 and incorporated by this reference. When determining the rights and obligations of the parties concerning the County's access to the source code, if any provision of this Agreement is inconsistent with the terms and conditions of the Escrow Agreement, the terms of the Escrow Agreement shall control.

36. AUTHORIZATION WARRANTY

The Contractor represents and warrants that the person executing this Price Agreement on behalf of and for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every Article and obligation of this Price Agreement and that all requirements of the Contractor have been fulfilled to provide such actual authority.

**PRICE AGREEMENT
FOR
MAINTENANCE & SUPPORT SERVICES
OF PARADIGM SOFTWARE, L.L.C.**

IN WITNESS WHEREOF, the parties hereto have executed this Price Agreement on the dates shown opposite their respective signatures below.

*CORPORATION NAME: Paradigm Software, L.L.C.

DATE: _____ BY: _____

TITLE: _____
"Contractor"

DATE: _____ BY: _____

TITLE: _____
"Contractor"

**Integrated Waste Management Department/
County of Orange, a Political
Subdivision of the State of California**

DATE: _____ BY: _____

TITLE: _____
Deputy Purchasing Agent

*Based on Corporations Code 313, a contract with a Corporation is validated when the Agreement is signed by two corporate officers. County Counsel has advised that where the party contracting with the County is a corporation, one signature must be obtained by the Chairman of the Board, the President or any Vice President and one signature by the Secretary any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.

Attachment 1

**COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT
CERTIFICATION REQUIREMENTS**

In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address:

Name: _____
D.O.B: _____
Social Security No: _____
Residence Address: _____

In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity:

Name: _____
D.O.B: _____
Social Security No: _____
Residence Address: _____

Name: _____
D.O.B: _____
Social Security No: _____
Residence Address: _____

Name: _____
D.O.B: _____
Social Security No: _____
Residence Address: _____

(Additional sheets may be used if necessary)

"I certify that (Company name) is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. I understand that failure to comply shall constitute a material breach of the contract and that failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract."

Authorized Signature Name Title Date

Attachment 2

EDD INDEPENDENT CONTRACTOR REPORTING REQUIREMENTS

California Senate Bill 542 requires businesses and government entities to report specified information regarding independent Contractors to the Employment Development Department (EDD). This information will be used by the EDD to assist in locating parents who are delinquent in their child support payments. An independent Contractor is defined as a sole proprietor who is not an employee of the business or government entity for which that individual is performing a service and who received compensation and/or executes a contract for services performed for that business or government entity either in or outside of California.

To comply with the reporting requirements of SB 542, County procedures for contracting with independent contracts mandate that the following information be completed and forwarded to the contracting agency/department immediately upon request:

- First name, middle initial and last name
- Social Security Number
- Address
- Start and expiration dates of contract
- Amount of contract

First Name	Middle Initial	Last Name
SSN	_____	
Contract No.	_____	
Start Date	Expiration Date	_____
Dollar value of contract	_____	

Attachment 3

Support Services Terms and Conditions Agreement

TERMS AND CONDITIONS

COVERAGE. The computer programs eligible for Standard Support Services (as defined below) are those programs described on the Software Support Schedule set forth on the Software Support Schedule, or attached hereto, as updated with all current amendments, alterations, enhancements, improvements and updates furnished to County under warranty and Standard Support Services (the "Software"). Standard Support Services shall be rendered only to the currently supported version of Software running with the applicable operating system version supported by Paradigm.

TERM AND RENEWAL. Provided payment has been made as required herein, the term of this Agreement commences on the date specified on the Software Support Price Agreement, and continues until three (3) years following the date of commencement. After that, it will renew upon mutual written consent for two successive one (1) year periods, unless either Paradigm or County gives written notice to the other of intention not to renew at least 60 days prior to the commencement of any renewal term. The cost of the agreement may increase after the initial three-year period annually based upon the Consumer Price Index.

STANDARD SUPPORT SERVICES. During the term of this Agreement, Paradigm will provide to County its Standard Support Services described in this paragraph. Paradigm will provide technical services to design, code, check out and deliver for County's use subject to the license granted to County under the System Implementation Agreement, amendments or alterations of the Software necessary to correct or provide a solution to any programming error attributable to Paradigm which caused the Software not to perform all functions substantially as described in the current, standard editions of manuals delivered to County by Paradigm pertaining to the use of the Software (the "Documentation"). Such services will be promptly provided after County has identified and notified Paradigm of any such error in accordance with Paradigm's reasonable reporting procedures as in effect from time to time. Paradigm will also provide reasonable telephone consultation in the use and operation of the Software during the hours of 8:15 a.m. through 5:00 p.m. County's time on weekdays, except Paradigm holidays. For Standard Support Services, Paradigm will accept telephone calls during Standard Support Service hours only from one contact or alternate, designated by County in writing from time to time, in advance. Paradigm will charge on a time and materials basis, and County will pay such charges, for services in response to requests for consultation from any County contact not designated as set forth above. In addition, Paradigm will deliver to County, without any charge other than as specified on the Software Support Schedule, from time to time updates of the Software within the current version, which Paradigm elects to include under its Standard Support Services program and does not market separately to Standard Support Services customers generally.

COUNTY RESPONSIBILITIES. County agrees to test, and if operable, accept and use all updates, amendments and alterations to the Software furnished to County hereunder and to install

and maintain for the duration of this Agreement a modem and associated dialup telephone line. County shall allow Paradigm continuous access to the Software via this connection or Terminal Services for the purpose of providing Standard Support Services and will pay all telephone line use charges. County will provide Paradigm with dumps as requested, and with sufficient support and test time on County's computer system to duplicate any conditions or problems identified by County or Paradigm.

CHARGES. The annual fee for Standard Support Services is as set forth herein, payable annually in advance. Any uncontested charges left unpaid beyond 90 days may be considered a breach of this agreement Paradigm may increase its annual charges for maintenance and support after the initial 36 month period, annually by giving County notice of any such increase not later than the first day of August during the term prior to the renewal term for which such price increase is to be effective. Prices and fees are exclusive of all federal, state, municipal, or other government excise, sales, use, occupational, or like taxes now in force or enacted in the future, and County agrees to pay any tax Paradigm may be required to collect or pay now or at any time in the future (including interest and penalties imposed by any governmental authority) which are imposed upon the sale or delivery of items purchased or licensed or any services rendered hereunder. If a certificate of exemption or similar document or proceeding is to be made in order to except the sale from sales or use tax liability, the County will obtain and pursue such certificate, document or proceeding.

OTHER SERVICES. County agrees to pay Paradigm's charges for services not included in Standard Support Services, at Paradigm's rate provided herein. Investigation and research for County identified conditions determined by Paradigm not to be attributed to Paradigm programming errors are billable to County as such other services. This is provided, however, that Paradigm obtains written approval of the expected fees prior to beginning the services.

PROPRIETARY RIGHTS. Any programs, works, manuals, changes, additions, alterations, amendments or enhancements in the form of new or partial programs or documentation as may be provided by Paradigm under this Agreement, and all copies thereof, shall be and remain the sole and exclusive property of Paradigm and shall be available for use by County under and subject to the license granted in the System Implementation Agreement. The System Implementation Agreement includes under its proprietary rights restrictions any such additional programming and documentation provided under this Agreement.

TERMINATION OF STANDARD SUPPORT SERVICES BY PARADIGM. In the event of a termination of County's license to use the Software due to County's default, this Agreement shall terminate immediately. Paradigm may terminate this Agreement in the event of default by County, including failure to pay the annual installment of the annual charge for Standard Support Services within thirty (30) days notice that the same is thirty (30) days or more delinquent.

COUNTY ACKNOWLEDGES THAT NO EXPRESS WARRANTIES HAVE BEEN MADE BY PARADIGM WITH RESPECT TO STANDARD SUPPORT SERVICES OR SOFTWARE DELIVERED HEREUNDER. PARADIGM DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

PARADIGM SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, REVENUE, SAVINGS, OPPORTUNITY OR ADVANTAGE OF ANY KIND), WHETHER ARISING UNDER CONTRACT, TORT OR ANY OTHER LEGAL THEORY OR CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, PARADIGM'S LIABILITY FOR ANY CAUSE UNDER OR RELATING TO THIS AGREEMENT, SHALL IN NO EVENT EXCEED THE TOTAL OF ALL AMOUNTS PAID TO PARADIGM BY COUNTY FOR STANDARD SUPPORT SERVICES DURING THE ONE (1) YEAR PERIOD PRIOR TO THE DATE ON WHICH ANY CLAIM IS MADE.

CUSTOMER UNDERSTANDS THAT THE FEES CHARGED BY PARADIGM IN THIS AGREEMENT REFLECT THE ALLOCATION OF RISKS EXPRESSED BY THE LIMITATIONS OF LIABILITY AND DAMAGES, WHICH ARE SET FORTH ON THE ATTACHED TERMS AND CONDITIONS. BY SIGNING WHERE INDICATED, COUNTY ACCEPTS THESE TERMS AND AFFIRMS IT UNDERSTANDS THAT TO CHANGE THEM WOULD AFFECT THE ECONOMIC BARGAIN EXPRESSED IN THIS ATTACHMENT.

SOFTWARE SUPPORT SCHEDULE.

Maintenance of software and hardware:	\$38,800/year
Hourly rate for software support services:	\$150/hour
Escrow fee:	\$200/year

**SCOPE OF WORK
MAINTENANCE & SUPPORT SERVICES FOR
PARADIGM SOFTWARE, L.L.C.**

FOR

INTEGRATED WASTE MANAGEMENT DEPARTMENT (IWMD) OC Waste & Recycling

Contractor to provide software maintenance and support services for Paradigm Software Compuweigh and ~~Weighstation~~ Weighstation for ~~IWMD~~ OC Waste & Recycling.

1. SOFTWARE MAINTENANCE AND SUPPORT SERVICES

Contractor to provide on-going technical support, software maintenance and training of Information System staff as deemed necessary by the ~~IWMD~~ OC Waste & Recycling Contract Administrator or his/her designee.

- a. Contractor to provide software upgrades and patches to ~~IWMD~~ OC Waste & Recycling as they are released.
- b. Contractor to provide telephone support and/or online support to resolve technical problems between the hours of 5:15 A.M. and 5:15 PM (Pacific Standard Time), Monday through Saturday.

2. Escrow Agreement

Contemporaneous with the execution of this Agreement, County will enter into and be bound by an Escrow Agreement governing the right of the County to access the Source Code for the Paradigm Software (Escrow Agreement). The Escrow Agreement is intended by the Parties to govern the rights and obligations of the parties concerning the right of the County to access Paradigm's source code. A copy of this Escrow Agreement is attached as Attachment 4 and incorporated by this reference. When determining the rights and obligations of the parties concerning the County's access to the source code, if any provision of this Agreement is inconsistent with the terms and conditions of the Escrow Agreement, the terms of the Escrow Agreement shall control.

3. Time and Material

Upon request of change from the ~~IWMD~~ OC Waste & Recycling Contract Administrator, a written quote will be created by the contractor stating the written description of change, number of hours, amount change will cost and estimated completion date. Once ~~IWMD~~ OC Waste & Recycling Contract Administrator has given written approval, Paradigm Software will begin to complete the change request.

Billing Rate shall not exceed \$150 per hour with a maximum amount of \$20,000 per year.