



COUNTY OF ORANGE

CONTRACT # MA-003-18010262

BY AND BETWEEN

AUDITOR-CONTROLLER'S OFFICE

AND

ARK TECHNOLOGIES

FOR

**TECHNICAL SERVICES AND SUPPORT FOR THE PROPERTY TAX
SYSTEM MODERNIZATION PROJECT**

Contract

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Contract for Technical Services and Support for the Property Tax System Modernization Project

This Agreement number MA-003-18010262, hereinafter referred to as “Contract”, for Technical Services and Support for the Property Tax System Modernization Project (hereinafter referred to as “Services”), made and entered into as of the date fully executed by and between ARK Technologies, with a place of business at 114 Avenida Trieste, San Clemente, CA hereinafter referred as “Vendor,” and the County of Orange, a political subdivision of the State of California, hereinafter referred to as “County,” which may be referred to individually as “Party” or collectively as “Parties.”

RECITALS

WHEREAS, the County’s legacy Assessment Tax System was developed in the late 1980’s and is nearing its end of life; and

WHEREAS, the County wishes to modernize its legacy Assessment Tax System by re-platforming it from an IBM mainframe platform to an open system platform; and

WHEREAS, the Vendor agrees to provide technical services and support for the Property Tax System Modernization Project to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and

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

WHEREAS, the County of Orange Board of Supervisors has authorized the Purchasing Agent or designee to enter into a contract for Technical Services and Support for the Property Tax System Modernization Project with the Vendor;

NOW, THEREFORE, the Parties mutually agree as follows:

ARTICLES

General Terms and Conditions:

- A. Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. Entire Contract:** This Contract, comprised of these terms and conditions, and Attachments A and B, which are incorporated herein, 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 “DPA.”
- 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, price quoted does not include California state sales or use tax. Out-of-state Vendors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Vendor.
- E. Intentionally Omitted.**
- 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.
- G. Warranty:** Vendor 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 Vendor's part to indemnify, defend and hold County and its indemnities 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:** Unless otherwise expressly provided in this Contract, Vendor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Vendor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Vendor 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 Vendor without the express written consent of County. Any attempt by Vendor 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, Vendor 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. Vendor acknowledges that a violation of this provision shall subject Vendor 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 Vendor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.
- 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: Vendor shall be considered an independent contractor and neither Vendor, its employees, nor anyone working under Vendor shall be considered an agent or an employee of County. Neither Vendor, its employees nor anyone working under Vendor shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. Performance: Vendor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Vendor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods and services furnished by the Vendor under this Contract. Vendor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; 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; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.

O. Insurance Provisions:

Prior to the provision of services under this Contract, the Vendor agrees to purchase all required insurance at Vendor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Vendor 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 Vendor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Vendor.

Vendor shall ensure that all subcontractors performing work on behalf of Vendor pursuant to this Contract shall be covered under Vendor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Vendor. Vendor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Vendor under this Contract. It is the obligation of Vendor 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 Vendor 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 Vendor's current audited financial report. If Vendor's SIR is approved, Vendor, 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 Vendor's, its agents, employee's or subcontractor's performance of this Contract, Vendor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
2. Vendor'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 Vendor's SIR provision shall be interpreted as though the Vendor was an insurer and the County was the insured.

If the Vendor 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 Vendor shall provide the minimum limits and coverage as set forth below:

| <u>Coverage</u> | <u>Minimum Limits</u> |
|---|---|
| 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 Liability | \$1,000,000 per claims-made |
| Technology Errors & Omissions | \$1,000,000 per claims-made |

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 Vendor'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 Vendor'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.

Vendor 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 Vendor's Professional Liability is a "Claims-Made" policy, Vendor shall agree to maintain coverage for two (2) years following the completion of 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 Vendor 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 Vendor 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 Vendor in writing of changes in the insurance requirements. If Vendor 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 Vendor, 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 Vendor'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:** Vendor shall make no changes in the work or perform any additional work without the County's specific written approval.
- Q. **Change in Ownership:** Vendor agrees that if there is a change or transfer in ownership of Vendor'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 terms of sale or other transfer to assume Vendor'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.
- R. **Force Majeure:** Vendor 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 Vendor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Vendor avails himself of any available remedies.
- S. **Confidentiality:** Vendor 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 Vendor and Vendor's staff, agents and employees.
- T. **Compliance with Laws:** Vendor represents and warrants that services to be provided under this Contract shall fully comply, at Vendor'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. Vendor acknowledges that County is relying on Vendor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Vendor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **Intentionally Left Blank**
- 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, 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 Vendor 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 Vendor 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 Vendor shall retain all such documentation for all covered employees for the period prescribed by the law. The Vendor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Vendor 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. Indemnification: Vendor 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 Vendor pursuant to this Contract. If judgment is entered against Vendor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Vendor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

AA. Audits/Inspections: Vendor 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 Vendor 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 Vendor's records before final payment is made.

Vendor 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. Vendor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Vendor 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 Vendor cease to exist as a legal entity, the Vendor's records pertaining to this agreement shall be forwarded to the County Project Manager.

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

CC. Expenditure Limit: The Vendor shall notify the County of Orange assigned DPA 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 Contract:** This Contract specifies the contractual terms and conditions by which the County will procure services from Vendor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A."

2. **Term of Contract:** This Contract shall commence on October 2, 2017 and shall continue until ~~August 30, 2019~~March 31, 2021.
3. **Precedence:** The Contract documents consist of this agreement and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this agreement, i.e., those provisions set forth in the recitals and articles of this agreement, and then the exhibits and attachments.
4. **Compensation:** This is a Not to Exceed Contract between the County and Vendor for services provided in Attachment A – Scope of Work. Compensation for services shall be as set forth in Attachment B – Cost/Compensation, attached hereto and made a part hereof.
5. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Vendor without the express written consent of the County. Any attempt by the Vendor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

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

6. **Conflict of Interest – Vendor’s Personnel:** The Vendor 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 Vendor; the Vendor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Vendor’s efforts shall include, but not be limited to establishing precautions to prevent 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 from acting in the best interests of the County.
7. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Vendor shall not, during the period of this Contract, employ any County employee for any purpose.
8. **County Project Manager:** The County shall appoint a “County Project Manager” to act as liaison between the County and the Vendor during the term of this contract. The County Project Manager shall coordinate the activities of the County staff assigned to work with the Vendor.
9. **Vendor Project Manager and Key Personnel:** Vendor shall appoint a “Vendor Project Manager” to direct the Vendor’s efforts in fulfilling Vendor’s obligations under this Contract. This Vendor Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County Project Manager, which consent shall not be unreasonably withheld.

The Vendor Project Manager shall be assigned to this project for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County Project Manager shall have the right to require the removal and replacement of the Vendor Project Manager from providing services to the County under this Contract. The County Project Manager shall notify the Vendor in writing of such action. The Vendor shall accomplish the removal within three (3) business days after written notice by the County Project Manager. The County Project Manager shall review and approve the appointment of the replacement for the Vendor Project Manager. The County is not required to provide any additional information, reason or

rationale in the event it requires the removal of Vendor Project Manager from providing further services under the Contract.

10. **News/Information Release:** The Vendor 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 Contract without first obtaining review and written approval of said news releases from the County through the County Project Manager.
11. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Vendor and/or anyone acting under the supervision of Vendor 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 newspaper, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.
12. **County Of Orange Child Support Enforcement:** All Vendors are required to comply with the child support enforcement requirements of the County of Orange. Failure of the Vendor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. In order to comply with the child support enforcement requirements of the County of Orange, all bidders/proposers must furnish to the Contract administrator, the Purchasing Agent, or the agency/department DPA:
 - A. In the case of an individual Vendor, his/her name, date of birth, Social Security number, and residence address;
 - B. In the case of a Vendor 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;
 - C. A certification that the Vendor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
 - D. A certification that the Vendor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.

13. **Disputes – Contract:**

- A. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Vendor Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:
 1. The Vendor shall submit to the agency/department assigned Deputy Purchasing Agent 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.
 2. The Vendor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Vendor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Vendor believes the County is liable.

- B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Vendor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Vendor'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 Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Vendor's demand, it shall be deemed a final decision adverse to the Vendor's contentions. Nothing in this paragraph shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in paragraph K herein.

14. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Vendor shall be complete and shall be carefully checked by the professional(s) identified by Vendor as Vendor Project Manager and key personnel attached hereto, prior to submission to the County. Vendor agrees that County review is discretionary and Vendor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Vendor's reports, files and other written documents, the reports, files or documents will be returned to Vendor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Vendor after County approval thereof, County approval of Vendor's reports, files or documents shall not be used as a defense by Vendor in any action between the County and Vendor, and the reports, files or documents will be returned to Vendor for correction.
15. **Gratuities:** The Vendor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Vendor or any agent or representative of the Vendor 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 goods or services which the Vendor agreed to supply shall be borne and paid for by the Vendor. 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. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned DPA, except through the course of the Parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

| | | |
|-------------|------------|---|
| For Vendor: | Name: | ARK Technologies |
| | Address: | 114 Avenida Trieste San Clemente, CA 92672 |
| | Attn: | Alan Van Leuven |
| | Telephone: | (949) 858-3306 |
| For County: | Name: | Auditor-Controller |
| | Address: | 12 Civic Center Plaza Santa Ana, CA 92701 |
| | Attn: | Albert Zavala, DPA |
| | Telephone: | (714) 834-3504 |
| | Fax: | (714) 834-2569 |

17. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Vendor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remain the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Vendor without the express written consent of the County.
18. **Vendor's Records:** The Vendor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Vendor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange assigned DPA.
19. **Reports and Meetings:** The Vendor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this contract. The County Project Manager and the Vendor Project Manager will meet on reasonable notice to discuss the Vendor's performance and progress under this contract. If requested, the Vendor Project Manager and other project personnel shall attend all meetings. The Vendor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
20. **Termination – Orderly:** After receipt of a termination notice from the County, the Vendor may 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 Vendor. Upon termination County agrees to pay the Vendor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. 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 performance of the Contract.
21. **Breach of Contract:** The failure of the Vendor to comply with any of the provisions, covenants or conditions of this Contract shall be 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:
- Terminate the Contract immediately, pursuant to paragraph K herein;

- b. Afford the Vendor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c. Discontinue payment to the Vendor for and during the period in which the Vendor is in breach; and
 - d. Offset against any monies billed by the Vendor but yet unpaid by the County those monies disallowed pursuant to the above.
22. **Conditions Affecting Work:** The Vendor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions which can affect the work or the cost thereof. Any failure by the Vendor to do so will not relieve Vendor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in this Contract.
23. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Vendor 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 Vendor 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.
24. **County Data:**
- a. Subject to applicable law, the County shall permit Vendor and its subcontractors to have access to, and make appropriate use of, County Data solely to the extent Vendor requires such access and use in order to properly and appropriately perform the Services as contemplated by this Contract. Vendor may only access and use County Data in connection with performance of its duties under this Contract or as specifically directed by the County in writing and may not otherwise use, disclose, modify, merge with other data, commercially exploit, or make any other use of County Data or take, or refrain from taking, any other action that might, in any manner or form, adversely affect or jeopardize the integrity, security, or confidentiality of County Data, except as expressly permitted herein or as expressly directed by the County in writing. Vendor acknowledges and agrees that, as between the Parties, the County owns all right, title, and interest in, and all Intellectual Property Rights in and to, all County Data.
 - b. **Ownership by the County:** All County Data, reports and other documents or materials created by the County through its use of the Vendor or by Vendor under this Contract, including all Intellectual Property Rights in or pertaining to the same, shall be owned solely and exclusively by the County. The Parties further agree that all materials, documents, data or information obtained from the County or any County medium furnished to Vendor in the performance of this Contract shall 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 Vendor 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 upon the termination of this Contract.
25. **County Pre-Existing Materials:** The County shall retain ownership to all pre-existing or independently developed intellectual property of the County that existed before the Effective Date of this Contract. Without limiting the foregoing, the ownership of all Intellectual Property Rights in County supplied materials remains at all times with the County and its third party licensees. Except for the limited license to use software or materials provided by the County as may be necessary for Vendor to perform Services under this Contract, Vendor is granted no right, title or interest in any County Intellectual Property Rights.

26. **Location of Performance:** Except where the Vendor obtains the County's prior written approval, the Vendor shall perform all of the Services only from or at any location at which the County operates a data center or performs any IT-related services or functions during the term of this Contract within the geographic boundaries of the County. Any County approval for the performance of Services outside of the geographic boundaries of the County shall be limited to the specific instance and scope of such written approval.
27. **Trans Border Data Flows:** County of Orange data will be stored in Orange County, except where the Vendor obtains the County's prior written approval before moving the data to other locations within the continental United States.
28. **Computer Software Rights:** The County will have Government Purpose Rights to the Computer Software furnished to the County under this Contract, including the computer software described in Article 1 – Scope of Work, or developed with County funds. "Software Products" means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the software to be reproduced, recreated, or recompiled. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the computer software within the County without restriction. "Government Purpose Rights" also include the right to release or disclose the computer software outside the County for any County government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the computer software for any County government purpose. Such recipients of the computer software may include, without limitation, County contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the computer software for any commercial purpose.
29. **Information Access:** Vendor shall, at all times, use appropriate safeguard and security measures so as to ensure the confidentiality and security of all County Data. At all times during the term of this Contract, Vendor shall, and shall cause the Vendor personnel and subcontractors, and the employees or agents of any of the foregoing, to, fully comply with all of the County's policies and procedures regarding data access and security, including those prohibiting or restricting remote access to the Software Products' Systems and County Data, as set forth in the Security Policies. Vendor shall, and shall cause the Vendor personnel and subcontractors to, fully comply with and abide by all such Security Policies at all times during the term of this Contract. The County shall authorize, and Vendor shall issue, any necessary information-access mechanisms, including access IDs and passwords, and in no event shall Vendor permit any such mechanisms to be shared or used by other than the individual Vendor person to whom issued. Vendor shall provide each Vendor Person with only such level of access as is required for such individual to perform his or her assigned tasks and functions. From time to time throughout the term of this Contract, upon request from the County but at least once every three months, Vendor shall provide the County with an accurate, up-to-date list of those Vendor personnel having access to the Software Products' systems, or County Data, and the respective security level or clearance assigned to each such Vendor person. All Software Products' Systems, and all data contained therein, including County Data, used or accessed by Vendor personnel: (a) shall be used and accessed by such Vendor personnel solely and exclusively in the performance of their assigned duties in connection with, and in furtherance of, the performance of Vendor's obligations hereunder; and (b) shall not be used or accessed except as expressly permitted hereunder, or commercially exploited in any manner whatsoever, by Vendor, the Vendor personnel or any subcontractor, at any time. Vendor acknowledges and agrees that any failure to comply with the provisions of this Paragraph shall constitute a breach of this Contract and entitle the County to deny or restrict the rights of such non-complying Vendor personnel to access and use the Software Products' systems and County Data, as the County in its sole discretion shall deem appropriate.

30. **Enhanced Security Measures:** The County may, in its discretion, designate certain areas, facilities, or Software Products' systems as ones that require a higher level of security and access control. The County shall notify Vendor in writing reasonably in advance of any such designation becoming effective. Any such notice shall set forth in reasonable detail the enhanced security or access-control procedures, measures, or requirements that Vendor shall be required to implement and enforce, as well as the date on which such procedures and measures shall take effect. Vendor shall, and shall cause the Vendor personnel and subcontractors to, fully comply with and abide by all such enhanced security and access measures and procedures as of such date.
31. **General Security Standards:** At all times during the term of this Contract, Vendor shall maintain a level of security with regard to the Software Products' system and County Data for which Vendor has agreed in this Contract to provide or manage physical security, that in all events is at least as secure as each of the following levels of security: (a) that are maintained by Vendor with regard to its own systems, data, and facilities of a similar nature and import; and (b) that are common and prevalent in the industry and in accordance with industry best practices.
32. **Breach of Security:** Any material breach or violation by Vendor or its subcontractors, or the employees or agents of any of the foregoing, or of the Security Policies, shall be deemed a material breach of a material obligation of Vendor under this Contract, and any chronic or critical breach by Vendor or its subcontractors, or the employees or agents of any of the foregoing, or of the County's security policies shall be deemed an incurable and material breach of a material obligation of Vendor under this Contract.
33. **Security Audits:** Each year of the contract, County may perform or have performed security reviews and testing based on a Software Products' infrastructure review plan. Such testing shall include all pertinent County security standards as well as any customer agency requirements, such as federal tax requirements. Vendor shall inform County of any security audit or assessment performed that includes County hosted content, within thirty (30) calendar days of such audit or assessment.
34. **Business Documents:** At the request of the County, the Vendor must provide copies of its latest articles of incorporation, by-laws, or partnership agreement, as applicable.
35. **Stop Work:** The County may, at any time, by written stop work order to the Vendor, require the Vendor to stop all or any part of the work called for by this Contract for a period of 90 days after the stop work order is delivered to the Vendor and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the stop work order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of 90 days after a stop work order is delivered to the Vendor or within any extension of that period to which the parties shall have agreed, the County shall either:
- a. Cancel the stop work order; or
 - b. Terminate work covered by the stop work order as provided for in the "Default" or "Termination" clause of this Contract.

If a stop work order issued under this clause is canceled or the period of the stop work order or any extension thereof expires, the Vendor shall resume work. The County shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified in writing accordingly if:

- a. The stop work order results in an increase in the time required or in the Vendor's cost properly allocable to the performance of any part of this Contract; and

- b. The Vendor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage, provided that if the County decides the facts justify the action, the County may receive and act upon a proposal submitted at any time before final payment under this Contract.

If a stop work order is not canceled and the work covered by the stop work order is terminated in accordance with the provision entitled, "Termination" the County shall allow reasonable costs resulting from the stop work order in arriving at the termination settlement.

If a stop work order is not canceled and the work covered by the stop work order is terminated for default, the County shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.

An appropriate equitable adjustment may be made in any related Contract of the Vendor that provides for adjustment and is affected by any stop work order under this clause. The County shall not be liable to the Vendor for loss of profits because of a stop work order issued under this clause.

If any provisions of this agreement are invalid under any applicable statute or rule of law, they are, to that extent, omitted, but the remainder of this agreement shall continue to be binding upon the parties hereto.

- 36. **Parking:** The County of Orange will not provide free parking for any service in the County Civic Center.

Signature Page

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date following their respective signatures.

ARK TECHNOLOGIES, A PARTNERSHIP

| Signature | Name | Title | Date |
|-----------|------|-------|------|
| | | | |

| Signature | Name | Title | Date |
|-----------|------|-------|------|
| | | | |

COUNTY OF ORANGE

A political subdivision of the State of California

COUNTY AUTHORIZED SIGNATURE:

| Signature | Name | Title | Date |
|-----------|------|-------|------|
| | | | |

APPROVED AS TO FORM:

County Counsel

By _____
Deputy

Date _____

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

**Attachment A
Scope of Work**

Background:

The County's legacy Assessment Tax System (ATS) was built over the last 30 years by the County, utilizing the services of ARK Technologies, Inc. (Vendor). This system is utilized by the Auditor-Controller, Treasurer-Tax Collector and Clerk of the Board to manage the County's \$6 billion property tax system process. Vendor has been instrumental in the design, development, enhancement, and support of the system since its implementation in 1987. Through the years, the Vendor has acquired intimate knowledge of the system and the County's complex property tax processes and procedures.

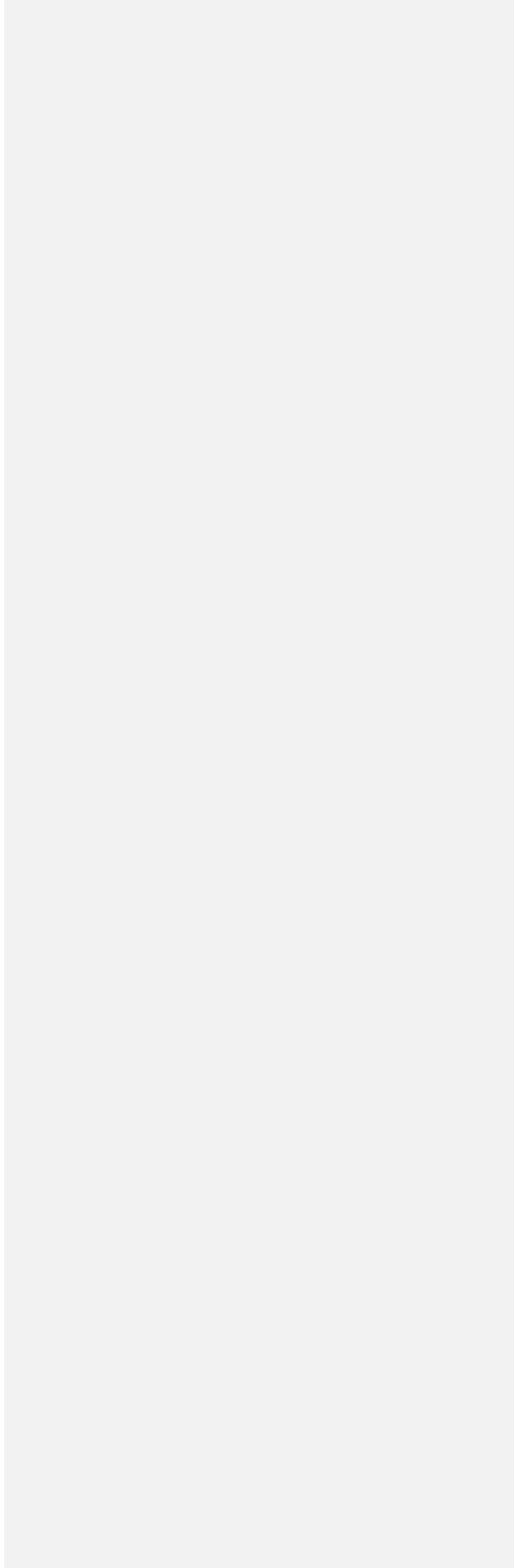
Modernization of Legacy Property Tax System Project:

The County is undertaking a project to modernize its legacy ATS system by replatforming it from the IBM mainframe to an open system platform, and the County has contracted with Enterprise Services, LLC (ES) to accomplish this goal. Due to Vendor's expertise with the ATS system, the County intends to utilize the Vendor's knowledge and expertise in the replatforming effort.

In this project, Vendor shall:

1. Assist the County in the preparation of artifacts including but not limited to the following ATS components: programs, panels, reports, JCL, data dictionaries, utilities, job schedules, etc.
2. Participate in discussions and analysis to determine County solution and strategy regarding iterations, technical and business assessment of complexity, effort, timeline, data strategy, test strategy, etc.
3. Participate in discussions and analysis to educate ES on the property tax system and its environment, including but not limited to:
 - a. Capturing screen behaviors and functionality of the current legacy ATS system
 - b. Inspecting and verifying the re-platformed ATS functions against legacy system functions, and to explain any differences
4. Assist the County in the configuration of the tools utilized by ES to transform the different components of the legacy ATS to the new system.
5. Build definitions and specifications for extraction of data from the legacy ATS to the re-platformed system; help resolve data exceptions.
6. Facilitate data migration to desired platform, including migration of both test data and production data.
7. Review and compare functionalities between the legacy and the new system, identifying gaps and constraints in the resulting system.
8. Evaluate output of programs and databases after transformation.
9. Assess impact of ATS maintenance changes to the development of the new system.
10. Assist the County build test scenarios and prepare test data.

11. Assist the County in testing iterations through data verification and the resulting functionalities.
12. Assist the County in the development of system and end-user documentation.



Attachment B
Cost/Compensation

1. **Compensation:** This is a Not to Exceed Contract between the County and Vendor for Technical Services and Support for the Property Tax System Modernization Project as set forth in Attachment A, "Scope of Work."

The Vendor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Vendor of all its duties and obligations hereunder. The Vendor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by amendment in accordance with Paragraph C of this Contract.**

2. **Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

| | 10/2/2017 to 9/30/2018 | 10/1/2018 to 8/30/2019 | 8/31/2019 to 6/30/2020 | 7/1/2020 to 3/31/2021 |
|------------------------|---------------------------|---------------------------|----------------------------|----------------------------|
| Hourly Rate | \$137.00 | \$141.00 | <u>\$144.53</u> | <u>\$148.14</u> |
| Maximum # Hours | 3,120.00 | 2,860.00 | <u>2,850</u> | <u>2,505</u> |
| Maximum Cost | \$427,440.00 | \$403,260.00 | <u>\$411,929.30</u> | <u>\$371,090.70</u> |

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The total Not to Exceed amount of this contract is \$830,7001,613,720.00.

3. **Payment Terms – Payment in Arrears:** Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this Contract. Vendor shall reference Contract number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Vendor.

Billing shall cover services and/or goods not previously invoiced. The Vendor shall reimburse the County of Orange for any monies paid to the Vendor for goods or services not provided or when goods or services do not meet the Contract requirements.

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.

4. **Taxpayer ID Number:** The Vendor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.

5. **Payment – Invoicing Instructions:** The Vendor will provide an invoice on the Vendor’s letterhead for goods delivered and/or services rendered. In the case of goods, the Vendor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:

- a. Vendor’s name and address
- b. Vendor’s remittance address, if different from above
- c. Vendor’s Taxpayer ID Number
- d. Name of County Agency/Department
- e. Delivery/service address
- f. Master Agreement (MA) number
- g. Date of invoice
- h. Product/service description, hours worked, and prices
- i. Sales tax, if applicable
- j. Freight/delivery charges, if applicable
- k. Total

Invoice and support documentation are to be forwarded to:

County of Orange
Auditor-Controller’s Office
Attention:
12 Civic Center Plaza, Room 200,
P. O. Box 567
Santa Ana, CA 92702