



**COUNTY OF ORANGE
SOCIAL SERVICES AGENCY**

CONTRACT
No. MA-063-~~15010577~~20010052

WITH

THE RUSHMORE GROUP, LLC.

FOR

CASE REVIEW SYSTEM SOFTWARE MAINTENANCE

TABLE OF CONTENTS

	<u>Page:</u>
Cover Page	1
Table of Contents	2
Sections:	
I. Articles and Recitals	3
II. Terms and Conditions	
General Terms and Conditions	4
Additional Terms and Conditions	10 <u>11</u>
III. Scope of Work	16 <u>17</u>
IV. Compensation/Payment Schedule	17 <u>18</u>
V. Signature Page	18 <u>20</u>

SECTION I

This ~~Agreement~~Contract MA-063-~~15010577~~20010052 (referred to as "Contract") is made and entered into upon execution of all necessary signatures between the County of Orange, Social Services Agency (SSA), a political subdivision of the State of California, with a place of business at ~~888500 N. Main St., Santa Ana~~State College Blvd., Suite 100, Orange CA ~~92704~~92868-1673 (referred to as "County"), and The Rushmore Group, LLC, having its principal place of business at ~~9 Forest Ave., Vermillion~~316 Coteau St., Ste 100 Pierre, SD ~~57069-3105~~57501-3189 (referred to as "Contractor") for Case Review System Software Maintenance. County and Contractor may be individually referred to as "Party", or collectively as "Parties".

RECITALS

WHEREAS, County desires to enter into a Contract for Case Review System Software Maintenance; and

WHEREAS, Contractor is agreeable to supplying the Case Review System Software Maintenance (referred to as "Services") on the terms and conditions set forth hereinafter; and

WHEREAS, the County of Orange Board of Supervisors has authorized the ~~Purchasing Agent~~County Procurement Officer or ~~his designee~~authorized Deputy to enter into a Contract with Contractor for obtaining said ~~services~~Services; and

WHEREAS, County and Contractor agree that this Contract is effective upon mutual agreement of both Parties and County of Orange Board of Supervisor's approval; and

NOW, THEREFORE, the ~~parties~~Parties mutually agree as follows:

ARTICLES

1. **Scope Of Contract**

This Contract specifies the contractual terms and conditions by which the County will enter into a Contract for the Services with Contractor. The services to be provided are more fully set for in Section III. Scope of Work, attached hereto and incorporated by this reference as if fully set forth herein.

2. **Term Of Contract**

The term of this Contract shall be for a three-year period from December 1, ~~2014~~2019 through November 30, ~~2017~~2022, unless otherwise terminated by the County. -This Contract may be renewed thereafter for ~~one~~two additional ~~two~~one-year ~~term~~terms upon mutual agreement of both ~~parties~~Parties. The County does not have to give a reason if it elects not to renew this Contract.

3. **Compensation & Payment**

Contractor agrees to provide the Services as set forth in Section III. Scope of Work at the fixed rates specified in Section IV. Compensation /—Payment Schedule. The total cost of this Contract shall not exceed ~~\$56,700.00~~68,500.

SECTION II

GENERAL TERMS AND CONDITIONS

~~A.~~ **Governing Law ~~And~~ Venue**

A. : 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 ~~trial~~adjudication to another ~~County~~county.

~~B.~~ **Entire Contract**

B. : This Contract, ~~when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder,~~ 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,~~ "Purchasing Agent."

~~C.~~ **Amendments**

C. : 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**

D. : Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

~~E.~~ **Delivery**

E. : Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

~~F.~~ **Acceptance/ Payment**

F. : 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**

G. : Contractor expressly warrants that the goods/~~services~~ covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "~~HHZ~~" below,

and as more fully described in paragraph "~~HHZ~~," 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

H. : Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "~~HHZ~~" 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 ~~limited to, including~~ attorney's fees, ~~costs and expenses~~.

~~I.~~ Assignment Or Sub-Contracting

I. : 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 ~~or sub-contracted~~ by Contractor without the express written consent of County. Any attempt by Contractor to assign ~~or sub-Contract~~ 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

J. : In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or sex ~~military and veteran status~~ of ~~such persons. any person, or refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.~~ Contractor acknowledges that a violation of this provision shall subject Contractor to ~~all the penalties imposed for a violation of pursuant to~~ Section ~~1720 et seq.~~ 1741 of the California Labor Code.

~~K.~~ Termination

K. : In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty ~~immediately with~~ for cause or after 30 days' written notice without cause, unless otherwise specified. ~~Cause shall be defined as any material breach of Contract~~ contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.

~~L.~~ Consent ~~To~~ Breach Not Waiver

L. : 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.~~ Remedies Not Exclusive

~~The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either party to any other remedies provided by law.~~

~~N.~~ Independent Contractor

M. : Contractor shall be considered an independent ~~Contractor~~contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

~~O.~~ Performance

N. Warranty: Contractor shall ~~perform warrant~~ all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and ~~workman-like~~workmanlike manner; shall furnish all necessary 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, If~~ permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

~~P.~~ Insurance Provisions

O. : 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 Contract have been complied with ~~and~~. Contractor agrees to keep such insurance coverage ~~and the certificates therefore, Certificates of Insurance, and endorsements~~ on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

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

All self-insured retentions (SIRs) ~~and deductibles~~ shall be clearly stated on the Certificate of Insurance. ~~If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage.~~ Any self-insured retention (SIR) ~~or deductible~~ in an amount in excess of ~~\$25~~Fifty Thousand Dollars (\$50,000 ~~(\$5,000 for automobile liability);~~) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

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

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

Qualified Insurer:

~~The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category) as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).~~

~~It is preferred, but not mandatory, that the~~

~~The policy or policies of insurance must be issued by an~~ insurer be licensed to do business in the ~~state~~ State of California (California Admitted Carrier).

If the insurance carrier ~~is a non-admitted carrier in the state of California and~~ does not ~~meet or exceed~~ have an A.M. Best ~~rating~~ 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. ~~If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.~~

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	\$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—

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

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 ~~0042~~00 12, CA 00 20, or a substitute form providing liability coverage ~~at least~~ as broad.

Required Endorsements

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

- 1) An Additional Insured endorsement using ISO form CG ~~2010 or CG-2033~~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, ~~agents~~** as Additional Insureds, or provide blanket coverage, which will state "as required by written contract".
- 2) A primary non-contributing endorsement using ISO Form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

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

- 1) An Additional Insured endorsement naming the **County of Orange, its elected and appointed officials, officers, agents and employees** as Additional Insureds for its vicarious liability.
- 2) A primary and non-contributing endorsement evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

~~All insurance policies required by this Contract 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 Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving 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**, or provide blanket coverage, which will state "as required by written contract".

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

Contractor shall notify County in writing within thirty (30) days ~~notice in the event~~ of any policy cancellation and ten (10) days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the contract, upon which the County may suspend or terminate this Contract.

If ~~Contractor's~~Contractor's Professional Liability, Technology Errors & Omissions and/or Network Security & Privacy Liability are "Claims-Made" policy ~~is a "claims-made" policy(ies).~~ Contractor shall agree to maintain ~~professional liability~~ coverage for two (2) years following the completion of the Contract.

The Commercial General Liability policy shall contain a severability of ~~interests~~interest's clause, also known as a "separation of insureds" clause (standard in the ISO CG ~~0004~~001 policy).

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

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

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

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

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

~~Q.~~ Bills And Liens

~~Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of paragraph "HH" below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.~~

~~R.~~ Changes

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

~~S.~~ Change ~~Of~~ Ownership

Q. /Name, Litigation Status, Conflicts with County Interests: Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

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

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

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

~~T.~~ Force Majeure

R. : Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

~~U.~~ Confidentiality

S. : Contractor agrees to maintain the confidentiality of all County and County--related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.

~~V.~~ Compliance ~~With~~with Laws

T. : Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "~~HHZ~~" below, Contractor agrees that it shall defend, indemnify and hold County and County ~~Indemnities~~**INDEMNITEES** harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

~~W.U.~~ Freight (~~F.O.B. Destination~~): Intentionally Omitted.

~~Contractor assumes full responsibility for all transportation scheduling, packaging, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.~~

~~X.~~ Pricing

~~The Contract bid price shall include full compensation for providing all required goods, in accordance with required specifications, or services, as specified herein or when applicable, in the scope of services attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.~~

~~Y.~~ Waiver Of Jury Trial

~~Each party acknowledges that it is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and/or any other claim of injury or damage.~~

~~Z.~~ Terms And Conditions

~~Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.~~

~~AA.~~ Headings

~~The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.~~

~~BB.~~ Severability

V. : 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.

~~CC.~~ Calendar Days

~~Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.~~

~~DD.~~ Attorney Fees

W. : In any action or proceeding to enforce or interpret any provision of this Contract, ~~or where any provision hereof is validly asserted as a defense,~~ each party shall bear ~~its~~their own attorney's fees, costs and expenses.

~~EE.~~ Interpretation

X. : 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.

~~FF.~~ Authority

~~The parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitute the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.~~

~~GG.~~ Employee Eligibility Verification

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

~~HH.~~ Indemnification Provisions

Z. : 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 of Orange~~County's Board of Supervisors acts as the governing Board ("County ~~Indemnities~~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 ~~Indemnities~~Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

~~II.~~ Audits/Inspections

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

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

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

Should the ~~contractor~~Contractor cease to exist as a legal entity, the ~~contractor's~~Contractor's records pertaining to this ~~agreement~~Contract shall be forwarded to the ~~surviving entity in a merger or acquisition or, in the event of liquidation, to the~~ County's project manager.

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

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

ADDITIONAL TERMS AND CONDITIONS

1. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.
2. ~~**Correspondence To Buyer:** Any correspondence related to the terms, prices and conditions of this Contract must be directed to the agency/department purchasing division to the attention of the assigned buyer. Correspondence not directed through the buyer for resolution will not be regarded as valid.~~

- ~~3. **Contractor Bankruptcy/Insolvency:** If the Contractor should be adjudged bankrupt or should have a general assignment for the benefit of its creditors or if a receiver should be appointed on account of the Contractor's insolvency, the County may terminate this Contract.~~
- ~~4.2. **Conflict Of Interest:** 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.~~
- ~~5. **Re-Procurement Costs:** In the case of default by Contractor, the County of Orange may procure the service from other sources and, if the cost is higher, Contractor will be held responsible to pay the County the difference between the price agreement cost and the price paid. The price paid by the County of Orange shall be the prevailing market price at the time such services are rendered. This is in addition to any other remedies available under law.~~
- ~~6.3. **State Funds - Audits:** When and if state funds are used in whole or part to pay for the goods and/or services under this Contract the Contractor agrees to allow the Contractor's financial records to be audited by auditors from the state of California, the County of Orange or a private auditing firm hired by the state or the County. The County or state shall provide reasonable notice of such audit.~~
- ~~7. **Fiscal Appropriations:** This Contract is subject to and contingent upon applicable budgetary appropriations being approved by the County of Orange Board of Supervisors for each fiscal year during the term of this Contract. If such appropriations are not approved, the Contract will be terminated without penalty to the County.~~
- ~~8. **Contingency Of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may also be contingent upon the receipt of funds from, and/or appropriation of funds by, the state of California to County. If such funding and/or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.~~
- ~~9.4. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the ~~contractor~~ **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~~ **Contractor**. Upon termination County agrees to pay the ~~contractor~~ **Contractor** for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation plus previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each ~~party~~ **Party** shall promptly return to the other ~~party~~ **Party** all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each ~~party~~ **Party** will assist the other ~~party~~ **Party** in orderly termination of this Contract and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each ~~party~~ **Party**.~~
- ~~10. **Termination – Default:** If **Debarment:** Contractor is in default of any of its obligations under this Contract and has not commenced cure within ten 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 Contract by giving written notice to take effect immediately. Default shall include failure to carry out any of the requirements of this Contract, 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 Contract. Upon termination of the Contract with Contractor, the County may begin negotiations with a third-party Contractor to provide goods and/or services as specified in this Contract.~~

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

~~11.5. **Agency Debarment:** Upon award of Contract, the Contractor will be required to~~ certify that neither ~~it~~Contractor nor its principals are presently debarred, ~~suspended~~, proposed for debarment, declared ineligible, or voluntarily excluded from participation in ~~this~~the transaction by any ~~Federal~~federal department or agency. ~~The~~ Where Contractor as the recipient of federal funds, is ~~required~~unable to ~~complete such~~certify to any of the statements in the certification ~~before entering into this Contract.~~ Contractor must include an explanation with their bid/proposal. Debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any federal department or agency may result in the bid/proposal being deemed non-responsible.

~~12.6.~~ **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11426 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

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

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

~~13.7.~~ **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'~~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 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~~Party at the address stated herein or such other address as the ~~parties~~Parties hereto may designate by written notice from time to time in the manner aforesaid.

~~FOR COUNTY:~~

~~County of Orange
SSA/Procurement Services
888 N. Main St., 1st Floor
Santa Ana, CA 92701
Attn: Angie Villalpando
Telephone: (714) 541-7768
Fax: (714) 541-7772~~

FOR CONTRACTOR:

The Rushmore Group, LLC.
9 Forest Ave.
Vermillion, South Dakota 57069-3105
Attn: Steve Tracy
Telephone: (605) 624-6854

~~COPY TO:~~

~~County of Orange~~
~~SSA/IT~~
~~888 N. Main St.~~
~~Santa Ana, CA 92701~~
~~Attn: Marilyn Inigo~~
~~Telephone: (714) 541-7818~~

FOR COUNTY:	COPY TO:
County of Orange	County Of Orange
SSA/Procurement Services	SSA/Information Technology
500 N. State College Blvd., Suite 100	500 N. State College Blvd.
Orange, CA 96868-1673	Orange, CA 96868-1673
Attn: Angie Villalpando	Attn: Vipul Bhavsar
Telephone: (714) 541-7768	Telephone: (714) 541-7818
Email: Angie.Villalpando@ssa.ocgov.com	Email: Vipul.Bhavsar@ssa.ocgov.com

FOR CONTRACTOR:
The Rushmore Group, LLC
316 Coteau St, Suite 100
Pierre, South Dakota 57501-3189
Attn: Steve Tracy
Telephone: (605) 670-9159
Email: Stephen.tracy@rushmore-group.com

14. ~~County Of Orange Child Support Enforcement~~ ~~(Within 30 Days Of Award Of Contract):~~ ~~In order to comply with the child support enforcement requirements of the County of Orange, within 30 days of award of Contract, the contractor agrees to furnish to the Contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:~~

- ~~A. In the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address;~~
- ~~B. In the case of a contractor doing business: Contractor certifies it is~~ [Contractor certifies it is](#) ~~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 contractor has fully complied~~ [full compliance](#) ~~with all applicable federal and state reporting requirements regarding its employees; and~~
- ~~D. A certification that the contractor has fully complied~~ with all lawfully served Wage and Earnings Assignment Orders and Notices of ~~Assignment~~ [Assignments](#) and will continue to ~~so comply.~~

8. [be in compliance throughout the term of the Contract with the County of Orange.](#) ~~Failure of the contractor to timely submit the data and/or certifications required or 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 to comply~~ shall constitute a material breach of the Contract. ~~Failure and failure~~ [to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.](#)

9. Breach of Contract: The failure of the Contractor 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:

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

10. Disputes – Contract:

A. Contractor 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 Contractor's project manager and the County's project manager, such matter shall be brought to the attention of the County Purchasing Agent by way of the following process:

- i. The Contractor shall submit to the agency/department assigned buyer 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.
- ii. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of the County's final decision or one year following the accrual of the cause of action, whichever is later.

11. News/Information Release: The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's project manager.

12. Ownership of Documents: The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder 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 Contractor without the express written consent of the County.

13. Contractor's Records: The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the County. Storage of records in another County will require written approval from the County of Orange assigned Deputy Purchasing Agent.

14. **Waivers – Contract:** The failure of the County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

15. **Computer Hardware and Software Standards:** No substitutions of hardware or software will be accepted. The specifications provided herein are approved County of Orange standards.

16. **Software- Acceptance:** The County shall be deemed to have accepted each software product unless the County, within 30 days from the installation date, gives ~~contractor~~Contractor written notice to the effect that the software product fails to conform to the functional and performance specifications, which, if not attached, are incorporated by reference. The ~~contractor~~Contractor will, upon receipt of such notice, investigate the reported deficiencies. The right of the parties shall be governed by the following:

1. If it is found that the software product fails to conform to the specifications and the ~~contractor~~Contractor is unable to remedy the deficiency with 60 days, the County shall return all material furnished hereunder and this ~~contract~~Contract shall be terminated.
2. If it is found that the software product fails to conform to the specifications and the ~~contractor~~Contractor, within 60 days of receipt of the above said notice, corrects the deficiencies in the software product, the County will provide the ~~contractor~~Contractor with written acknowledgement of its acceptance of said software product.
3. If it is found that the software product does, in fact, conform to the specifications, the County shall reimburse the ~~contractor~~Contractor for the time and material cost of the investigation at the rates specified in this ~~contract~~Contract.

The County's acceptance of the software product is contingent upon the software product conforming to function and performance specifications and the contractor delivering adequate users manuals within 30 days from the installation date.

17. **Software-Acceptance Testing:** Acceptance testing may be required as specified for all ~~contractor~~Contractor-supplied software as specified and listed in the ~~contract~~Contract or order, including all software initially installed. Included in this clause are improved versions, including new releases, of this software, any such software which has been modified by the ~~contractor~~Contractor to satisfy the County requirements, and any substitute software provided by the ~~contractor~~Contractor in lieu thereof, unless the ~~contract~~Contract or order provides otherwise. The purpose of the acceptance test is to ensure that the software operates in substantial accord with the ~~contractor's~~Contractor's technical specifications and meets the County's performance specifications.

18. **Software-Documentation:** The contractor agrees to provide to the County the County-designated number of all manuals and other associated printed materials and updated versions thereof, which are necessary or useful to the County in its use of the equipment or software provided hereunder. The County will designate the number of copies for production use and the number of copies for disaster recovery purposes and will provide this information to the contractor.

If additional copies of such documentation are required, the contractor will provide such manuals at the request of the County. The requesting agency/department shall be billed for the manuals and any associated costs thereto by invoice. The contractor agrees to provide such additional manuals at prices not in excess of charges made by the contractor to its best customers for similar publications.

The contractor further agrees that the County may reproduce such manuals for its own use in maintaining the equipment or software provided hereunder. The County agrees to include the contractor's copyright notice on any such documentation reproduced in accordance with copyright instructions to be provided by the contractor.

19. **Software-Future Release:** If improvement, upgraded, or enhancement versions of any software product under this contract are developed by the contractor and are made available to other licensees, they will be made available to the County at the County's option, provided such versions are operable on the same computer hardware configuration. The charge for such upgrading to the later version of the software will be the difference between the price established by the contractor for the later version and the price specified herein or the then prevailing prices of the currently installed version.
20. **Software License:** The contractor hereby grants to the County of Orange and the County accepts from the contractor, subject to the terms and conditions of this agreement, a non-exclusive, non-transferable license to use the software products list in this agreement, hereinafter referred to as "software products." The license granted above authorizes the County to use the software products in machine-readable form on a single computer system, ~~designed~~designated in writing by the County to the contractor, provided that if the designated CPU is inoperative due to malfunction, license herein granted shall be temporarily extended to authorize the County to use the software products in machine-readable form on any other County CPU until the designated CPU is returned to operation. By prior written notice to the contractor the County may redesignate the CPU in which the software products are to be used and must do so if the redesignation is permanent.

When encryption/CPU ID authorization codes are required to operate the software products, the contractor will provide all codes to the County with shipment of the software. In the case of an inoperative CPU, as defined above, contractor will provide a temporary encryption/CPU ID authorization code to the County for use on a temporarily authorized CPU until the designated CPU is returned to operation. When changes in designated CPUs occur, the contractor will issue to the County within 24 hours of notification a temporary encryption/ID authorization code for use on the newly designated CPU until such time a permanent code is assigned.

~~21. **Software-Maintenance:** Note: This T and C is applicable to software products with renewable or perpetual licenses where software maintenance is required by the County.~~

21. ——— **Software-Maintenance:** The correction of any residual errors in any software products which may be discovered by the contractor or by the County will be considered maintenance. Such maintenance will be performed by the contractor without additional charge for the duration of this contract. Suspected errors discovered by the County in the software products will be handled by the following procedure:

1. ——— A listing of the output and a copy of the evidential input data in machine-readable format will be submitted to the contractor along with a completed copy of the appropriate contractor information form and, if appropriate, a listing of the contents of the memory of the CPU at the time the error was noted.
2. ——— Errors in the software product as verified by the contractor will be corrected by providing a new copy of said software product or a new copy of the affected portions in machine-readable format.

The contractor will be available to assist the County in isolating and correcting error conditions caused by the County's particular hardware or operating system at rates specified in this contract. If the contractor is called upon by the state to correct an error caused by the County's negligence, modification by the County, County-supplied data, or machine or operator failure or due to any other cause not inherent in the original software products, the contractor reserves the right to charge the County for such service on a time and material basis at rates in accordance with the contract.

22. **Software-Protection:** The County agrees that all material appropriately marked or identified as proprietary, whether oral or written, and furnished hereunder are provided for County's exclusive use for the purposes of this agreement only and will be held in confidence. All proprietary data shall remain the property of the contractor. County agrees to take all reasonable steps to ensure that such data are not disclosed to others without prior written consent of the contractor. The County will ensure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.

The County agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed programs and/or optional materials to satisfy its obligations under this agreement with respect to use, copying, modification and protection and security of licensed programs and optional materials.

- ~~23.~~ **Software-Right to Copy or Modify:** Any software product provided by the contractor in machine-readable format may be copied, in whole or in part, in printed or machine-readable format for use by the County with the designated CPU to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the software product as provided below, provided, however that no more than the County- and contractor-agreed to number of copies will be in existence under this

23. ~~contract~~ Contract at any one time without the prior written consent from the contractor. Such consent shall not be unreasonably withheld by the contractor. The original and any copies of the software product, in whole or in part, which are made hereunder shall be the property of the contractor.

The County agrees to keep any such copies and the original at a contractor and County mutually designated County location, except that the County may transport or transmit a copy of the original of any software product to another County location for backup use when required by CPU malfunction, provided the copy or the original is destroyed or returned to the designated location when the malfunction is corrected.

The County may modify any non-personal computer software product in machine-readable format for its own use and merge it into other program material. Any portion of the software product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of this contract.

SECTION III

SCOPE OF WORK

~~The scope of work~~

Maintenance and Support for this proposal seeks to provide the ~~Orange County (OC) Social Services Agency (SSA) with~~ Case Review System Maintenance.

Case Review System Maintenance

Case Review System Maintenance for the Rushmore Case Review Application includes include the following:

~~A. Rushmore will provide, as necessary, updates to OC SSA for the application on a quarterly basis.~~

~~These updates will include scheduled programming change and functionality requests that have been approved, fully tested and deemed ready for release.~~

~~B. Rushmore~~

A. Contractor will respond to and address any software issues that are demonstrable problems with the existing Case Review Application functionality. Each demonstrable software issue will be jointly discussed and an initial date will be agreed upon by which a fix will be made available for installation or an acceptable and jointly agreed upon alternative solution will be developed.

~~B. C. Rushmore Contractor~~ will respond as soon as reasonably possible, ~~but at least~~ within ~~two working days, to~~ the response time listed on the table below regarding demonstrable software related problems that interrupt the daily use of the Case Review Applications or identified programmatic oversights in meeting the software requirements as articulated by ~~OC SSA~~ County and agreed upon by both parties.

~~C. D. Rushmore Contractor~~ will work with ~~OC SSA~~ County's analysts and support staff to resolve problems that ~~can not~~ can't be clearly determined to be existing demonstrable issues. All reasonable efforts will undertake to consider the identified issue until a joint determination is made that the problem is or is not related to the programming of the application.

Problem Response & Resolution Process

Support shall be provided 8:00am to 5:00pm Central Time – Monday through Friday.

The response time for support shall be accomplished using the priority rank listed in the table below. Response time starts after notification by the County that service is required. County and Contractor define the priorities for support with the table below:

<u>Level</u>	<u>Description</u>	<u>Response Time</u>
<u>1 - Critical</u>	<u>The application is not usable resulting in total disruption in entering reviews or accessing reports. No workaround is available.</u>	<u>Within 1 working day</u>
<u>2- Major Function Issue</u>	<u>Users are severely restricted. A workaround is available.</u>	<u>Within 2 working days</u>
<u>3- Minor Feature/Function Issue</u>	<u>The application is not working as designed, there is some minor impact on usage, acceptable.</u>	<u>Within 2 working days</u>
<u>4- Minor Problem</u>	<u>Issue is documented and flagged for enhancement opportunity.</u>	<u>Within 2 working days</u>

SECTION IV

COMPENSATION/PAYMENT SCHEDULE

This is a fixed amount Contract between County and Contractor for the Case Review System Software Maintenance for SSA/IT Information Technology, and the "not to exceed amount" for the three-year term of this Contract is ~~\$56,700.00~~ 68,500.

A. COMPENSATION

Terms of Payment: Payment for all services shall be made to the Contractor within 30 calendar days of receipt of a valid invoice in a format acceptable to the County. The invoice must first be verified and approved by the using agency/department and is subject to routine processing requirements of the County.

Payment in Advance: Invoices are ~~to be submitted yearly~~ payable 30 days in advance ~~for case review system maintenance. Billing shall cover case review system maintenance not previously invoiced., unless otherwise directed in this Contract.~~ Invoices are to be submitted to the user agency/department ~~for verification~~ 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 approvals ~~verified and approved by the agency/department and subject to routine processing requirements.~~ The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor 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 ~~to from~~ thereafter ~~dispute~~ disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the ~~order~~ goods or services.

Invoice Submittal: Responsibility for providing an acceptable invoice rests with the Contractor.

An acceptable invoice format shall minimally include:

1. A. ~~Contractor's name and address;~~
2. B. ~~Invoice number and date;~~
- ~~C.3.~~ Name of County agency/department ordering services/goods;
- ~~D.4.~~ Description of services and date ordered;
5. E. ~~Contract No. MA-063-15010577~~ 20010052;
6. F. ~~Total Invoice Amount;~~
- ~~G.7.~~ Contractor's federal taxpayer's ID number and
- ~~H.8.~~ Contractor's remittance address (if different from line A1)

Contractor shall submit invoices for payment processing to the following address:

Social ~~Service~~ Services Agency/Procurement Services
 Attn: Processing Desk (MA)
~~888 N. Main St., 1st Floor~~
~~Santa Ana~~ 500 N. State College Blvd., Suite 100
Orange, CA 92704 92868-1673

Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic

Remittance Advice with the payment details via email. An email address will need to be provided to the County via EFT Authorization Form. To request a form, please contact the DPA.

B. PAYMENT SCHEDULE

Annual ~~payments~~ Maintenance Fee

<u>Annual Maintenance Fee</u>	<u>Amount</u>
<u>Year 1 - 12/1/19 – 11/30/20 up to 75 hours of enhancements.</u>	<u>\$19,500</u>
<u>Year 2 - 12/1/20 – 11/30/21 up to 75 hours of enhancements.</u>	<u>\$19,500</u>
<u>Year 3 - 12/1/21 – 11/30/22 up to 75 hours of enhancements.</u>	<u>\$19,500</u>

Any Enhancements will be reviewed and agreed upon prior to starting the enhancement. Enhancements hours above the 75 included with the Maintenance contract will be billed at ~~\$18,900.00~~ 125 per ~~year~~ hour and must have prior approval from the County.

SIGNATURE PAGE FOLLOWS-

SECTION V**SIGNATURE PAGE**

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

THE RUSHMORE GROUP, LLC**

By _____	By _____
Print _____	Print _____
Name _____	Name _____
Title _____	Title _____
_____ Corporate Officer	_____ Corporate Officer
Date _____	Date _____

*If the contracting ~~party~~ 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. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signator to bind the corporation.

COUNTY OF ORANGE

a political subdivision of the State of California

By _____	Date _____
Print _____	
Name _____	Title _____

COUNTY OF ORANGE**COUNTY COUNSEL**

Approved as to Form:

By _____	Date _____
Deputy County Counsel	