



ORANGE COUNTY
AUDITOR-CONTROLLER
CONTRACT WITH
CGI TECHNOLOGIES AND SOLUTIONS INC.
FOR
CAPS+ FS, HR, & BRASS
TEN YEAR
MAINTENANCE AND SUPPORT SERVICES

CONTRACT #
MA-003-11012413
OPTION 3

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CONTRACT FOR CAPS+ FS, HR, & BRASS ANNUAL MAINTENANCE AND SUPPORT

This Contract Number **MA-003-11012413** for CAPS+ FS, CAPS+ HR and BRASS Maintenance and Support Services (hereinafter referred to as "CONTRACT") is effective July 1, 2011 by and between the **Orange County/Auditor-Controller**, a political subdivision of the State of California, hereinafter referred to as "COUNTY" and **CGI Technologies and Solutions** with a place of business at **350 S. Grand Ave., Los Angeles, CA 90071-3433**, hereinafter referred to as "CONTRACTOR", which are sometimes individually referred to as "PARTY", or collectively referred to as "PARTIES".

RECITALS

WHEREAS, COUNTY and CONTRACTOR executed Contract number **MA-003-11012413** for CAPS+ FS, HR, CAPS+HR, and BRASS Maintenance and Support Services effective July 1, 2011 through June 30, 2021; and

NOW THEREFORE, in consideration of the mutual obligations set forth herein, both COUNTY and CONTRACTOR agree as follows:

ARTICLES

- A. Governing Law and Venue:** This CONTRACT has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this CONTRACT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
- B. Entire Contract:** This CONTRACT contains the entire CONTRACT between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing. Electronic acceptance of any additional terms, conditions or supplemental CONTRACTS by any COUNTY employee or agent, including but not limited to installers of software, shall not be valid or binding on COUNTY unless accepted in writing by COUNTY'S Purchasing Agent or his designee, hereinafter "PURCHASING AGENT."
- 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.

E. Acceptance/Payment: Annual payments for the CONTRACT term of **July 1, 2011 through and including June 30, 2021** shall be made after approval of this CONTRACT by the COUNTY Board of Supervisors, subject to receipt of an invoice as further set forth in paragraph 24.

F. Warranty:

1. CONTRACTOR warrants that the Maintenance Services will be performed in a workmanlike manner consistent with industry standards reasonably applicable to the performance of such Maintenance Services. If COUNTY believes there has been a breach of this warranty and so notifies CONTRACTOR in writing stating in reasonable detail the nature of the claimed breach of this warranty contained herein within thirty (30) days after the requested Maintenance Services by COUNTY staff are delivered to COUNTY by CONTRACTOR, then CONTRACTOR will promptly investigate the matter. If it is determined that there has been a breach of this warranty, then CONTRACTOR's sole obligation, and COUNTY's exclusive remedy, will be for CONTRACTOR to correct or re-perform any affected Maintenance Services as necessary to cause them to comply with this warranty. There will be no additional charge to COUNTY for the investigation and correction efforts performed by CONTRACTOR, except as provided in the attached Scope of Work. If CONTRACTOR is unable to correct a breach of this warranty after repeated efforts, COUNTY will be entitled to recover its actual damages subject to the limitations and exclusions set forth in paragraph "GG" and "O" – Indemnification and Insurance.
2. CONTRACTOR is not responsible for any claimed breaches of the foregoing warranties caused by: (i) modifications made to the Software of Documentation by anyone other than CONTRACTOR and its sub-CONTRACTOR's working at its direction; or (ii) the combination, operation or use of the Software or Documentation with any items that CONTRACTOR did not supply to COUNTY; or (iii) COUNTY's failure to use any new or corrected versions of the Software or Documentation made available by CONTRACTOR.
3. CONTRACTOR does not warrant that the Software will be error-free or that its operation will be uninterrupted. COUNTY acknowledges that it alone is responsible for the results obtained from use of the Software, including without limitation the completeness, accuracy and content of such results. COUNTY acknowledges further that it alone is responsible for independent verification and testing of any such results prior to using them in its business.
4. THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

G. PATENT/COPYRIGHT MATERIALS/PROPRIETARY INFRINGEMENT: Unless otherwise expressly provided in this CONTRACT, CONTRACTOR shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this CONTRACT. CONTRACTOR warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. CONTRACTOR agrees that, in accordance with the more specific requirement contained in paragraph "GG" 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, but not limited to, attorney's fees, costs and expenses.

- H. Assignment or Sub-Contracting:** 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.
- I. NON-DISCRIMINATION:** In the performance of this CONTRACT, CONTRACTOR agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. CONTRACTOR acknowledges that a violation of this provision shall subject CONTRACTOR to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
- J. TERMINATION:** Unless otherwise specified, exercise by COUNTY of its right to terminate the CONTRACT shall relieve COUNTY of all further obligation. CONTRACTOR has the right to terminate this CONTRACT with cause after 30 days' prior written notice. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the other party.
- K. 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.
- L. 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, however the remedies are subject to limits set forth under paragraph "Q", Limitation of Liabilities.
- M. Independent Contractor:** CONTRACTOR shall be considered an independent contractor and neither CONTRACTOR, its employees, nor anyone working under CONTRACTOR shall be considered an agent or an employee of COUNTY. Neither CONTRACTOR, its employees nor anyone working under CONTRACTOR shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.
- N. Performance:** CONTRACTOR shall perform 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 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 Requirements:**INSURANCE PROVISIONS**

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

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 \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

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

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

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject 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
Professional Liability Insurance	\$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 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insured.
- 2) A primary 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.

All insurance policies required by this CONTRACT shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If CONTRACTOR'S Professional Liability policy is a "claims made" policy, CONTRACTOR shall agree to maintain professional liability coverage for two years following completion of contract.

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

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

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

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

COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty days of receipt of such notice, this CONTRACT may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal remedies.

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

- P. 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 "11" 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.
- Q. Limitation of Liability:** If COUNTY should become entitled to claim damages from CONTRACTOR (including without limitation, for breach of CONTRACT, breach of warranty, negligence or other tort claim), CONTRACTOR will be liable only for the amount of COUNTY's actual direct damages, not to exceed the amounts paid by COUNTY to CONTRACTOR for the Maintenance Period with respect to which the claims arise.

In no event will CONTRACTOR or any person or entity involved in the creation, manufacture or distribution of any software, services or other materials provided under this CONTRACT be liable for any damages caused by the failure of COUNTY or its affiliates or suppliers to perform their responsibilities or any lost profits, loss of business, loss of use, lost savings or other consequential, special, incidental, indirect, exemplary or punitive damages, even if CONTRACTOR has been advised of the possibility of such damages. CONTRACTOR will not be held responsible, or to have failed to meet its obligations under this CONTRACT, if it either delays performance or fails to perform as a result of any cause beyond its reasonable control.

The foregoing limitations do not apply to the payment of settlements, costs, damages and legal fees referred to in paragraphs "O" – Insurance Requirements and "GG" – Indemnification. The limitation of liability set forth in paragraph "GG" will survive and apply notwithstanding the failure of any limited or exclusive remedy for breach of warranty set forth in this CONTRACT. The PARTIES agree that the foregoing limitations shall not limit the COUNTY's right to any insurance recovery available under the policies required in this CONTRACT.

- R. CHANGES:** CONTRACTOR shall make no changes in the work or perform any additional work without the COUNTY'S specific written approval.
- S. CHANGE OF OWNERSHIP:** CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR'S business prior to completion of this CONTRACT, the new owners shall be required under terms of sale or other transfer to assume CONTRACTOR'S duties and obligations contained in this CONTRACT and complete them to the satisfaction of COUNTY.
- T. FORCE MAJEURE:** CONTRACTOR shall not be responsible for 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:** 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 Laws:** CONTRACTOR represents and warrants that services to be provided under this CONTRACT shall fully comply, at CONTRACTOR'S expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by COUNTY in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by COUNTY. CONTRACTOR acknowledges that COUNTY is relying on CONTRACTOR to ensure such compliance, and pursuant to the requirements of paragraph "O" above, CONTRACTOR agrees that it shall defend, indemnify and hold COUNTY and COUNTY INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- W. Pricing:** The CONTRACT price shall include full compensation for providing all required services, 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.
- X. 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.
- Y. TERMS AND CONDITIONS:** CONTRACTOR acknowledges that it has read and agrees to all terms and conditions included in this CONTRACT.
- Z. 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.
- AA. 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.
- BB. Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
- CC. ATTORNEY FEES:** 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 own attorney's fees, costs and expenses.

DD. 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.

EE. AUTHORITY: The parties to this CONTRACT represent and warrant that this CONTRACT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

FF. EMPLOYEE ELIGIBILITY VERIFICATION: The CONTRACTOR warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this CONTRACT meet the Citizenship or alien status requirement set forth in Federal statutes and regulations. The CONTRACTOR shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The CONTRACTOR shall retain all such documentation for all covered employees for the period prescribed by the law. The CONTRACTOR shall indemnify, defend with counsel approved in writing by COUNTY, and hold 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.

GG. INDEMNIFICATION:

INDEMNIFICATION PROVISIONS

CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY'S Board of Supervisors acts as the governing Board ("COUNTY INDEMNITIEES") harmless from any claims, demands or liability 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 INDEMNITIEES, CONTRACTOR and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

ADDITIONAL TERMS AND CONDITIONS

1. **Scope of Contract:** This CONTRACT, including its attachments, specifies the Contractual terms and conditions by which COUNTY will procure services from CONTRACTOR as further detailed in the Scope of Work, identified and incorporated herein by the reference as **Attachment A – Scope of Work**.
2. **Term of Contract:** The initial term of this CONTRACT is for **ten (10) years, effective July 1, 2011 through and including June 30, 2021**.
3. **Fiscal Appropriation:** This CONTRACT is subject to and contingent upon applicable budgetary appropriations being approved by the COUNTY Board of Supervisors for each fiscal year during the Term of this CONTRACT. If such appropriations are not approved, the CONTRACT will be terminated without penalty to the COUNTY.
4. **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.
5. **Precedence:** In the event of a conflict between or among this CONTRACT documents, the order of precedence shall be the provisions of the main body of this CONTRACT, i.e., those provisions set forth in the recitals and articles of this CONTRACT, and then attachments.
6. **Contractor personnel uniforms/Badges/Identification:** The CONTRACTOR warrants that all persons employed to provide service under this CONTRACT have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this CONTRACT.

All CONTRACTOR'S employees shall be required to wear badges or other means of identification which are to be furnished by the CONTRACTOR and must be worn at all times while working on COUNTY property. The assigned buyer must be notified in writing, within seven days of notification of award of contract, of the uniform and/or badges and/or other identification to be worn by employees prior to beginning work and notified in writing seven days prior to any changes in this procedure.

7. **Contractor personnel – Reference Checks:** The CONTRACTOR warrants that all persons employed to provide service under this CONTRACT have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this CONTRACT. CONTRACTOR'S employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this CONTRACT.
8. **Adjustments-Scope of Work:** Adjustments made to the scope of work will not be authorized or paid for without prior written approval of the COUNTY assigned buyer, in accordance with the signed writing requirements set forth in Paragraph C – Amendments. Amendments may require approval of the COUNTY Board of Supervisors.
9. **Interpretation of Contract:** In the event of a conflict or question involving the provisions of any part of this CONTRACT, interpretation and clarification as necessary shall be determined by the COUNTY'S assigned buyer. If disagreement exists between the CONTRACTOR and the COUNTY'S assigned buyer in interpreting the provision(s), final interpretation and clarification shall be determined by the COUNTY'S Purchasing Agent or his designee.

- 10. Reports/Meetings:** The CONTRACTOR shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this CONTRACT. The COUNTY'S project manager and the CONTRACTOR'S project manager will meet on reasonable notice to discuss the CONTRACTOR'S performance and progress under this CONTRACT. If requested, the CONTRACTOR'S project manager and other project personnel shall attend all meetings. The CONTRACTOR shall provide such information that is requested by the COUNTY for the purpose of monitoring progress under this CONTRACT.
- 11. 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 maintained for a period of four years after final payment is received from the COUNTY.
- 12. Conflict of Interest – Contractor's Personnel:** The CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the COUNTY. This obligation shall apply to the CONTRACTOR; the CONTRACTOR'S employees, agents, and relatives; sub-tier CONTRACTOR'S and third PARTIES associated with accomplishing work and services hereunder. The CONTRACTOR'S efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the COUNTY.
- 13. 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.
- 14. Title to Data:** All materials, documents, data or information obtained from the COUNTY data files or any COUNTY medium furnished to the CONTRACTOR in the performance of this CONTRACT will at all times remain the property of the COUNTY. Such data or information may not be used or copied for direct or indirect use by the CONTRACTOR after completion or termination of this CONTRACT without the express written consent of the COUNTY. All materials, documents, data or information, including copies, must be returned to the COUNTY at the end of this CONTRACT.
- 15. Contract Disputes:** At the written request of either PARTY, the PARTIES will attempt to resolve any dispute arising under or related to this CONTRACT through the informal means described in this section. Each PARTY will appoint a senior management representative who does not devote substantially all of his time to performance under this CONTRACT. The representatives will furnish to each other all non-privileged information with respect to the dispute that the PARTIES believe to be appropriate and germane. The representatives will negotiate in an effort to resolve the dispute without the necessity of any formal proceedings. Formal proceedings for the resolution of the dispute may not be commenced until the earlier of: (i) the designated representatives concluded that resolution through continued negotiation does not appear likely; or (ii) thirty (30) calendar days have passed since the initial request to negotiate the dispute was made; provided, however that a PARTY may file earlier to avoid the expiration of any applicable limitation period, to preserve a superior position with respect to other creditors, or to apply for interim or equitable relief.

- 16. Termination – Orderly:** Upon termination or other expiration of this CONTRACT, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of execution of the CONTRACT. In addition, each party will assist the other party in orderly termination of this CONTRACT and the transfer of all aspects, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each party.
- 17. Notices:** Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate Party at the address stated herein or such other address as the Parties hereto may designate by written notice from time to time in the manner aforesaid.

County: County of Orange Auditor-Controller/Admin
 Attn: Jim Christiansen
 12 Civic Center Plaza, Room 200
 Santa Ana, CA 92702

Cc: County of Orange Auditor-Controller/CAPS System Admin.
 Steve Rodermund
 12 Civic Center Plaza, Room 200
 Santa Ana, CA 92702

Contractor: CGI Technologies and Solutions, Inc.
 Office of the General Counsel
 11235 Random Hills Road, 8th Floor
 Fairfax, VA 22030
 Fax: (703) 267-7161

- 18. Audits/Inspections:** CONTRACTOR agrees to permit the COUNTY'S Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the COUNTY) access during normal working hours. The inspection and/or audit will be confined to those matters connected with the performance of the CONTRACT. The COUNTY will provide thirty days (30) prior notice of such an audit or inspection.

The COUNTY reserves the right to audit and verify the CONTRACTOR'S records before payment is made.

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

Should the CONTRACTOR cease to exist as a legal entity, the CONTRACTOR'S records pertaining to this 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.

- 19. Conditions Affecting Work:** The CONTRACTOR 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 CONTRACTOR to do so will not relieve CONTRACTOR 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 the CONTRACT.
- 20. Gratuities:** The CONTRACTOR warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the CONTRACTOR or any agent or representative of the CONTRACTOR to any officer or employee of the COUNTY with a view toward securing the CONTRACT or securing favorable treatment with respect to any determinations concerning the performance of the CONTRACT. For breach or violation of this warranty, the COUNTY shall have the right to terminate the CONTRACT, either in whole or in part, and any loss or damage sustained by the COUNTY in procuring on the open market any goods or services which the CONTRACTOR agreed to supply shall be borne and paid for by the CONTRACTOR. The rights and remedies of the COUNTY proved in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the CONTRACT.
- 21. Authorization/Warranty:** The CONTRACTOR represents and warrants that the person executing this CONTRACT on behalf of and for the CONTRACTOR is an authorized agent who has actual authority to bind the CONTRACTOR to each and every term, condition and obligation of this CONTRACT and that all requirements of the CONTRACTOR have been fulfilled to provide such actual authority.
- 22. News/Information Release:** The CONTRACTOR agrees that it will not issue any news releases in connection with either the awarded of this CONTRACT or any subsequent amendment of or effort under the CONTRACT without first obtaining review and written approval of said news releases from the COUNTY through the COUNTY'S project manager.
- 23. County of Orange Child Support Enforcement Requirements:** In order to comply with the child support enforcement requirements of the COUNTY, within 30 days of award of CONTRACT the CONTRACTOR agrees to furnish the required CONTRACTOR data and certifications, as specified in Attachment B hereto, to the CONTRACT administrator, the Purchasing Agent, or the agency/department deputy purchasing agent. Failure of the Contractor to timely submit the data and/or certifications required or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the CONTRACT. Failure to cure such breach within 60 calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.
- 24. Payment – Invoicing Instructions:** The contractor will provide a two-part invoice on the contractor's letterhead for maintenance services rendered. In the case of goods, the contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:

1. Contractor's name and address
2. Contractor's remittance address, if different from 1, above

- 3. Name and telephone number of contact for questions concerning invoice
- 4. Contractor's Federal ID number
- 5. Contract Agreement number (MA-003-11012413)
- 6. Date of order
- 7. Product/service description, quantity, and prices
- 8. Sales tax, if applicable
- 9. Freight/delivery charges, if applicable
- 10. Total

Payment shall be payable upon submission of invoice. Total Contract amount is a fixed fee amount in accordance with the schedule below. Invoice to be submitted to COUNTY as provided below. CONTRACTOR shall reference the CONTRACT number, MA-003-11012413, on invoice. Payment will be net 30 days after receipt of invoice in a format acceptable to the COUNTY and verified and approved by the Auditor-Controller and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the CONTRACTOR.

Billing shall cover services and/or goods not previously invoiced. Payments made by the COUNTY shall not preclude the right of the COUNTY from thereafter disputing any items or services involved or billed under this CONTRACT and shall not be construed as acceptance of any part of the goods or services.

CONTRACTOR shall extend to the COUNTY a discounted rate of increase of 3% annually for ten years for CAPS+ Financial and CAPS+ HR/Payroll maintenance. If the COUNTY terminates the CONTRACT prior to the end of the ten year term without cause as defined in Paragraph K, the COUNTY will pay the difference between the standard five years rate of increase (5%) and the discounted rate of increase (3%) for prior maintenance periods that the COUNTY paid for at the discounted rate of increase through the date of termination. BRASS maintenance will increase from Year 1 to Year 2 and remain constant for the remaining life of the contract.

Maintenance Period	Fin/info/Third Party	HR/Third Party	BRASS	Total
July 2011 – June 2012	\$429,215.70	\$435,522.18	\$124,260.00	\$988,997.88
July 2012 – June 2013	\$442,092.17	\$448,587.85	\$130,800.00	\$1,021,480.02
July 2013 – June 2014	\$455,354.94	\$462,045.48	\$130,800.00	\$1,048,200.42
July 2014 – June 2015	\$469,015.58	\$475,906.85	\$130,800.00	\$1,075,722.43
July 2015 – June 2016	\$483,086.05	\$490,184.05	\$130,800.00	\$1,104,070.10
July 2016 – June 2017	\$497,578.63	\$504,889.57	\$130,800.00	\$1,133,268.21
July 2017 – June 2018	\$512,505.99	\$520,036.26	\$130,800.00	\$1,163,342.25
July 2018 – June 2019	\$527,881.17	\$535,637.35	\$130,800.00	\$1,194,318.52
July 2019 – June 2020	\$543,717.61	\$551,706.47	\$130,800.00	\$1,226,224.07
July 2020 – June 2021	\$560,029.14	\$568,257.66	\$130,800.00	\$1,259,086.80
			Total for 10 Years	\$11,214,710.70

25. 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 CONTRACTORS insolvency, the COUNTY may terminate this CONTRACT with cause within the meaning of Paragraph K.

SIGNATURES

The PARTIES hereto have executed this CONTRACT on the dates shown opposite their respective signatures below.

CONTRACTOR*: CGI TECHNOLOGIES AND SOLUTIONS INC.

Dave Delgado Vice President
Print Name Title

Dave Delgado 6/13/11
Signature Date

PIERRE SIMONEAU Chief Financial Officer
Print Name Title

Psimoneau 06/13/11
Signature Date

* Unless otherwise demonstrated that the person(s) executing this CONTRACT on behalf of CONTRACTOR has the requisite authority to legally obligate and bind CONTRACTOR, if the CONTRACTOR is a corporation, signatures of two specific corporate officers are required as further set forth. The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President. The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; d) Assistant Treasurer.

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

Jim Christensen Admin Manager
Print Name Title

Jim Christensen 6/21/2011
Signature Date

Approved by Board of Supervisors on: Date 6/21/2011

County of Orange, Office of the County Counsel

APPROVED AS TO FORM:

Mark Servino
Deputy County Counsel
Date _____

Attachment A

Scope of Work

Background History of Services:

Maintenance is performed to support all software licensed to the County for CAPS. CAPS is used to support the County's Financial Purchasing, and Human Resources Information Systems. With this Maintenance Services Contract, Contractor will assist County in the use of the Software described in Section 4 below, and provide County with all Enhancements to the Advantage Software. This Contract is limited to the Software listed below for the period specified in Section 1, Maintenance Period.

1. **Maintenance Period.** The Maintenance period is the period beginning July 1, 2011 and ending on June 30, 2021.

2. **Maintenance Fee.** The total maintenance fee shall be

Advantage 3 (July 1, 2011– June 30, 2021) \$11,214,710.70 plus tax

Payable annually as stated in Section 24, Payment – Invoicing instructions of the Proprietary Software Maintenance Agreement. This cost may be adjusted if software is added or deleted during the term.

County may purchase maintenance services for the Software for subsequent Maintenance periods in which CGI is offering maintenance services at Contractor's then current rates.

3. **Maintenance**

A. Contractor's Standard Support and Maintenance Services provide the County with the required ongoing enhancements to the Software to address functional and technical changes. Specifically, the Standard Support and Maintenance Services provide these major components:

1. Internet access through our secure web site, eAccess (<https://support.cgiam.com/advantage/>), to a variety of 24x7 support materials.
2. Help Desk Support with direct phone, email, and web support on the baseline products through the CGI County Support Center. Standard hours of operation are 8 am EST to 9 pm EST Monday-Friday. CGI can be reached at 800-321-0267 via phone and <https://support.cgi-ams.com/advantage/> via our online support website.
3. Software incident corrections to the Software.
4. Software releases are provided periodically to address technical and functional compatibility with system software and ongoing regulatory changes and changes to business practices. Documentation updates are provided as part of each release. Additional Software incident corrections will be included in releases, as dictated by testing requirements and the magnitude of the required change.
5. Enhancements to the Software are provided in new releases of the AMS Advantage solution.
6. Membership to the AMS Advantage User Group. Membership provides the option to participate in various user group activities such as the annual CGI Forum, regional User Group meetings and voting for the User Group Steering Committee that works closely with CGI on a variety of County issues and concerns. Membership also

provides each site the option of proposing a candidate for election to the User Group Steering Committee.

Contractor will support the following features of the AMS Advantage solution:

1. The system components that the County is currently contracted for and is paying maintenance on;
2. The third-party software component releases that are compatible with the currently supported version of the AMS Advantage solution;
3. The documented features of the AMS Advantage Software, as listed on the delivered on-line documentation and help files;
4. All standard baseline features of the system, including configuration tables (e.g. Required Elements) of the AMS Advantage Software, that DO NOT include infrastructure or other programming code changes. Any County-specific configuration tables will not be supported.
5. Prioritizations of all issues and software incidents according to the following schedule:

Severity	Definition
1 - Critical	A problem with CGI supported Software causing critical impact to the County's business operation. No workaround is immediately available and work using the Software can not continue.
2 - Serious	A problem with CGI supported Software causing significant impact to the County's business operation. A workaround is available but is unacceptable on a long term basis.
3 - Moderate	A problem with CGI supported Software that impairs some functionality, but a practical workaround exists.
4 - Minor	A problem that does not affect any functionality of the Software.

- B. At the expiration of the initial Maintenance Period stated in this Agreement, County may buy maintenance services for the Software for subsequent Maintenance Periods in which Contractor is offering maintenance services, at Contractor's then current prices. County may obtain such maintenance services only if (i) County has paid the maintenance fee for all prior Maintenance Periods; and (ii) County incorporates into the Software all releases, corrections, and Enhancements to the Software that Contractor has made available to County, no less than two minor software releases prior to current release.
- C. All Enhancements and corrections to the Software and Documentation provided by Contractor pursuant to this Contract will become a part of the Software and Documentation for the purposes of the License Agreement at the time they are provided to County and are hereby licensed to County as part of the Software and Documentation pursuant to all of the terms and conditions of the License Agreement.

4. **Software.** The maintenance services under this Contract are provided with respect to the following Software:

Advantage® 3 including the following modules from July 1, 2011 through June 30, 2012:

Human Resources Management

Attachment A

Position Control

Benefits Administration

Payroll Administration & Payroll Accounting Management

Info Advantage Server Bundle for HR

Third Party Software Bundle for HR

Financial Management System

Project and Grants Management

Treasury Accounting

Inventory Management

Asset Management

Procurement Professional System

Info Advantage Server Bundle for Financial

Third Party Software Bundle for Financial

AMS Advantage BRASS

5. **License Agreement.** The Software was provided to County pursuant to the terms and conditions of that certain Proprietary Software License Contract between Contractor and County made effective as of May 19, 2009.

Pages 21-25 Intentionally Omitted from June 4, 2024, Agenda Staff Report