

**Contract MA-031-21011755
with
DFM Associates
for
Lease and Maintenance of Election Information
Management System (EIMS) Software**

This Contract MA-031-21011755, hereinafter referred to as “Contract”, is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; hereinafter referred to as “County” and DFM Associates with a place of business at 10 Chrysler Ste. A, Irvine, CA 92618-2016 hereinafter referred to as “Contractor”, with County and Contractor sometimes referred to as “Party” or collectively as “Parties”.

ATTACHMENTS

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

Attachment A – Scope of Work
Attachment B – Compensation/Payment

RECITALS

WHEREAS, County is currently leasing Election Information Management System (EIMS) software from Contractor and such lease will expire on September 30, 2021; and

WHEREAS, County wishes to continue using the EIMS software; and

WHEREAS, Contractor is a sole source offering EIMS software and maintenance for such software; and

WHEREAS, Contractor has represented that its services shall meet or exceed the requirements specified in this Contract and its attachments, including the Scope of Work; and

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

For the purposes of this Contract, the following terms shall have the following definitions:

1. **EIMS Software**: The computer program(s) in object code to register and manage voters, election officials, and polling places as well as the election process itself provided by Contractor to County pursuant to this Contract. The term “EIMS Software” includes any corrections, bug fixes, enhancements, updates, new releases, or other modifications, including custom modifications, to such computer program(s).
2. **Manuals**: Any documents, reports, written instructions or other writings, and any annotations thereto, that explain or depict, generally or in detail, any aspect of any particular EIMS Software, including

but not limited to, all procedures and workings thereof. Such Manuals may be in any format, including hard copy, on disk or on CD-ROM or any other media.

3. Monthly Fee: Monthly charge by Contractor for the right of the County to use EIMS Software and services specified in Attachment A - Scope of Work.
4. Software Enhancement: Addition of a new Subsystem or revision of any existing Subsystem of the EIMS Software.
5. Software Release: Most recent revision of the EIMS Software.
6. Specified Operating System Software: Operating system software provided by a third-party vendor for the computer hardware used by the County on which the EIMS Software will operate.
7. Subsystem: Any portion of any particular functional area of the EIMS Software.

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue**: This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. **Entire Contract**: This Contract 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 designee.
- C. **Amendments**: No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes**: Unless otherwise provided herein or by law, 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. However, the Parties understand and agree that the services rendered under this Contract are currently exempt from sales tax and that the County shall be liable for any sales tax deemed to be applicable.

- E. **Delivery:** Intentionally Left Blank.
- F. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. **Warranty:**
 - (a) Limited Warranty

The Contractor warrants, for the sole benefit of the County and no other person or entity, that the EIMS Software shall perform the functions set forth in Attachment A, Scope of Work. This is the Contractor’s sole express warranty with respect to the EIMS Software. Any claim by the County against the Contractor for breach of its express warranty must be in writing and must be promptly delivered by the County to Contractor. In the event of any breach of Contractor’s express warranty, the County’s sole and exclusive remedy against Contractor and Contractor’s sole and exclusive liability to the County, shall be the Contractor, at its sole cost and expense, shall exercise good faith. For purposes of this Contract, the term “good faith” shall have the same meaning as that term is defined and used in California Commercial Code Section 1201(20). Contractor shall make reasonable efforts to provide adequate programming services to correct such inherent defect, as Contractor and the County deem necessary or appropriate. With respect to any reported errors that result or will result in significant interruption of the County’s productivity or down time (“Business Impacting Failures”), Contractor shall use its best efforts to begin error correction procedures within two (2) hours after receipt of such report. With respect to any reported errors that do not constitute “Business Impacting Failures”, Contractor shall use its good faith reasonable efforts to begin error correction procedures no later than twenty-four (24) hours after receipt of such report.

(b) Non-Infringement Warranty

Contractor represents and warrants to County that Contractor is the owner of the EIMS Software, or has authorized marketing rights to the EIMS Software, and has the right to grant the lease set forth herein. Contractor represents and warrants that the EIMS Software furnished by Contractor pursuant to this Contract will not infringe upon or violate any patent, copyright, trade secret right or other proprietary right of any third party. Contractor agrees to defend, indemnify and hold harmless County, members of its Board of Supervisors, officers, employees and agents from any claims, demands or liability of any kind or nature, arising out of or related to any claim that the EIMS Software infringes or violates any patent, copyright, trade secret or other proprietary right of any third party.

(c) Warranty Limitations

Notwithstanding the warranty provisions set forth in Paragraph (a) above, all of Contractor’s obligations with respect to such warranties shall be contingent upon the County’s use of the EIMS Software in accordance with this Contract and in accordance with written instructions provided by Contractor from time to time, including those set forth in the Manuals, as the same may be amended, supplemented or modified. The Contractor shall have no warranty obligation:

- 1) With respect to any portion of the EIMS Software which has been:

- i. Operated by the County or its employees, agents, contractors, or subcontractors in a manner inconsistent with the requirements set forth in the Manuals, or that has been modified by any party other than Contractor;
 - ii. Damaged in any manner by any cause other than any act or omission of the Contractor;
 - iii. Operated or maintained in environmental conditions outside the parameters designated by Contractor in the Manuals;
 - iv. Subjected to extreme power surges or electromagnetic fields;
 - v. Reinstalled without the prior written consent of Contractor;
 - vi. Determined by Contractor to have an error or defect, which fact is conveyed to the County together with supplemental instructions on how to avoid or circumvent the error or defect, and the County fails or refuses to follow the supplemental instructions.
- 2) As a result of any error or defect in the Specified Operating System Software and/or any application software provided by any third party software vendor; provided, however, in such events the Contractor will use its good faith reasonable efforts to resolve the problem to the extent that a resolution is reasonably available by reprogramming the EIMS Software;
 - 3) As a result of the County's failure or refusal to use the Specified Operating System Software or to upgrade its computer hardware as requested by Contractor; or
 - 4) As a result of County's data.

(d) Disclaimer of Warranties

CONTRACTOR DOES NOT REPRESENT OR WARRANT THAT THE EIMS SOFTWARE WILL BE FREE FROM ERRORS OR THAT ALL ERRORS IN THE EIMS SOFTWARE WILL BE CORRECTED. THE WARRANTY STATED IN PARAGRAPH (a) ABOVE IS THE SOLE AND EXCLUSIVE WARRANTY OFFERED BY CONTRACTOR. THERE ARE NO OTHER WARRANTIES RESPECTING THE EIMS SOFTWARE, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF DESIGN, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF CONTRACTOR HAS BEEN INFORMED OR IS OTHERWISE MADE AWARE OF SUCH PURPOSE. NO AGENT OF CONTRACTOR IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF THE CONTRACTOR SET FORTH IN PARAGRAPHS (a) AND (c) ABOVE.

(e) Limitation on Liability and Remedy

THE COUNTY ACKNOWLEDGES AND AGREES THAT THE MONTHLY FEE AS SET FORTH IN ATTACHMENT B DOES NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY CONTRACTOR OF THE RISK OF THE COUNTY'S INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH MAY ARISE IN CONNECTION WITH THE COUNTY'S USE OF THE EIMS SOFTWARE. ACCORDINGLY, THE COUNTY AGREES THAT THE CONTRACTOR SHALL NOT BE RESPONSIBLE TO THE COUNTY OR ANY DEPARTMENT, AGENCY OR SUBDIVISION THEREOF, FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE LICENSING, LEASING OR USE OF THE EIMS SOFTWARE; PROVIDED HOWEVER, THAT THE CONTRACTOR SHALL BE RESPONSIBLE FOR SUCH INCIDENTAL (BUT NOT CONSEQUENTIAL) COSTS

AND EXPENSES ARISING IN CONNECTION WITH ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF THIRD PARTY PROPRIETARY RIGHTS AS SET FORTH IN PARAGRAPH (b) ABOVE.

- H. **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 “Z” below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney’s fees.

- I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.

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

- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

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

- N. **Performance:** Contractor shall 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 workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain

and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

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

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

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

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

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

Qualified Insurer

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

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

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

<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

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 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Required Endorsements

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

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming *the County of Orange, its elected and appointed officials, officers, employees and 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 Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, its elected and appointed officials, officers, employees and agents*, or provide blanket coverage, which will state *As Required By Written Contract*.

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

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

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 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 of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

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

- P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- Q. **Change of Ownership/Name, Litigation Status, Conflicts With County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

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

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

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

be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

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

S. **Confidentiality:**

(a) Contractor Information:

The County, to the extent permitted by the California Public Records Act, Government Code section 6250 et seq., and other applicable State and Federal laws, agrees to take all steps reasonably necessary to protect and maintain the confidentiality of the EIMS Software and to prevent it from entering the public domain or falling into the hands of others not bound by this Contract. In furtherance hereof, the County agrees as follows:

- 1) The County shall use its good faith reasonable efforts to restrict access to any computer hardware running or able to access the EIMS Software, and to the EIMS Software itself, to prevent unauthorized personnel from acquiring significant or confidential information concerning the EIMS Software.
- 2) To the extent reasonably practicable, the County shall require all persons who will have access to the EIMS Software to sign a confidentiality agreement, a form provided by the Contractor which is acceptable to the County.
- 3) The County shall not duplicate or reproduce (except to the extent reasonably required to back-up the EIMS Software in the ordinary course of business), in any manner, the EIMS Software, or any component or constituent parts thereof, and agrees not to disseminate, display or use the EIMS Software except as is reasonably necessary for the County to perform its functions using the EIMS Software and to comply with the terms of this Contract.
- 4) The County shall notify the Contractor immediately of any and all known or suspected, unauthorized disclosures of the EIMS Software.
- 5) The County agrees to provide Contractor with written notice of any actual infringement claim within thirty (30) days of notice thereof by or to the County.

(b) County Information:

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.

T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions,

ordinances, requirements, and regulations (collectively “laws”), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph “Z” below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

- U. **Freight:** Intentionally left Blank.
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney’s fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the parties and this Contract.
- Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold 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.
- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County’s Board of Supervisors acts as the governing Board (“County Indemnitees”) harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree

that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

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

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

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

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the County's project manager.

- BB. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. **Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

Additional Terms and Conditions:

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County shall lease EIMS Software from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. **Term of Contract:** This Contract shall commence on October 1, 2021 and will be in effect for three (3) years from that date, unless otherwise terminated by the County. This contract may be renewed by written mutual agreement of both Parties for two (2) additional (1) year terms. The County does not have to give reason if it elects not to renew. Renewal periods may be subject to approval by the County of Orange Board of Supervisors.

3. **Lease:** Contractor hereby grants to County the non-exclusive, right to lease and use the EIMS Software during the term of this Contract subject to the terms and conditions set forth in this Contract. The County's right to lease and use the EIMS Software specifically excludes the right to sublicense, assign, sublease or otherwise transfer the EIMS Software and/or the any of the County's rights hereunder or therein.
4. **Adjustments – Scope of Work:** No adjustments made to the Scope of Work will be authorized without the prior written approval of the County assigned Deputy Purchasing Agent.
5. **Americans with Disabilities Act:** Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22: California Government Code, Sections 11135, et seq; and other federal and state laws and executive orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities.
6. **Breaches:**
 - (a) County Breaches: For purposes of this Contract, the term "County Breach" or "County Breaches" means any one or more of the following events, acts or occurrences:
 - 1) Any breach by the County, or any of its officers, employees, agents, contractors, subcontractors or licensees, of any of the provisions of Section S; provided, however, instead of terminating the Contract, the Contractor, in its sole and absolute discretion, may give notice to the County of the breach, demanding adequate assurances from the County that it will protect the proprietary interest of the Contractor and remedy all prior breaches. In the event that the County fails to provide such adequate assurances and to remedy such breaches within seventy-two (72) hours of receipt of the notice ("Suspense Period"), the Contract will automatically terminate as if no demand for adequate assurances had been made. For purposes of this Paragraph, the parties agree that the Suspense Period is reasonable based on the proprietary interest to be protected by the Contractor and the interest of the County to continue the right to use the EIMS Software.
 - 2) Any modification of the EIMS Software which is accomplished or undertaken by the County, its employees, or its authorized agents, shall give the Contractor the right to terminate the Contract, or any portion thereof related to the EIMS Software which was subject to the unauthorized modification.
 - 3) Any breach by the County of any of its monetary obligations to the Contractor, in which event the Contractor shall have the right, at any time after thirty (30) days prior written notice, to suspend its performance under this Contract; and, if the County Breach continues for an additional thirty (30) days, the Contractor may, at its option, terminate the Contract, or any portion thereof related to the EIMS Software involved in such a breach.
 - 4) Any material breach by the County of any of its other obligations under this Contract (other than those described in (1) through (3) above), which continues for a period of thirty (30) days after written notice thereof from the Contractor specifying the nature of the breach and the curative action, if any, which must be taken.
 - 5) The remedies in favor of the Contractor set forth in this Section are not exclusive and the Contractor shall have the right to pursue any other remedy to which it may be entitled.
 - (b) Contractor Breaches - 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:

- 1) Terminate the Contract immediately, pursuant to Section K herein;
 - 2) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - 3) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - 4) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
7. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
8. **Ownership of County's Data:** At all times during the term of this Contract, the County shall retain all ownership rights in the County's data (as that term is defined below). In addition, notwithstanding any use by the County of the EIMS Software in connection therewith, the County shall be solely responsible and accountable for the accuracy and completeness of, all data and information stored by it in any database in any format (hereafter referred to as the "County's Data"), and for any use, publication or other dissemination of the County's Data. If the County uses, publishes or otherwise disseminates, or allows any access to, any portion of the County's Data, whether before or after it has been manipulated by the EIMS Software, and whether or not it is a commercial or non-commercial use, by doing so the County is representing to the Contractor that it has accepted, ratified and approved the accuracy and completeness of the County's Data and accepts full responsibility for it. The County hereby agrees to indemnify, defend, protect and hold the Contractor harmless from and against any claims, liabilities, judgments, costs and expenses, including reasonable attorneys' fees and costs, which the Contractor may incur arising out of the accuracy or inaccuracy of (which includes omissions to) the County's Data, including, without limitation, claims of any third party who accesses the County's Data using the EIMS Software
9. **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 subcontractors associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
10. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.

11. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

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

12. **Data – Title To:** 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.

13. **Disputes – Contract:**

A) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:

1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
2. The 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 Deputy 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. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in section K herein.

14. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

- 1) The Contractor has made false certification, or
- 2) The Contractor violates the certification by failing to carry out the requirements as noted above.

15. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 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.

- 16. **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 provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
- 17. **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.
- 18. **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.
- 19. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor:	DFM Associates 10 Chrysler, Ste. A Irvine, CA 92618 Attn: Thomas Diebolt, President Email:
County Project Manager:	Registrar of Voters 1300 S. Grand Ave. Bldg. C Santa Ana, CA 92705

Attn: Justin Berardino
Phone: 714-567-5103
Email: Justin.Berardino@rov.ocgov.com

County DPA:

Registrar of Voters
PO Box 11298
Santa Ana, CA 92711
Attn: Christina Morales
Phone: 714-567-5169
Email: Christina.Morales@rov.ocgov.com

20. **Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.
21. **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 State or County shall provide reasonable notice of such audit.
22. **Subcontracting:** No performance of this Contract or any portion thereof may be subcontracted by the Contractor without the express written consent of the County. Any attempt by the Contractor to subcontract any performance of this Contract without the express written consent of the County shall be invalid and shall constitute a breach of this Contract.

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

23. **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.

24. **Compliance with County Information Technology Policies and Procedures:**

Policies and Procedures: Contractor, its subcontractors, the Contractor personnel, and all other agents and representatives of Contractor, will at all times comply with and abide by all Information Technology (IT) policies and procedures of the County that are provided or made available to Contractor that reasonably pertain to Contractor (and of which Contractor has been provided with advance notice) in connection with Contractor’s performance under this Contract. Contractor shall cooperate with the County in ensuring Contractor’s compliance with the IT policies and procedures described in this Contract and as adopted by the County from time-to-time, and any material violations or disregard of such IT policies or procedures shall, in addition to all other available rights and remedies of the County, be cause for termination of this Contract. In addition to the foregoing, Contractor shall comply with the following:

- a. **Security and Policies:** All performance under this Contract, shall be in accordance with the County's security requirements, policies, and procedures as set forth above and as modified, supplemented, or replaced by the County from time to time, in its sole discretion, by providing Contractor with a written copy of such revised requirements, policies, or procedures reasonably in advance of the date that they are to be implemented and effective (collectively, the "Security Policies"). Contractor shall at all times use industry best practices and methods with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to County systems accessed in the performance of services in this Contract.
- b. **Information Access:** The County may require all Contractor personnel performing services under this Contract to execute a confidentiality and non-disclosure Contract concerning access protection and data security in the form provided by County. The County shall authorize, and Contractor shall issue, any necessary information-access mechanisms, including access IDs and passwords, and in no event shall Contractor permit any such mechanisms to be shared or used by other than the individual Contractor personnel to whom issued. Contractor shall provide each Contractor Person with only such level of access as is required for such individual to perform his or her assigned tasks and functions. All County systems, and all data and software contained therein, including County data, County hardware and County software, used or accessed by Contractor: (a) shall be used and accessed by such Contractor solely and exclusively in the performance of their assigned duties in connection with, and in furtherance of, the performance of Contractor's obligations hereunder; and (b) shall not be used or accessed except as expressly permitted hereunder, or commercially exploited in any manner whatsoever, by Contractor, at any time.
- c. **Enhanced Security Procedures:** The County may, in its discretion, designate certain areas, facilities, or systems as requiring a higher level of security and access control. The County shall notify Contractor in writing reasonably in advance of any such designation becoming effective. Any such notice shall set forth in reasonable detail the enhanced security or access-control procedures, measures, or requirements that Contractor shall be required to implement and enforce, as well as the date on which such procedures and measures shall take effect. Contractor shall fully comply with and abide by all such enhanced security and access measures and procedures as of such date.
- d. **Breach of Security:** Any breach or violation by Contractor of any of the foregoing shall be deemed a material breach of a material obligation of Contractor under this Contract and may be deemed an incurable and material breach of a material obligation of Contractor under this Contract resulting in termination.
- e. **Conduct on County Premises:** Contractor shall, at all times, comply with and abide by all reasonable policies and procedures of the County (or that may be established thereby, from time to time) that pertain to conduct on the County's premises, possession or distribution of contraband, or the access to, and security of, the Party's real property or facilities, to the extent that the Contractor has been provided with a copy of each such policy or procedure. Contractor shall exercise due care and diligence to prevent any injury to persons or damage to property while on the other Party's premises. The operation of vehicles by either Party's personnel on the other Party's property shall conform to posted and other applicable regulations and safe-driving practices. Vehicular accidents occurring on a Party's property and involving either Party's personnel shall be reported promptly to the appropriate Party's personnel. Each Party covenants that at all times during the Term, it, and its employees, agents, and Subcontractors shall comply with, and take no action that results in the other Party being in violation of, any

applicable federal, state, and local laws, ordinances, regulations, and rules. Each Party's personnel shall clearly identify themselves as the appropriate Party's personnel and not as employees of the other Party. When on the other Party's premises, each Party's personnel shall wear and clearly display identification badges or tags, as approved by the other Party.



- f. **Security Audits:** Each Contract Year, County may perform or have performed security reviews and testing based on an IT infrastructure review plan. Such testing shall ensure all pertinent County security standards as well as any customer agency requirements, such as federal tax requirements or HIPPA.

SIGNATURE PAGE FOLLOWS

Signature Page

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

CONTRACTOR: DFM Associates *

THOMAS DIEBOLT	PRESIDENT
Print Name	Title
	6.21.21
Signature	Date
PATRICIA McALEER	CFO
Print Name	Title
	6/21/2021
Signature	Date

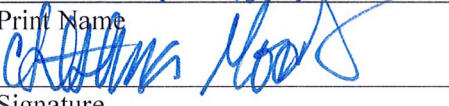
* If the contracting party is a corporation, signatures of two specific corporate officers are required as further set forth.

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: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.

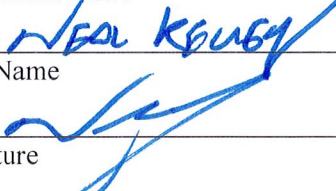
In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.

 County of Orange, a political subdivision of the State of California

Christina Morales	DPA
Print Name	Title
	8/10/21
Signature	Date


APPROVED AS TO CONTENT:

Department Head

NEAL KENNEY	Registrar of Voters
Print Name	Title
	8/10/21
Signature	Date

APPROVED AS TO FORM:

County Counsel

	
Print Name	Title
Signature	Date
	7.20.21

ATTACHMENT A
Scope of Work

A. Functions Performed

The EIMS Software shall consist of the following functional modules:

1. **Precinct/District:** Creates and maintains precincts, districts, and the relationship between those categories.
2. **Street Guide:** Creates and maintains street segments and their relationship to precincts.
3. **Office/Incumbent:** Creates and maintains office types, office definitions, and incumbent data.
4. **Voters:** Creates and maintains voter registration records. Maintains active, canceled, and inactive voter records. Provides duplicate checking, customer tape generation and other reporting features.
5. **Affidavit Tracking:** Maintains records of affidavits provided to third parties and tracks those subsequently returned.
6. **Officers/Polling Places:** Maintains records of polling places, election officers and election night workers. Maintains all records from past polling places, election officers and election night workers.
7. **Election Workspace:** Manages election definitions including contests, candidates, and measures. Provides ballot typing, consolidation, election officer and polling place management for the election. Produces election related mailings and reports. Manages absentee/ mailed ballot voters.
8. **Petition Checking:** Manages petition information, defines newly submitted petitions, selects random samples, and provides system directed signature checking.
9. **Resources:** Manages County-specific information and options.

The core function of the EIMS Software is to gather and maintain data for use in the process of registering voters and the processing of elections. The ability of the EIMS Software to perform the core functions is dependent upon, among other things, all of the following: (1) accuracy and completeness of the County's Data and (2) continual verification by the County of the accuracy and completeness of the County's Data.

B. Maintenance

1. The Contractor will provide the County with periodic updates of the EIMS Software that may incorporate corrections of any defects, fixes of any bugs, enhancements, upgrades and new releases to the EIMS Software, including all Software Enhancements and Software Releases for the EIMS Software, within thirty (30) days after the updates, Software Enhancements or Software Releases become generally available to other customers. Updates, Software Enhancements and Software Releases will include applicable legislative

changes and new laws. Installation of updates, Software Enhancements and Software Releases will be coordinated between the County and the Contractor.

All updates, Software Enhancements and Software Releases shall be provided and installed by employees or authorized agents of the Contractor.

2. The Contractor will correct defects in the EIMS Software, including correction of programming errors, so that the EIMS Software will operate as described in the specifications listed in the Manuals and in Attachment A. Contractor shall use good faith reasonable efforts to correct compatibility problems among computer hardware, EIMS Software and third party software.
3. Contractor shall provide telephone support twenty-four (24) hours a day, seven (7) days a week to assist County in using the EIMS Software

C. Training

The Contractor agrees to provide the County with the following training with respect to the EIMS Software:

1. Develop a training schedule with sufficient training to allow users with primary responsibility to operate the EIMS Software.
2. Conduct training sessions at the Registrar of Voters, including “hands on” and formal classroom training. As Subsystems of the EIMS Software are enhanced or changed to conform to new requirements, users will be provided training on an on-going basis, either on-site at the Registrar of Voters or regional, depending on the material and individual needs of the users.

The cost of the foregoing maintenance and training is included in the Monthly Fee outline in Attachment B.

D. Access to Facilities

The County will provide the Contractor and its employees and authorized agents access to the County’s facilities, including computers on which the EIMS Software operates, and will provide adequate facilities including a desk, work area and computer as needed by the Contractor to perform its obligations under this Contract. Access will be provided during ROV regular business hours, Monday through Friday 8:00 a.m. – 5:00 p.m., except on County holidays, upon reasonable prior notice, except in the case of an emergency when access shall be provided as soon as is reasonably practicable.

**ATTACHMENT B
Compensation/Payment**

A. Compensation

This is a fixed fee Contract between the County and the Contractor for Lease and Maintenance of Election Information Management System (EIMS) Software in the amount **not to exceed (NTE) \$1,035,480.00**, as further described in this Contract.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder.

The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. The County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by amendment in accordance with paragraphs C and P of the County’s General Terms and Conditions.

B. Pricing

Contractor shall submit a monthly invoice in an amount \$17,258.00.

Contract Term	Service Dates	Monthly Fee	Total Annual Cost
Year One	10/1/2021 – 9/30/2022	\$17,258.00	\$207,096.00
Year Two	10/1/2022 – 9/30/2023	\$17,258.00	\$207,096.00
Year Three	10/1/2023 – 9/30/2024	\$17,258.00	\$207,096.00
Year Four	10/1/2024 – 9/30/2025	\$17,258.00	\$207,096.00
Year Five	10/1/2025 – 9/30/2026	\$17,258.00	\$207,096.00
Contract Shall Not Exceed			\$1,035,480.00

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

- D. **Tax-Payer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.

- E. **Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or 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 of County Agency/Department
 - 4. Contract number (MA number)
 - 5. Order Date
 - 6. Product/service description, quantity, and prices
 - 7. Sales tax, if applicable
 - 8. Contractor's Federal Tax ID number
 - 9. Total

The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction. Invoice and support documentation are to be sent to:

OC Registrar of Voters
Attn: Accounts Payable
PO Box 11298
Santa Ana, CA 92711