

THIS Contract **MA-299-18010702** for Software Support Services, Purchase and Installation of a new credit card payment module, WeighPay and Signature Capture Module, Customization Services, and Continuation of the software license of the Landfill Fee Collection System (“**Contract**”) is made and entered into upon execution of all necessary signatures between the County of Orange, a political subdivision of the State of California, by its OC Waste & Recycling (“**County**”) and **Paradigm Software, LLC** (“**Contractor**” or “**Paradigm**”), with a place of business at 113 Old Padonia Road, Suite 200, Cockeysville, MD 21030. County and Contractor are collectively referred to as “Parties.”

### RECITALS

WHEREAS, the County of Orange Board of Supervisors has authorized the County Procurement Officer or authorized designee to enter into this Contract with Contractor to provide software support services, purchase and installation of a new credit card payment module, WeighPay and Signature Capture Module, customization services, and continuation of the software license of the Landfill Fee Collection System (“**Services**”) for OC Waste & Recycling for a three-year period, effective January 1, 2018 through December 31, 2020 in an amount not to exceed \$513,566.53; and

WHEREAS, Contractor agrees to provide Services as more specifically described in the Scope of Work, attached hereto as Attachment A and incorporated herein; and

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor Compensation and Payment, attached hereto as Attachment B and incorporated herein; and

WHEREAS, County now desires to renew the Contract for one year, effective January 1, 2021 through December 31, 2021, in an amount not to exceed \$161,056, for a revised cumulative Contract total not to exceed \$674,623; and

WHEREAS, County desires to amend Attachment B, Compensation and Payment Terms – Fee Schedule, to increase the Escrow Fee from \$200 per year to \$300 per year with no monetary increase to the annual Contract; and

WHEREAS, County now desires to add three (3) additional licenses and renew the Contract for one year, effective January 1, 2022 through December 31, 2022, for an annual Contract amount not to exceed \$183,646, and a cumulative Contract total not to exceed \$858,269;

NOW, THEREFORE, for and in consideration of the professional services and mutual promises to be performed for the County by the Contractor in connection with the Services and the compensation to be paid for such Services and mutual promises by the County, the Parties agree as follows:

### ARTICLES

#### **GENERAL TERMS AND CONDITIONS**

1. **Scope of Services:** This Contract, including Attachments, specify the contractual terms and conditions by which the Contractor shall provide software support services, purchase and installation of a new credit card payment module, WeighPay and Signature Capture Module, customization services, and continuation of the software license of the Landfill Fee Collection System for OC Waste & Recycling under a fixed ceiling Contract, as set forth herein.
2. **Contract Term:** This Contract shall be effective January 1, 2018, proposed to continue for three (3) consecutive years through December 31, 2020, in an amount not to exceed \$513,566.53, with an option to renew the Contract for two additional one-year periods, increasing the monetary limit by \$161,055.51 each additional year, with excess funds for time

and material services to be carried over from year to year not to exceed the revised cumulative contract total. Any extension of this Contract may require approval by the County's Board of Supervisors. The License Contract Term included in this Contract is addressed in Attachment 1, Software License Terms and Conditions.

3. **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.
4. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. The Contractor agrees to supply services requested, as needed by the County of Orange, at rates listed in the Contract, regardless of quantity requested.
5. **Precedence:** The Contract documents consist of this Contract 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 Attachments.
6. **Contractor's Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to act as liaison between the County and the Contractor during the term of this Contract and 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 and Key Personnel shall be assigned to this Contract for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Contractor's Key Personnel are those individuals who report directly to the Contractor's Project Manager.

7. **County's Project Manager:** The County shall appoint a Project Manager to act as liaison between the County and the Contractor during the term of this Contract. The County's Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager and Key Personnel under this Contract. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County's Project Manager. The County is not required to provide any reason, rationale or additional factual information if it elects to request any specific Contractor Project Manager or Key Personnel be removed from performing services under this Contract. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager and Personnel. Said approval shall not be unreasonably withheld.

8. **Contractor's Personnel:** 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 personnel shall be required to wear uniforms, badges and/or other means of identification which are to be issued and provided by the Contractor and must be worn at all times while working on County

property. The County Project Manager 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.

9. **Conflict of Interest:** 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. 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 Consultants; 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.
10. **Existing Site Conditions:** Information respecting the site of the work given in drawings or specifications has been obtained by County's representatives and is believed to be reasonably correct, but the County does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
11. **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.
12. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the Contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County DPA.
13. **Audits/Inspections:** Contractor agrees to permit the County, which may include the 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 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.

14. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the County unless otherwise agreed to by both Parties.
15. **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.
16. **Reports/Meetings:** In addition to the requirements set forth in the Scope of Work, Attachment A, upon County's request, the Contractor shall develop reports for a fee and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The fee would be based on the requirements of the report and would be billed at the hourly rate for time and materials listed in Attachment B, Compensation and Payment Terms. 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.
17. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
  - a. Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
  - b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
  - c. Terminate the Contract immediately, pursuant to Article 38.
18. **Contract Disputes:** 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 (DPA), as specified in Article 24, Notices, by way of the following process:

- a. The Contractor shall submit to the County DPA 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.
- b. 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.
- c. 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 DPA. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of the County's final decision or one year following the accrual of the cause of action, whichever is later.

19. **Orderly Termination:** 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 assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
20. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and personnel prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
21. **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.

22. **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.
23. **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 County's Project Manager and Contractor's Project Manager 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: OC Waste & Recycling/Purchasing  
Attn: Purchasing Manager  
300 N. Flower St. 4<sup>th</sup> Floor, Suite 400  
Santa Ana, CA 92703  
Phone: 714.834.4145  
[diane.dodson@ocwr.ocgov.com](mailto:diane.dodson@ocwr.ocgov.com)

Contractor: Paradigm Software, L.L.C.  
Attn: Jackie Barlow  
113 Old Padonia Road, Suite 200  
Cockeysville, MD 21030  
Phone: 410.329.1300  
[jackie.barlow@paradigmsoftware.com](mailto:jackie.barlow@paradigmsoftware.com)

24. **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.
25. **Entire Contract:** This Contract, when accepted by the Contractor, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or his designee, hereinafter "Purchasing Agent."

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

Attachment 1	Paradigm Software, LLC, Software License Terms and Conditions
Attachment 2	Paradigm Software, LLC, Support Services Terms and Conditions
Attachment 3	Paradigm Software, LLC, Escrow Agreement

Attachment A	Scope of Work
Attachment B	Compensation and Payment Terms

26. **Software License:** Pursuant to the Scope of Work set forth in Attachment A, the Contractor shall provide to the County the software license for the Landfill Fee Collection System ("CompuWeigh™ System"). The CompuWeigh™ System shall consist of all licenses and modules purchased by the County which are included in this Contract. The terms and conditions for the provision of such are set forth in Attachment 1 attached hereto and incorporated herein by reference thereto ("Software License"). If there are any discrepancies between this Contract and the Software License, the provisions of the County Contract shall govern.
27. **Standard Support Services:** Pursuant to the Scope of Work set forth in Attachment A, the Contractor is required to provide to the County standard support services for the CompuWeigh™ System. The terms and conditions for the provision of such standard support services are set forth in Attachment 2 attached hereto and incorporated herein by reference thereto ("Support Services Terms and Conditions"). If there are any discrepancies between this Contract and the Support Services Terms and Conditions, the provisions of the County Contract shall govern.
28. **Escrow Agreement:** Contemporaneous with the execution of this Contract, County will enter into and be bound by an Escrow Agreement governing the right of the County to access the Source Code for the Paradigm Software (Escrow Agreement). The Escrow Agreement is intended by the Parties to govern the rights and obligations of the Parties concerning the right of the County to access Paradigm's source code. A copy of this Escrow Agreement is attached as Attachment 3 and incorporated by this reference. When determining the rights and obligations of the Parties concerning the County's access to the source code, if any provision of this Contract is inconsistent with the terms and conditions of the Escrow Agreement, the terms of the Escrow Agreement shall control.
29. **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 Article and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority.
30. **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.
31. **Taxes:** All prices shall be exclusive of any applicable sales tax.
32. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed Scope of Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. Overshipments and undershipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods, or services, have actually been received and accepted in writing by County.
33. **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 services have been provided.
34. **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 Article 43, Indemnification, it shall indemnify, defend and hold County and County Indemnities 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.
35. **Assignment or Subcontracting:** 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 subcontracted 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.
36. **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 Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
37. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any 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 obligations.
38. **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.
39. **Warranties and Remedies Exclusive:** The warranties and remedies for any breach set forth in this Contract are exclusive. The warranties and remedies set forth in Attachment 3 and 4 respectively, are the sole and exclusive warranties and remedies under this Contract.
40. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.



41. **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.
42. **Indemnification and Insurance:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, their 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.

### **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:

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

### **Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

### **Required Endorsements**

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

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange its elected and appointed officials, officers, agents and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT***.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

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

- 1) An Additional Insured endorsement naming the ***County of Orange, its elected and appointed officials, officers, agents and employees*** as Additional Insureds for its vicarious liability.
- 2) A primary and non-contributing endorsement evidencing that the 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, agents and employees*** or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT***.

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

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.

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

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

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

If the 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 which shall be mutually agreed upon by the Parties. 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.

43. **Warranty and Insurance:** Notwithstanding the limiting language contained within this Contract, or any attachments hereto, including Attachments 1 and 2, Contractor agrees to the following provisions:
- a. **Warranty:** Contractor warrants that the goods/services covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees as identified in Article 43 above, harmless from liability, loss, damage and expense incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties or faulty work performance.
  - b. **Insurance:** In addition to item a above, any provisions which limit Contractor's liability in this Contract or its attachments, including Attachments 1 and 2 shall not include any and all claims which are covered by the required insurance provisions in this Contract, found at paragraph 43 herein.
44. **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 Article 43, 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.
45. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
46. **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.
47. **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.
48. **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.
49. **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 Article 43 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.
50. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
51. **Pricing:** The Contract rates, as more fully set forth in Attachment B, shall include full compensation for providing all required services as specified herein, in the Scope of Work attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
52. **Intentionally left blank.**
53. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
54. **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.
55. **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.
56. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
57. **Attorney's 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.
58. **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 has 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 of 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.

59. **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.
60. **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.
62. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown below their respective signatures below.

\*\*\*\*\*

**PARADIGM SOFTWARE, LLC\***

By \_\_\_\_\_

Print Name: Philip Weglein

Title: Chief Executive Officer  
Corporate Officer

Date \_\_\_\_\_

By \_\_\_\_\_

Print Name: Jackie W. Barlow, II

Title: Chief Operating Officer  
Corporate Officer

Date \_\_\_\_\_

**COUNTY OF ORANGE**

a political subdivision of the State of California

By \_\_\_\_\_

Print  
Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM:**

County Counsel

By \_\_\_\_\_

Paul Albarian, Senior Deputy

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

**ATTACHMENT 1****SOFTWARE LICENSE  
TERMS AND CONDITIONS**

1. **CHARGES AND PAYMENT.** County agrees to pay the charges specified in the schedules and attachments hereto as and when due. Prices and fees are exclusive of all current or future sales or use taxes, and County agrees to pay any such tax PARADIGM may be required to collect or pay (including interest and penalties imposed by any governmental authority) upon the sale or delivery of items purchased or licensed. County shall only be responsible for payment of interest and penalties if given adequate notification of taxes due which are the responsibility of County herein, if County has failed to pay within a reasonable timeframe. Exemption from such taxes, if any, shall be the responsibility of County to pursue.
2. **CUSTOMER RESPONSIBILITIES.** County shall be responsible for timely site preparation including, but not limited to, adequate electrical power for computer operation, high-speed internet connection and installation of all cabling. County shall make available up to three (3) qualified personnel to be trained by PARADIGM in the use, operation, and management of the system Hardware and Software, and shall provide and adequately manage the resources necessary to implement and operate the system Hardware and Software. County shall comply with laws, use proper audit controls and operating methods, adequately back-up data and programs, and establish and maintain security and accuracy of data.
3. **TRAINING.** PARADIGM shall provide standard training in the use of system Hardware and Software according to the Compensation and Payment Terms in Attachment B of this Contract.
4. (Deleted)
5. (Deleted)
6. **GRANT OF LICENSE.** Subject to the terms and conditions set forth in this Contract, and effective upon acceptance of this Contract, PARADIGM hereby grants to County, and County hereby accepts, a nonexclusive, nontransferable license to use, as herein provided, a single, executable copy an object code version of the Software and a single printed copy of PARADIGM's current, standard user manuals and training materials ("Documentation"). PARADIGM reserves all rights, privileges and interests not expressly granted to County, who shall acquire no right, title, interest or privilege with respect to the Software or the Documentation by implication.
7. **TERM AND RENEWAL.** The term of the license herein granted is ten (10) years commencing upon January 1, 2013, unless terminated earlier as provided herein. If County is not in default under this Contract, the term of this license may be renewed upon mutual concurrence pursuant to the same terms and conditions, for one (1) additional ten (10) year term.
8. **SCOPE OF LICENSE.** A single, executable copy of the object code version of the Software may be used by County for testing purposes and for processing of data, but such data shall be strictly limited to data of County created or used in the connection with County. Neither the Software nor the Documentation may be used in any manner directly or indirectly related to or in connection with the operation or management of any other business including without limitation any timeshare, facilities management, data processing service or billing service. County shall not modify or sublicense the Software or the Documentation. The Software may not be used with more



than the number of licenses agreed to in this Contract. PARADIGM shall provide County with a single, back-up copy of the Software, which County shall keep in a secure location reasonably approved by PARADIGM in advance. County shall place on all copies of the Software any notice, including, copyright notice, requested by PARADIGM.

9. SOFTWARE TITLE AND OWNERSHIP. PARADIGM is and shall be the exclusive owner or sublicensor, as appropriate, of the Software, the Documentation and all associated materials provided to County, all modifications, additions, derivatives and enhancements thereof, all copies thereof, and all rights, therein. All additions, modifications, derivatives and enhancements to the Software shall be considered a part of the Software, and all additions, modifications, derivatives and enhancements to the Documentation shall be considered a part of the Documentation. Physical copies of Software and Documentation are provided by PARADIGM on loan during the term of the license granted pursuant to this Contract. County shall keep the Software, the Documentation, and all copies thereof free and clear of all claims, liens and encumbrances, and any act of County purporting to create such a claim, lien or encumbrance shall be void and shall be a breach of this Contract. County hereby assigns to PARADIGM all of its right, title and interest in and to any changes, additions, derivatives and enhancements made to the Software, the Documentation or other materials provided by PARADIGM, and shall execute all documents and instruments reasonably requested by PARADIGM to effectuate such assignment. County agrees that the Software, Documentation and related materials, techniques and procedures furnished by PARADIGM to County hereunder embody exceptionally valuable trade secrets, and they are, and shall remain, the sole property of PARADIGM or its supplier(s), as appropriate. County shall not create or attempt to create, by decompilation, disassembly, reverse engineering or otherwise, the source programs for the Software, from the object programs or other information made available by PARADIGM. Unless PARADIGM agrees otherwise, County shall not disclose, divulge or communicate to any person (including contractors and consultants), except to County's employees (but then only to the extent necessary for operation of the Software) the Software or Documentation. Notwithstanding the foregoing, either party may disclose the other party's Confidential Information to the extent required by applicable law or regulation or by order of a court or other governmental entity, in which case such party will so notify the other party as soon as practicable and in any event at least thirty (30) days prior to such party making such required disclosure. Documents created by PARADIGM on the County's behalf or by the County itself to assist in installation or operation of the software, which are not a part of PARADIGM'S literature, manuals or any other copyrighted materials will become a property of the County. None of the data or information from reports or furnished materials provided by the County shall be used by PARADIGM without the express written consent of the County.

10. PROPRIETARY RIGHTS. Any programs, works, manuals, changes, additions, alterations, amendments or enhancements in the form of new or partial programs, Software, Source Code or Documentation ("IP") as may be provided by PARADIGM under this Contract or the Software License, and all copies thereof, shall be and remain the sole and exclusive property of PARADIGM and shall be available for use by County under and subject to the license granted in the Software License, the terms and conditions of which are incorporated herein. As between the parties, PARADIGM retains all right, title and interest in and to the IP, including, but not limited to, copyrights, trademarks, service marks, patents and other proprietary rights, and no such rights are conveyed to County by virtue of this Contract.

11. LIMITATION OF LIABILITY. EXCEPT AS REQUIRED IN SECTION 43 OF THIS CONTRACT, PARADIGM SHALL NOT BE LIABLE TO COUNTY FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES

(INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, REVENUE, BUSINESS OPPORTUNITY OR BUSINESS ADVANTAGE), WHETHER ARISING UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, BREACH OF STATUTORY DUTY, CONTRIBUTION, INDEMNITY OR ANY OTHER LEGAL THEORY OR CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT AS REQUIRED IN SECTION 43 OF THIS CONTRACT, PARADIGM'S MONETARY LIABILITY FOR ANY CAUSE UNDER OR RELATING TO THIS CONTRACT SHALL IN NO EVENT EXCEED THE TOTAL OF ALL AMOUNTS PAID TO PARADIGM BY COUNTY FOR SOFTWARE LICENSE FEES PURSUANT TO THIS CONTRACT, LESS A PRO RATA ABATEMENT OF SUCH FEES FOR EACH FULL OR PARTIAL MONTH OF THE FIRST ONE HUNDRED TWENTY (120) MONTHS FOLLOWING THE DATE OF ACCEPTANCE BY THE COUNTY AS DEFINED HEREIN IN THE SCOPE OF WORK.

COUNTY UNDERSTANDS THAT THE FEES CHARGED BY PARADIGM IN THIS CONTRACT REFLECT THE ALLOCATION OF RISKS EXPRESSED BY THE LIMITED WARRANTY, THE EXCLUSIVE REMEDY FOR BREACH OF THAT LIMITED WARRANTY, AND THE LIMITATIONS OF LIABILITY AND DAMAGES WHICH ARE SET FORTH HEREIN. BY SIGNING WHERE INDICATED, COUNTY ACCEPTS THESE TERMS AND AFFIRMS IT UNDERSTANDS THAT TO CHANGE THEM WOULD AFFECT THE ECONOMIC BARGAIN EXPRESSED IN THIS CONTRACT.

12. LIMITED WARRANTY. Except as provided in Section 44 of this Contract, PARADIGM does not warrant that the Software or the Documentation is free of errors or defects or that it meets County's requirements beyond those identified in this Contract. PARADIGM warrants only that the Software will perform all functions substantially as described in the current edition of the Documentation for a warranty period of twelve (12) months from the date of Software acceptance by the County, when operated as recommended. PARADIGM will design, code, check out and deliver promptly amendments or alterations to Software reasonably necessary to remedy or avoid any programming error present at the time of Software delivery which causes the Software to fail to perform as warranted above. County shall allow Software access to PARADIGM through dedicated remote communications for this purpose. During the first sixty (60) days, the foregoing is County's sole and exclusive remedy, and PARADIGM's sole and exclusive obligation, for breach of this limited warranty. This limited warranty is contingent upon County's written notice in compliance with PARADIGM's written reporting procedures, received not later than seven (7) days after the end of the twelve (12) month warranty period, setting forth with particularity the nature and circumstances of any alleged breach of warranty. PARADIGM makes no warranty as to the Hardware or any products (including software) not manufactured by PARADIGM, except to the extent that the PARADIGM recommended hardware and products will work with PARADIGM Software. However, County shall have the benefit of all standard warranties of the Hardware manufacturer.

COUNTY ACKNOWLEDGES THAT NO EXPRESS WARRANTIES HAVE BEEN MADE BY PARADIGM EXCEPT FOR THE LIMITED WARRANTY MADE IN THE PRECEDING PARAGRAPH. THIS LIMITED WARRANTY AND THE ASSOCIATED LIMITED REMEDY ARE PROVIDED IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES. PARADIGM DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE.

13. LICENSE TERMINATION. The obligations of PARADIGM under this Contract and the license herein granted shall terminate at the option of PARADIGM upon the failure of County to perform or observe any covenant or obligation set forth herein, provided PARADIGM has given County thirty (30) days prior written notice of the failure, and County has failed to cure such failure within such time. Upon termination, County shall cease using the Software and shall return to PARADIGM, or, at PARADIGM's option, destroy, the original and all copies of the Software, the Documentation and any other materials provided by PARADIGM, the obligations of County set forth in the paragraphs entitled "Scope of License," and "Software Title and Ownership" shall survive termination. PARADIGM's rights of repossession may be enforced by Software disablement.

**ATTACHMENT 2****SUPPORT SERVICES  
TERMS AND CONDITIONS**

1. **CHARGES.** The annual fee for Standard Support Services is as set forth herein, payable in accordance with Attachment B, Compensation and Payment Terms. Any uncontested charges left unpaid beyond 90 days may be considered a breach of this Contract. County agrees to pay the charges specified in the schedules and attachments hereto as and when due. Prices and fees are exclusive of all current or future sales or use taxes, and County agrees to pay any such tax Paradigm may be required to collect or pay (including interest and penalties imposed by any governmental authority) upon the sale or delivery of items purchased or licensed. County shall only be responsible for payment of interest and penalties if given adequate notification of taxes due which are the responsibility of County herein, if County has failed to pay within a reasonable timeframe. Exemption from such taxes, if any, shall be the responsibility of County to pursue.
2. **COUNTY RESPONSIBILITIES.** County agrees to test, and if operable, accept and use all updates, amendments and alterations to the Software furnished to County hereunder and to install and maintain for the duration of this Contract a modem and associated dialup telephone line. County shall allow Paradigm continuous access to the Software via this connection or Terminal Services for the purpose of providing Standard Support Services. County will provide Paradigm with dumps as requested, and with sufficient support and test time on County's computer system to duplicate any conditions or problems identified by County or Paradigm.
3. **COVERAGE.** The computer programs eligible for Standard Support Services (as defined below) are those programs described herein, as updated with all current amendments, alterations, enhancements, improvements and updates furnished to County under warranty and Standard Support Services (the "Software"). Standard Support Services shall be rendered only to the currently supported version of Software running with the applicable operating system version supported by Paradigm.
4. **TERM AND RENEWAL.** Standard support services shall commence January 1, 2018 and continue until three (3) years following the date of commencement.
5. **STANDARD SUPPORT SERVICES.** During the term of this Contract, Paradigm will provide to County its Standard Support Services described in this paragraph. Paradigm will provide technical services to design, code, check out and deliver for County's use subject to the license granted to County under the Software License provisions of Attachment 1, amendments or alterations of the Software necessary to correct or provide a solution to any programming error attributable to Paradigm which caused the Software not to perform all functions substantially as described in the current, standard editions of manuals delivered to County by Paradigm pertaining to the use of the Software (the "Documentation"). Such services will be promptly provided after County has identified and notified Paradigm of any such error in accordance with Paradigm's reasonable reporting procedures as in effect from time to time. Paradigm will also provide reasonable telephone consultation in the use and operation of the Software during the hours of 5:45 a.m. through 5:15 p.m. Pacific Standard Time, Monday through Saturday. For Standard Support Services, Paradigm will accept telephone calls during Standard Support Service hours only from County personnel, designated by County in writing from time to time, in advance. Paradigm will charge on a time and materials basis, and County will pay such charges, for services in response

to requests for service from any County contact not designated as set forth above. In addition, Paradigm will deliver to County, without any charge other than as specified herein, from time to time updates of the Software within the version in use, which Paradigm elects to include under its Standard Support Services program and does not market separately to Standard Support Services customers generally.

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

7. **PROPRIETARY RIGHTS.** Any programs, works, manuals, changes, additions, alterations, amendments or enhancements in the form of new or partial programs or documentation as may be provided by Paradigm under this Contract, and all copies thereof, shall be and remain the sole and exclusive property of Paradigm and shall be available for use by County under and subject to the license granted in the Software License.

8. **TERMINATION OF STANDARD SUPPORT SERVICES BY PARADIGM.** In the event of a termination of County's license to use the Software due to County's default, this provision for support services shall terminate immediately. Paradigm may terminate said services in the event of default by County, including failure to pay the annual installment of the annual charge for Standard Support Services within ninety (90) days' notice that the same is ninety (90) days or more delinquent.

9. **NO WARRANTIES. COUNTY ACKNOWLEDGES THAT NO EXPRESS WARRANTIES HAVE BEEN MADE BY PARADIGM EXCEPT FOR THE LIMITED WARRANTY MADE IN THE PRECEDING PARAGRAPH AND SECTION 44 OF THIS CONTRACT. THIS LIMITED WARRANTY AND THE ASSOCIATED LIMITED REMEDY ARE PROVIDED IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES. PARADIGM DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE.**

10. **LIMITATION OF LIABILITY. EXCEPT AS REQUIRED IN SECTION 43 OF THIS CONTRACT, PARADIGM SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFIT, REVENUE, SAVINGS, OPPORTUNITY OR ADVANTAGE OF ANY KIND), WHETHER ARISING UNDER CONTRACT, TORT OR ANY OTHER LEGAL THEORY OR CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, PARADIGM'S LIABILITY FOR ANY CAUSE UNDER OR RELATING TO THIS CONTRACT, SHALL IN NO EVENT EXCEED THE TOTAL OF ALL AMOUNTS PAID TO PARADIGM BY COUNTY FOR STANDARD SUPPORT SERVICES DURING THE ONE (1) YEAR PERIOD PRIOR TO THE DATE ON WHICH ANY CLAIM IS MADE.**

**CUSTOMER UNDERSTANDS THAT THE FEES CHARGED BY PARADIGM IN THIS CONTRACT REFLECT THE ALLOCATION OF RISKS EXPRESSED BY THE**

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

**ATTACHMENT 3**

PARADIGM SOFTWARE, L.L.C.  
113 Old Padonia Road, Suite 200  
Cockeysville, MD 21030  
(410) 329-1300

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is made by and among Paradigm Software, L.L.C., a Maryland limited liability company ("PARADIGM"), Shaffer, McLauchlin and Stover, LLC, a Maryland limited liability corporation (the "ESCROW AGENT") and the undersigned Customer ("CUSTOMER").

This Agreement governs the custody and release of source code to be held by ESCROW AGENT for certain computer software licensed to the CUSTOMER by PARADIGM. The Agreement is effective as of the date of acceptance by PARADIGM at its offices in Cockeysville, Maryland. The Agreement includes and is subject to all of the Terms and Conditions attached hereto, each of which is incorporated herein.

READ, UNDERSTOOD AND EXECUTED on the date(s) indicated below.

**PARADIGM SOFTWARE, L.L.C.:**  
113 Old Padonia Road, Suite 200  
Cockeysville, MD 21030

**SHAFFER, MCLAUHLIN AND STOVER, LLC:**  
836 South Main Street, Suite 102  
Bel Air, MD 21014

By: \_\_\_\_\_  
Jackie W. Barlow, II  
Vice President

By: \_\_\_\_\_  
Eric E. McLauchlin  
Partner/Member

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**CUSTOMER:**

**ORANGE COUNTY, CA**

300 N. Flower Street, Suite 400  
Santa Ana, CA 92703

By: \_\_\_\_\_

\_\_\_\_\_  
(Type or Print Name)

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

**TERMS AND CONDITIONS****1. Deposits**

ESCROW AGENT has accepted and currently holds on deposit a single copy of the source code for certain computer programs ("Source Code") that have been licensed to CUSTOMER pursuant to a written license agreement (the "License Agreement"). PARADIGM shall deposit updated copies of the Source Code upon each general release, and each updated copy shall upon deposit be deemed the Source Code under this Agreement. The copy of the Source Code held by ESCROW AGENT shall be and remain the exclusive property of PARADIGM, and ESCROW AGENT will hold the Source Code as specifically provided in this Agreement. ESCROW AGENT will hold the copy of the Source Code in safekeeping at its offices and may deliver a copy of the Source Code to CUSTOMER, but only under the conditions specified below. Upon reasonable request, and at CUSTOMER's cost, CUSTOMER may examine the copy of the Source Code to verify compliance with the terms hereof. Such examination shall be conducted on a computer to be made available by PARADIGM at its premises in Cockeysville, Maryland.

**2. Conditions for Release**

CUSTOMER shall be entitled to receive from ESCROW AGENT and to make limited use as herein provided of a single copy of the Source Code, if (i) PARADIGM releases the Source Code to other licensees as a matter of general policy; (ii) refuses to offer CUSTOMER error correction services or changes required to comply with federal regulations at PARADIGM's standard rates and on its standard terms and conditions; (iii) PARADIGM becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or has voluntarily wound up or liquidated its business (or that segment of its business pertinent to the License Agreement); or (iv) PARADIGM as a debtor-in possession or a trustee-in-bankruptcy in a case under the United States Bankruptcy Code rejects the License Agreement. Any of the foregoing events is referred to below as a "Release Condition."

Upon the happening of any Release Condition, CUSTOMER may at its option give ESCROW AGENT written notice (the "Notice") requesting a copy of the Source Code. The Notice shall (i) be labeled "Notice Under Escrow Agreement Dated \_\_\_\_\_," (ii) specify the Release Condition with reference to the applicable section of this Agreement; (iii) identify (by application name, version number and release date, and any other pertinent information) the computer programs for which Source Code is on deposit and which CUSTOMER desires to have released; and (iv) be given within sixty (60) days of CUSTOMER's knowledge of happening of the applicable Release Condition.

Upon receipt of the Notice, ESCROW AGENT shall send a copy to PARADIGM by certified or registered mail, postage prepaid, return receipt requested. If PARADIGM denies or disputes an alleged Release Condition, PARADIGM shall, within fifteen (15) days after the receipt of the copy of the Notice from ESCROW AGENT, deliver to the ESCROW AGENT a statement (the "Statement") identifying its dispute. ESCROW AGENT shall send a copy of the Statement to CUSTOMER by certified or registered mail, return receipt requested, and ESCROW AGENT shall continue to hold the Source Code in accordance with this Escrow Agreement. If ESCROW AGENT does not receive the Statement within the applicable time period, or if ESCROW AGENT is informed in the Statement that PARADIGM's denial of statements in CUSTOMER's Notice does not apply to certain applications or modules, ESCROW AGENT is authorized and directed to deliver a copy of the applicable Source Code to CUSTOMER. Upon delivery to CUSTOMER under any circumstances, the Source Code shall become a part of the licensed software (as defined in the License Agreement) and shall be subject to all of the license and confidentiality provisions and obligations set forth in the License Agreement.

In the event that PARADIGM delivers the Statement to ESCROW AGENT in the manner and within the time period set forth above, ESCROW AGENT shall not release a copy of the Source Code or any part thereof, to CUSTOMER unless (i) required to do so by order of a court of competent jurisdiction, or (ii) ESCROW AGENT has received written instructions with authorized signatures of both PARADIGM and CUSTOMER requesting release to CUSTOMER. The ESCROW AGENT may withhold release of the Source Code to the CUSTOMER if fees or costs owed by the CUSTOMER to the ESCROW AGENT are unpaid.

**3. Payments and Fees**



CUSTOMER shall pay to PARADIGM \$200.00 per year, on the anniversary of the Escrow Agreement, for maintenance of the account. PARADIGM will forward an amount of \$100.00 to the Escrow Agent on behalf of the CUSTOMER.

CUSTOMER shall further reimburse ESCROW AGENT for all out of pocket costs in connection with its performance of services hereunder, including without limitation the cost of media, copies, delivery charges, long distance charges, postage, shipping, handling and insurance.

#### **4. Termination**

It is the responsibility of the CUSTOMER to forward the annual Escrow Fee to PARADIGM for payment to the ESCROW AGENT. Failure of CUSTOMER to pay PARADIGM the applicable fees, within 30 days written notice of payment due, shall result in the termination of the Escrow Agreement and ESCROW AGENT's obligations under the terms thereof, in which case ESCROW AGENT shall return the Source Code to PARADIGM.

This Agreement shall terminate upon delivery of a copy of the Source Code to CUSTOMER in accordance with the terms of this Agreement or the termination of the License Agreement, whichever occurs first. The delivery of a copy of the Source Code to CUSTOMER hereunder shall act as a termination of all of PARADIGM's responsibilities, all of PARADIGM's warranties, and all of PARADIGM's software maintenance obligations under the License Agreement and all other agreements.

#### **5. Limitation on ESCROW AGENT's Responsibility and Liability**

As a fiduciary, conservator, receiver or guardian of the computer disc that it receives, ESCROW AGENT's obligation is solely one of safekeeping. ESCROW AGENT shall not be obligated or required to examine or inspect the Source Code. The ESCROW AGENT cannot and does not warrant the content of the computer disc that it receives from PARADIGM, which purports to contain the Source Code. ESCROW AGENT's obligation for safekeeping shall be limited to providing the same degree of care for the Source Code as it maintains for its valuable documents and those of its CUSTOMERS at the same location. However, ESCROW AGENT shall not be responsible for any loss or damage to the Source Code due to changes in atmospheric conditions (including, but not limited to, failure of the air conditioning system), unless such changes are proximately caused by the gross negligence or malfeasance of ESCROW AGENT. ESCROW AGENT shall be protected in acting upon any written notice, request, waiver, consent, receipt or other paper or document furnished to it, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information therein contained, which it in good faith believes to be genuine and what it purports to be.

In no event shall ESCROW AGENT be liable for any act or failure to act under the provisions of this Escrow Agreement except where its acts are the result of its gross negligence or malfeasance. ESCROW AGENT shall not have duties except those which are expressly set forth herein, and it shall not be bound by any notice of a claim, or demand with respect thereto, or any waiver, modification, amendment, termination or rescission of this Escrow Agreement, unless such notice is in writing and actually received, and, if its duties herein are affected, unless it shall have given its prior written consent thereto.

PARADIGM and CUSTOMER shall jointly and severally indemnify ESCROW AGENT against any loss, liability, or damage (other than any caused by the gross negligence or malfeasance of ESCROW AGENT), including reasonable costs of litigation and counsel fees, arising from and in connection with the performance of its duties under this Agreement.

PARADIGM and CUSTOMER acknowledge that ESCROW AGENT has previously represented and represents PARADIGM regarding other transactions, but nonetheless enter into this Agreement, consent to the representation by ESCROW AGENT of PARADIGM, and waive any conflict created hereby, whether actual or potential, real or perceived. Each party has been advised to seek legal representation prior to executing this Agreement. PARADIGM and CUSTOMER acknowledge that neither this Agreement nor their waiver of any potential conflict created hereby will materially limit the ability of the ESCROW AGENT to perform hereunder or to represent PARADIGM as to matters unrelated hereto.

#### **6. Bankruptcy**

PARADIGM acknowledges that this Escrow Agreement is an "agreement supplementary" to the License Agreement as provided in Section 365(n) of Title 11, United States Bankruptcy Code (the "Code"). PARADIGM acknowledges that if a Trustee in a case under the Code rejects the License Agreement or this Escrow Agreement, CUSTOMER may elect to retain its rights under the License Agreement and this Escrow Agreement as provided in Section 365(n) of the Code. After the commencement of a case under the Code by or against PARADIGM, and unless and until the License Agreement is rejected upon written request of CUSTOMER to the Trustee, Trustee (a) shall not interfere with the rights of CUSTOMER as provided in the License Agreement and this Escrow Agreement, including the right to obtain the Source Code from the ESCROW AGENT. If the Trustee rejects the License Agreement or this Escrow Agreement and CUSTOMER elects to retain its rights hereunder and upon written request of CUSTOMER to the Trustee, the Trustee shall provide the Source Code to the CUSTOMER.

#### **7. Resignation**

The ESCROW AGENT may resign by delivery of a 30-day written notice to both PARADIGM and the CUSTOMER. The ESCROW AGENT will deliver the Source Code upon the joint written direction of PARADIGM and the CUSTOMER received within 30 days of the date on the ESCROW AGENT's notice of resignation. If no joint direction is received within the time period outlined, the Source Code will be delivered to Thomas M. Wagner and Associates, Attention Mr. Thomas Wagner, 323 Williams Street, Bel Air, MD 21014 to serve as acting trustee, until the parties mutually agree on a successor escrow agent.

#### **8. Miscellaneous**

**Complete Understanding.** This Escrow Agreement is the entire agreement and understanding between the parties with respect to the subject matter, and as such this Escrow Agreement supersedes all prior and contemporaneous agreements, negotiations, representations and proposals, written and oral, relating to the subject matter. CUSTOMER expressly acknowledges, agrees and represents to PARADIGM that there are no understandings or agreements with respect to the subject matter other than as expressly set forth in this Escrow Agreement. CUSTOMER agrees that no contrary terms and conditions of any subsequent CUSTOMER purchase order, no course of dealing, trade custom or usage of trade, and no warranty made during the course of performance, will apply, unless expressly agreed to by PARADIGM in writing.

**Notice.** Any notice or communication provided or permitted hereunder shall expressly describe its purpose and scope, shall be in writing and shall be deemed duly given or made if delivered in person or sent by U.S. certified mail, return receipt requested, postage prepaid, addressed to the party for which it is intended at the address set forth in this Agreement or at any other address specified by a party in writing.

**Invalidity.** In the event any provision hereof shall be deemed invalid or unenforceable by any court or governmental agency, such provision shall be deemed severed from this Escrow Agreement and replaced by a valid provision which approximates as closely as possible the intent of the parties. All remaining provisions shall be afforded full force and effect.

**Effective Date.** This Agreement shall become effective and shall be binding only upon acceptance by PARADIGM at its offices in Cockeysville, Maryland, and it shall be governed by, subject to, and interpreted in accordance with, the laws of the State of Maryland.

**ATTACHMENT A  
SCOPE OF WORK****SOFTWARE LICENSE, WEIGHPAY AND SIGNATURE CAPTURE MODULE,  
LEGISLATIVE CHANGE REPORTING REQUIREMENT,  
AND SUPPORT SERVICES**

Contractor shall provide continuation of the current software license; WeighPay and Signature Capture Module; implement legislative change reporting requirements; and provide support services by Paradigm Software, LLC (Paradigm) for the software application, the CompuWeigh™ System, for OC Waste & Recycling.

**1. SOFTWARE LICENSE**

- A. Contractor shall continue to provide the software license for three of the remaining five years of the original ten-year term for Paradigm Software's CompuWeigh™ System. This license shall include current and future versions of all application referenced above, which are released during the term of this license.
- B. If OC Waste & Recycling elects to upgrade to any newer versions which are released during the term of this license, the upgrade license shall be provided at no additional cost. Paradigm shall make any released versions available to OC Waste & Recycling within thirty (30) months of release but not prior to eighteen (18) months of release. Customization and installation charges required to match the County's current application shall be negotiated under separate contracts.

**2. WEIGHPAY AND SIGNATURE CAPTURE MODULE**

The WeighPay and Signature Capture Module will allow OC Waste & Recycling the ability to accept credit cards as a form of payment and store information pertaining to credit card transactions within the scale transaction (excluding credit card sensitive data). The module allows fee operators to electronically process credit card transactions utilizing a selected third-party PCI compliant application. Paradigm shall configure the WeighStation application to interface with the hardware provided by the approved third-party PCI compliant vendor. OC Waste & Recycling will be responsible for entering into a separate contract with the third-party PCI compliant vendor. The third-party PCI compliant vendor will provide the hardware, gateway and processing services. Paradigm shall ensure the correct data is being provided by its application to the third-party. Paradigm shall provide OC Waste & Recycling training on the use of its application. The third-party PCI compliant vendor will provide OC Waste & Recycling training on the use of their services.

**3. LEGISLATIVE REPORTING REQUIREMENTS**

Software enhancements will be required to remain in compliance with waste management rules, regulations and/or legislation, such as reporting requirements for AB901 and SB1383. This may include but is not limited to adding the following: additional material type categories, source sector information, and new interfacing with the state's CalRecycle reporting system.

#### 4. SOFTWARE SUPPORT SERVICES

Paradigm shall provide continued on-going technical support for the CompuWeigh™ System. Software maintenance and training of Information System staff as deemed necessary by the OC Waste & Recycling Project Manager or designee will be provided for at an additional fee. Support shall include that required for the CompuWeigh™ System.

- A. Paradigm shall provide quarterly software updates and patches to OC Waste & Recycling as they are released at no charge. It will be the County's responsibility to apply these software updates and patches. At County's request, Contractor will apply these software updates and patches for an additional fee.
- B. Paradigm shall provide telephone support and/or online support to resolve technical problems between the hours of 5:45 a.m. through 5:15 p.m. Pacific Standard Time each Monday through Saturday of the year.
- C. Paradigm shall coordinate with OC Waste & Recycling to update requirements within the Disposal Reporting System including, but not limited to, custom report date ranges for the Green Waste Quarterly, Disposal Quarterly, Daily Count, and Daily Tonnage; and the ability to select multiple (and all) accounts for the Hauler Transaction Report. OC Waste & Recycling will provide Paradigm with the business requirements for any modifications and Paradigm will provide OC Waste & Recycling with a quote to perform such modifications.

#### 5. ESCROW AGREEMENT

Contemporaneous with the execution of this Contract, County will enter into and be bound by an Escrow Agreement governing the right of the County to access the Source Code for the Paradigm Software (Escrow Agreement). The Escrow Agreement is intended by the Parties to govern the rights and obligations of the parties concerning the right of the County to access Paradigm's source code. A copy of this Escrow Agreement is attached as Attachment 3 and incorporated by this reference. When determining the rights and obligations of the parties concerning the County's access to the source code, if any provision of this Contract is inconsistent with the terms and conditions of the Escrow Agreement, the terms of the Escrow Agreement shall control.

#### 6. TASK ORDERS

Any new software customization may be authorized pursuant to this Contract by the County Project Manager (PM), on an as-needed basis by a task order. As each task is identified by the PM, the Contractor shall prepare a "Task Proposal" which details the scope of work to be accomplished, list of deliverables, schedule for completion, and an estimated not-to-exceed cost for its completion. Each task order proposal will be reviewed and approved by the PM prior to commencement of the proposed work. These services may be paid on a unit price times the number of units basis, time and materials basis, or lump sum basis, as mutually agreed by PM and

Contractor. PM's written authorization must be submitted with the invoice in order for payment to be made.

### **Time & Materials Basis**

For payment on a Time & Materials basis Task Order, all of the costs on each invoice shall be separate and itemized with reference to the scope of services and the task order number, as provided in the Contract and the Task Order authorization. Invoice documentation shall be attached to the invoice and be sufficient to substantiate the actual cost of all billed items. The submitted billed items shall be in conformance with the Contract requirements as set forth in Attachment B, Compensation and Payment Terms. Time shall be charged at a billing rate not exceed \$225 per hour during Paradigm's normal business hours and \$337.50 per hour after Paradigm's normal business hours, with a maximum amount not to exceed \$225,000 for the three-year contract term.

### **Lump Sum Basis**

Lump Sum basis Task Orders shall require written authorization by the PM prior to the Contractor proceeding with the services. Contractor shall provide the PM with a detailed breakdown of the labor and materials costs that determined the lump sum quote. The breakdown shall be in accordance with the Contract rates provided herein. Costs not contained in the Contract rate sheets shall be reviewed by the PM for reasonableness as part of the written approval process, prior to authorization. All Lump Sum quotes for task orders shall be executed and processed as described herein.

In the event of unforeseen circumstances occurring necessitating a modification to the authorized Lump Sum Task Order, a separate Task Order authorization may be requested by the Contractor to reflect the change of scope of services.

The Contractor shall at all time during the term of the Task Order keep full and complete records and documentation in support of the services performed. The PM shall have the right to request and examine any project records for the purpose of determining its accuracy in accordance with the terms and conditions of this Contract.

---

**ATTACHMENT B  
COMPENSATION AND PAYMENT TERMS**

This is a fixed ceiling Contract with Paradigm Software LLC for the software license extension and support services of the software application, the CompuWeigh™ System; and purchase, installation, implementation and upon acceptance, support of the WeighPay and Signature Capture Module for OC Waste & Recycling, as further defined in Attachment A, Scope of Work.

Contractor agrees to accept the compensation specified herein as full remuneration for performing all services and furnishing all staffing and materials agreed to within this Contract; and for any reasonably foreseeable difficulties which may arise or be encountered in the execution of the services; and for performance by the Contractor of all of its duties and obligations hereunder.

The Contractor shall notify the County Project Manager in writing when expenditures against the time and materials allocation of **\$225,000 for the three year term** reaches 75% of the total dollar limit of the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the total dollar limit of the Contract unless an amendment to cover those costs has been issued by the County. This notification must come within 3 working days of receipt of invoice that is within the notification limit.

All extra work resulting in an increase in the Contract total ceiling amount shall be authorized by written amendment to this Contract. Said amendment may be issued by the County of Orange Procurement Officer or his designee or may be subject to approval by the County Board of Supervisors.

**Terms of Payment**

Upon the effective starting date of the Contract, the initial payment shall be made to Contractor, as set forth in the deliverable schedule contained herein, set forth below.

Contractor shall submit an invoice *in arrears* for hourly time and materials services provided for approved task orders. Payment due to the Contractor will be made within forty-five (45) days after receipt of a correctly submitted invoice.

Annual support and annual escrow fee shall be *payable in advance*, upon receipt of an invoice by the County as set forth in the deliverable schedule.

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

**Invoicing Instructions**

Invoices and supporting documentation are to be sent to:

County Of Orange  
OC Waste & Recycling  
Attn: Accounts Payable  
300 N. Flower Street, Suite 400  
Santa Ana, CA 92703

Invoices may be emailed to:

[ocwrinvoice@ocwr.ocgov.com](mailto:ocwrinvoice@ocwr.ocgov.com)

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

Acceptable invoicing format:

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

1. County Contract MA-299-18010702
2. Contractor's Federal I.D. Number
3. Total Contract Amount
4. Amount expended to date
5. Amount being invoiced
6. Contract balance

The responsibility for providing an acceptable invoice to the County of Orange for payment rests with the Contractor. Invoices must be received by the 25<sup>th</sup> of the month following the month in which the work was performed. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction. Final invoices must be received within 60 days upon completion of final task.

For accounting purposes only, the total not-to-exceed compensation for proposed time and materials allocated for unforeseen software enhancements is designated into annual amounts. The amounts allocated for time and materials on an annual basis may be transferred and adjusted within this category with the written approval of the Director of OC Waste & Recycling, County PM, or Deputy Director of Business Services or their designee.

**Payment (Electronic Funds Transfer (EFT)):**

The County of Orange offers contractors the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address will need to be provided to the County of Orange via an EFT Authorization Form. To request a form, please contact the agency/department representative listed in the bid. Upon completion of the form, please mail, fax or email to the address or phone listed on the form.

**FEE SCHEDULE**

Description	Qty	Unit Cost	Extended Cost
<b>New Software Module</b>			
WeighPay and Signature Capture Module	1	\$30,400.00	<b>\$30,400.00*</b>
WeighStation Program License	3	\$5,775.00	<b>\$17,325.00</b>
<b>Annual Support</b>			
CompuWeigh™ System	1	\$80,605.51	
Disposal Authorization Module**	1	\$1,500.00	
WeighPay and Signature Capture Module**	1	\$3,750.00 \$7,215	
<b>Annual Support Total</b>		<b>\$85,855.51/yr</b>	<b>\$89,321/yr</b>
<b>Escrow Agreement</b>			
Escrow Fee	1	\$300/yr	<b>\$300/1 yr</b>
<b>Time and Materials</b>			
Hourly rate during Paradigm's normal business hours		\$225.00/hr	
Hourly rate after Paradigm's normal business hours		\$337.50/hr	
Annual Amount not to exceed	1	\$75,000/yr	<b>\$76,800/1 yr</b>
<b>Total Contract Monetary Limit Shall Not Exceed:</b>			<b>\$183,646/yr \$858,269/Total</b>

**\*Payment Schedule for WeighPay and Signature Capture:**

- 50% upon contract execution
- 25% upon installation in test environment
- 15% upon installation in production environment
- 10% 30 days after successful installation

\*\*Annual Support shall be prorated upon successful installation