

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY, CALIFORNIA
AND RECORD OF ACTION**

June 23, 2015

**FROM: MICHAEL J. SCARPELLO, Registrar of Voters
Registrar of Voters**

**SUBJECT: CONTRACT WITH DATA INFORMATION MANAGEMENT SYSTEMS, INC. FOR
SOFTWARE LICENSING FEES AND SYSTEM SUPPORT**

RECOMMENDATION(S)

1. Affirm that continued use of Data Information Management Systems, Inc. (DIMS) of Roseville, California as the standard for the voter registration and election records system is in the best interests of the County.
2. Approve **Contract No. 15-404** with DIMS for software licensing fees and system support for election management software in an amount not to exceed \$819,847.40 for the period from July 1, 2015 through June 30, 2020, with the option to extend for one additional five-year period.
3. Terminate contract no. 89-601 with DIMS effective July 1, 2015.
(Presenter: Michael J. Scarpello, Registrar of Voters, 387-2100)

BOARD OF SUPERVISORS COUNTY GOALS AND OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

Approval of this contract will require additional Discretionary General Funding (Net County Cost) for future recommended budgets because DIMS has the option to increase the fee annually based on the Consumer Price Index (CPI-U) for Los Angeles and surrounding areas as calculated by the United States Department of Labor - Bureau of Labor Statistics. Accordingly, expenses for software licensing and support have been estimated using CPI-U forecasts provided by the California Department of Finance at an increase of 2.1% annually. DIMS also offered a 2% discount if the fees are prepaid annually in lieu of monthly installments. As a result, the estimated expenditures, which includes the 2% discount, for software licensing and support will be as follows:

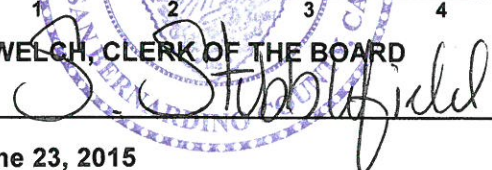
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cc: ROV- Scarpello w/Agree
Contractor c/o ROV w/Agree
ATC-Acct. Pay. Mgr. w/Agree
EBIX-BPO c/o Risk Mgmt.
Purchasing- Rozko
CAO-Porter
File - w/Agree
ss 6/29/15

ITEM 76

Record of Action of the Board of Supervisors

**APPROVED (CONSENT CALENDAR)
COUNTY OF SAN BERNARDINO
Board of Supervisors**

MOTION	MOVE	AYE	AYE	SECOND	AYE
	1	2	3	4	5
LAURA H. WELCH, CLERK OF THE BOARD					
BY 					
DATED: June 23, 2015					

**CONTRACT WITH DATA INFORMATION MANAGEMENT SYSTEMS, INC.
FOR SOFTWARE LICENSING FEES AND SYSTEM SUPPORT
JUNE 23, 2015
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Fiscal Year	Estimated Annual Cost
2015-16	\$157,225.86
2016-17	\$160,527.60
2017-18	\$163,898.68
2018-19	\$167,340.55
2019-20	\$170,854.71
Total	\$819,847.40

Adequate appropriation has been included in the Registrar of Voter's (ROV) 2015-16 recommended budget, and will be included in future recommended budgets.

BACKGROUND INFORMATION

Approval of these recommendations will allow the ROV to continue using DIMS election management software to maintain its voter registration and election records. The recommendations in this item are aligned with County Goals and Objectives with respect to conducting efficient elections in a business-like manner that are compliant with Elections Code.

Last year, an automatic renewal clause with DIMS was identified dating back to 1985, which was last amended with Board of Supervisors (Board) approval on July 16, 1990 (Item No. 13). The contract remained in place due to advantageous pricing; however, an item was presented to the Board on November 4, 2014 (Item No. 42) to ensure compliance with County Policy 11-05 regarding indefinite term contracts. Approval of that item authorized a one-time payment to DIMS in the amount of \$159,319.31 for 2014-15 while a competitive process could be conducted to establish a new contract with Board approval beginning on July 1, 2015.

In January 2015, the ROV prepared a Request for Proposal, but it was not released after further consultation with the Purchasing Department, County Administrative Office and County Counsel due to the significant expense associated with a system conversion. The DIMS system is open source, and as a result, ROV has customized applications within the DIMS software to provide the required functionality for several interfaces including, but not limited to, the Voter Address and Precinct Layer Integration, Voter Roster and Index Generation, Mail Ballot Sorting Tool, Mail Ballot Tracking System, Provisional Processing System, Voter Information Guide Opt Out System, and several applications for My Elections Gateway. In addition, only one other vendor is certified by the Secretary of State to provide this software for the VoteCal system and converting to that vendor's software would require substantial time and resources to achieve the same required functionality. Converting would require a substantial General Fund investment, estimated at \$750,000 to replicate existing enhancements and reporting applications.

VoteCal is a mandated statewide voter registration database to be implemented in 2015 and 2016 in order to comply with the federal Help America Vote Act of 2002 (HAVA).

**CONTRACT WITH DATA INFORMATION MANAGEMENT SYSTEMS, INC.
FOR SOFTWARE LICENSING FEES AND SYSTEM SUPPORT
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The State's schedule requires the ROV to begin implementing VoteCal in September 2015 in order to complete this process by November 2015. Given this aggressive schedule, changing the ROV's current system would also negatively affect the County's ability to implement VoteCal successfully by the deadline.

For these reasons, a non-competitive procurement is recommended by staff and supported by the Purchasing Department. The recommended contract with DIMS includes competitive pricing and is updated with current County terms and conditions, including termination for convenience. Per County Policy 11-05, service contracts exceeding \$100,000 and contract terms greater than 3 years require Board approval.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Agnes Cheng, Deputy County Counsel, 387-5455) on May 7, 2015; Purchasing (Laurie Rozko, Director, 387-2074) on May 1, 2015; Finance (Ginger Porter, Administrative Analyst, 387-4883) on May 15, 2015; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on May 18, 2015.



F A S

CONTRACT TRANSMITTAL

FOR COUNTY USE ONLY

<input checked="" type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	FAS Vendor Code DATAINF386	SC	Dept. ROV	A	Contract Number 15-4104	
ePro Vendor Number 00002024				ePro Contract Number 164337		
County Department Registrar of Voters		Dept. ROV		Orgn. ROV	Contractor's License No. N/A	
County Department Contract Representative Michael J. Scarpello				Telephone (909)387-2100		Total Contract Amount \$819,847.40
Contract Type <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason:						
Commodity Code 920-45		Contract Start Date 07/01/2015		Contract End Date 06/30/2020		Original Amount \$819,847.40
Fund AAA	Dept. ROV	Organization ROV	Appr. 200	Obj/Rev Source 2115	GRC/PROJ/JOB No.	Amount \$819,847.40
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
Project Name Annual Software License & Maintenance Support			Estimated Payment Total by Fiscal Year			
	FY	Amount	I/D	FY	Amount	I/D
	2015-16	\$157,225.86		2018-19	\$167,340.55	
	2016-17	\$160,527.60		2019-20	\$170,854.71	
	2017-18	\$163,898.68				

CONTRACTOR Data Information Management Systems, LLC

Federal ID No. or Social Security No. 95-3606386

Contractor's Representative Ross Underwood

Address 2999 Douglas Blvd., Ste. 310, Roseville, CA 95661

Phone (877) 377 - 8683

Nature of Contract:

Annual software license fees and system support for the voter registration and election records system.

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink) ▶ <u>Agnes Cheng</u> County Counsel – Agnes Cheng	Reviewed as to Contract Compliance ▶ _____	Presented to BOS for Signature ▶ <u>Michael J. Scarpello</u> Department Head – Michael J. Scarpello
Date <u>6/16/15</u>	Date _____	Date _____

THIS IS NOT A CONTRACT
THIS IS A COVER
TRANSMITTAL ONLY

Auditor-Controller/Treasurer/Tax Collector Use Only		CAO Use Only	
<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS	Not required for mid fiscal year cancellations	
Input Date	Keyed By	Effective Date	Analyst Initials

**DATA INFORMATION MANAGEMENT SYSTEMS, LLC.
SOFTWARE LICENSE/MAINTENANCE AND SUPPORT AGREEMENT**

THIS SOFTWARE LICENSE/MAINTENANCE AND SUPPORT AGREEMENT ("Agreement") is made effective as of the date set forth below, by and between Data Information Management Systems, LLC., a California limited liability company ("DIMS") and County of San Bernardino ("Customer").

RECITALS:

- A. Customer has previously licensed and desires to continue to license certain of DIMS proprietary software, as described on Attachment 2 (the "Software"), and to obtain maintenance and support services for the Software.
- B. DIMS has agreed to provide such license and services, subject to the terms and conditions of this Agreement.
- C. This Agreement supersedes and replaces in their entirety any and all prior agreements between DIMS and Customer respecting license and maintenance and support services for such Software

NOW, THEREFORE, in consideration of the foregoing recitals (which are specifically incorporated herein by this reference) and the mutual representations, warranties, covenants and agreements set forth below, the parties hereby agree as follows:

**ARTICLE 1
LICENSE OF SOFTWARE**

1.1 **Grant of License.** Subject to the terms and conditions of this Agreement and Customer's timely payment of the Software license and maintenance and support services fees (collectively, the "Fee") pursuant to Attachment 1, DIMS hereby continues to grant to Customer a nonexclusive, nontransferable license for unlimited use of the Software (as defined in Attachment 2) that is accessible by all Customer's users (including Customer's full-time, part-time, permanent, and temporary employees and consultants) and from all Customer's equipment and devices, including a minimum of two (2) public access points, in development, test, and production environments and to use all related operating instructions, user manuals and training materials supplied by DIMS (collectively the "Documentation") in San Bernardino County, California, ("Jurisdiction"). The license allows Customer to use and copy the Software (in object code only) and the Documentation solely for the purposes of managing the voter registration process and other election-related activities in the Jurisdiction. The license does not permit Customer to take any of the following actions:

a. Reverse engineer, decompile, disassemble, re-engineer or otherwise create, attempt to create, or permit, allow or assist others to create, the source code or the structural framework for part or all of the Software;

b. Cause or permit any use, display, loan, publication, transfer of possession, sublicensing or other dissemination of the Software or Documentation, in whole or in part, to or by any third party (other than Customer's consultants) including, but not limited to, any transfer of possession to, or use of the DIMS Software or Documentation by any third party without DIMS' prior written consent; or

c. Cause or permit any change to be made to the Software without DIMS' prior written consent.

d. Cause or permit any copying, reproduction or printing of any output generated by the Software in which DIMS owns or claims any proprietary intellectual property rights (e.g., copyright, trademark, patent pending or patent).

1.2 **Delivery.** DIMS has previously delivered the Software to Customer.

1.3 **License Fee.** In consideration for DIMS' grant of the license in Section 1.1, Customer shall pay DIMS the Software License and Maintenance and Support Fees set forth on Attachment 1.

1.4 **Term of License.** The license granted in Section 1.1 shall commence upon July 1, 2015 and shall continue for a five-year period through June 30, 2020 (the "Initial Term"). Upon mutual written agreement by the parties, this Agreement may be renewed for one period of five-years by executing an amendment to this Agreement no later than thirty (30) days prior to the expiration of the Initial Term (the "Renewal Term"). If the parties mutually agree to renew the Agreement, the Agreement shall be renewed on the same terms and conditions as contained herein, including the payment by Customer of any applicable annual Fee increases as set forth in Attachment 1. DIMS may terminate this Agreement if Customer fails to pay the Fee due or if Customer breaches the Agreement and Customer does not cure such failure or breach within thirty (30) days after receipt of written notice from DIMS. Customer may terminate this Agreement if DIMS breaches the Agreement and DIMS does not cure such failure or breach within thirty (30) days after receipt of written notice from Customer. Upon the termination of the Agreement due to an uncured failure or breach by either party or upon Customer's discontinuance of the use of the Software, Customer shall, if requested by DIMS in writing, (a) immediately return such Software and the related Documentation (including any and all copies thereof) to DIMS, or (b) destroy such Software and Documentation and certify in writing to DIMS that such destruction has occurred, provided that Customer may retain a copy of the Software for archival purposes, but in no event may Customer use the Software. Customer shall further have the right to terminate this Agreement at any time during the term, including any renewal thereof, for any reason in Customer's sole discretion. If such right is exercised, the Registrar of Voters shall have the right, on behalf of the County, to provide DIMS with not less than sixty (60) days prior written notice of the termination and Customer shall have no further liability under this Agreement from and after the effective termination date.

1.5 **Warranties & Disclaimer.** DIMS warrants and represents to Customer the following: (a) the Software conforms to DIMS published program specifications and the Documentation; (b) DIMS is the sole owner of all the right, title, and interest in and to the Software; (c) the Software does not infringe, violate, or misappropriate any right of, and will be free of any claim of, any third party based on patent, copyright, trade secret, unfair trade practice or other proprietary right ("Infringement Claims"); (d) no other person, firm, or corporation has any rights, title, or interest in and to the Software and that Customer shall have the right to use the Software as herein provided; (e) be free of bugs and harmful codes; (f) be free of materials and workmanship defected; (g) comply with all applicable laws and regulatory requirements as of the effective date of the Agreement; and (h) DIMS has the full power to grant the rights and privileges herein granted to Customer pursuant to this Agreement. Notwithstanding anything to the contrary in this Agreement, Customer use of the Software in conjunction with Customer's separate database source code, as set forth in Section 1.6, shall not relieve DIMS of its warranty obligations herein. **DIMS EXPRESSLY DISCLAIMS ALL**

WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHICH ARE NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

1.6 **Source Code.** The license granted in Section 1.1 does not permit Customer to use the source code for the Software. The source code will remain the property of DIMS and may not otherwise be used by Customer. DIMS acknowledges that Customer is the owner of a separate database source code for Customer's own functionality, which is used as a compliment to the Software but does not impact the Software. DIMS recognizes the Customer's need to extend the functionality and DIMS shall accommodate the Customer's needs by either modifying the Software to meet Customer's needs or advising the Customer on how to develop and implement the Customer's separate database source code so that it does not impact the Software. The Customer understands that any code developed and implemented by the Customer is done at the Customer's risk. The parties acknowledge and agree that Customer owns all right, title, and interest in Customer's separate database source code.

1.7 **Add-Ons and New Products.** From time to time, DIMS may offer new features which can be added on to the Software ("Add-On") and new software products ("New Products") to Customer. Customer may elect to license an Add-On or New Product upon the payment of an applicable license fee to DIMS. Unless any such license is effectuated pursuant to a separate license agreement, the Add-On or New Product shall be deemed to be part of the DIMS Software upon payment of such license fee.

1.8 **Proprietary Rights.** Customer acknowledges and agrees that DIMS owns all right, title and interest in and to the Software and Documentation, subject to the license granted herein. DIMS likewise owns all patents, trademarks, copyrights, trade names and other proprietary or intellectual property in, or used in connection with, the Software and Documentation. The Software and Documentation also contain confidential and proprietary trade secrets of DIMS which are protected by law. Customer shall keep the Software and Documentation free and clear of all claims, liens and encumbrances and shall maintain all copyright, trademark, patent or other intellectual or proprietary rights notices which are set forth on the Software, the Documentation, and all permitted copies thereof.

1.9 **Indemnification By DIMS.** In the event of any Infringement Claims, DIMS shall, at its own expense, indemnify, defend (with counsel reasonably approved by Customer) and hold harmless Customer and its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability (including, without limitation, reasonable attorneys' fees and costs) arising out of or in connection with a claim that the Software, when used within the scope of this Agreement, infringes, violates or misappropriates a valid United States third party patent, copyright, trade secret, unfair trade practice, or other proprietary right. In the event any Software becomes, or in DIMS opinion is imminently likely to become, the subject of an Infringement Claim, DIMS may, at its option, either secure Customer's right to continue using the Software, replace or modify the Software to make it non-infringing, or if neither of the foregoing alternatives is reasonably available to DIMS, discontinue the Software upon thirty (30) days prior written notice and refund the Fee for the period from the date Customer discontinues use of the Software until the end of the then current term. DIMS shall have no responsibility to indemnify Customer for any Infringement Claim resulting from (i) Customer's failure to timely or properly install and use any Update provided to it by DIMS in accordance with Section 2.3; (ii) the use of any Software in combination with other equipment, hardware or software not meeting DIMS' specifications for use with such Software;

or (iii) Customer's modification or alteration of any item of Software without the prior written consent of DIMS. Customer shall notify DIMS immediately if it becomes aware of any claim for which it may be entitled to indemnification under this Section 1.9, and hereby gives DIMS full and complete authority, and shall provide such information and assistance as is necessary (at DIMS' expense with respect to reasonable out-of-pocket costs), to enable DIMS to defend, compromise or settle any such claim. Notwithstanding anything to the contrary in this Agreement, Customer use of the Software in conjunction with Customer's separate database source code, as set forth in Section 1.6, shall not relieve DIMS of its indemnification obligations herein unless the Customer's database source code infringes, violates or misappropriates a valid United States third party patent, copyright, trade secret, unfair trade practice, or other proprietary right; in such event, DIMS shall have no responsibility to indemnify Customer for any Infringement Claim.

ARTICLE 2

SOFTWARE MAINTENANCE AND SUPPORT

2.1 **Term; Termination.** During the Initial Term and any Renewal Term thereof, upon payment of the Fee pursuant to Attachment 1, DIMS shall provide Customer with Software Maintenance and Support (as defined below).

2.2 **Services.** During the Initial Term and any Renewal Term thereof, DIMS shall provide maintenance and support services for the Software ("Software Maintenance and Support") (a) to enable the Software to perform in all material respects in accordance with its Documentation, and (b) to cure any defect in material or workmanship. The specific Software Maintenance and Support services provided by DIMS and each party's obligations with respect to such services are set forth on Attachment 3.

2.3 **Updates.** During the Initial Term and any Renewal Term thereof, DIMS may provide new releases, upgrades or maintenance patches to the Software, along with appropriate Documentation ("Updates"), on a schedule defined by DIMS. Customer shall install any upgrades on a mutually agreed schedule as well as purchase any mutually agreed third party hardware or software required to operate the Updates. All Updates shall be provided at no additional cost to Customer and shall be deemed to be "Software", and shall be subject to the terms and conditions this Agreement, upon delivery. Customer shall install Updates on a mutually agreed schedule and in accordance with DIMS' recommended instructions or Customer may request that DIMS install the Updates on-site at its then-current rates. Software maintenance and support for such Updates shall be provided under the terms of this Agreement.

2.4 **Conditions.** DIMS shall not be obligated to provide Software Maintenance and Support for any item of Software if such item requires such services due to (a) repairs, changes, modifications or alterations not authorized or approved by DIMS; (b) negligent or intentional misuse by Customer which is not in accordance with the Documentation furnished by DIMS, (c) causes beyond the reasonable control of DIMS or Customer, including natural disaster, fire, flood, unusually severe weather or Acts of God during which time Software maintenance and support shall be suspended, or (d) Customer's failure to install and use the most recent Update in accordance with the mutually agreed installation schedule between DIMS and Customer for each Update. DIMS shall likewise not be obligated to provide Software Maintenance and Support if Customer does not notify DIMS within a reasonable period of time after Customer has actual knowledge of the need for such service or is in default

of its obligations under this Agreement and has not cured such default pursuant to the terms of this Agreement. A replacement version of the Software requested by Customer as a result of the items set forth in this Section 2.5 shall be billable to the Customer at DIMS' current rates.

2.5 **Fees.** In consideration for DIMS' agreement to provide Software License and Maintenance and Support under this Agreement, Customer shall pay to DIMS the ongoing License and Software Maintenance and Support Fee set forth on Attachment 1 on a monthly basis in arrears for the Initial Term. The Fee for any Renewal Term shall be as set forth in Attachment 1. If Customer elects to receive Software Maintenance and Support for an Add-On or New Product during the Initial Term or any Renewal Term thereof, DIMS will charge an incremental license and Software Maintenance and Support Fee for such services as mutually agreed by the parties.

2.6 **Proprietary Rights.** DIMS shall own the entire right, title and interest in and to all corrections, programs, information and work product conceived, created or developed, alone or with Customer or others, as a result of or related to the performance of the Software Maintenance and Support, including all proprietary rights therein or based thereon. Subject to the payment of the ongoing Fee, DIMS hereby grants to Customer a non-exclusive license to use that portion of such corrections, programs, information and work product that DIMS actually delivers to Customer pursuant to this Agreement. All licensed items shall be deemed to be "Software", and shall be subject to all the terms and conditions of DIMS' license of the Software, upon delivery. Except as, and to the extent, expressly provided herein, DIMS does not grant to Customer any right, license, or other proprietary right, express or implied, in or to any corrections, programs, information, or work product covered by this Agreement. Notwithstanding anything to the contrary contained in this Agreement, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties specifically developed by DIMS for the Customer under Section 1.6 of this Agreement shall remain the sole proprietary property of Customer and all such items shall be delivered to Customer at the termination this Agreement.

ARTICLE 3 MISCELLANEOUS

3.1 **Taxes; Interest.** Customer will provide DIMS with proof of its tax-exempt status. If Customer does not provide such proof, it shall pay, or shall reimburse DIMS for, all sales and use, excise or other similar taxes imposed on the transactions contemplated by this Agreement, but shall in no event be liable for taxes imposed on or measured by DIMS' income. If Customer disputes the applicability of any tax to be paid pursuant to this Section 3.1, it shall pay the tax and may thereafter seek a refund. Any disputed or undisputed payment which is past due to DIMS and is not paid within thirty (30) days after written notice from DIMS will bear interest at the rate of one and one-half percent per month (or such lesser amount as may be permitted by applicable law) for each month or portion thereof during which it remains unpaid.

3.2 **Limitation of Liability.** DIMS will not be liable under this Agreement for any claim, damage, loss, judgment, penalty, cost, amount paid in settlement or fee which is caused by (a) Customer's failure to install and use the most recent Update, or the second most recent update, provided to it by DIMS in accordance to the installation schedule mutually agreed by the parties for each update, or (b) Customer's election not to receive, or to terminate, the Software Maintenance and Support. Neither party will be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever arising out of or relating to this Agreement. Except for liability arising under Paragraph 1.9 of this Agreement,

DIMS' total liability to Customer arising out of or related to this Agreement shall be limited to the total amount of the Fee actually paid hereunder by Customer to DIMS for the Initial Term and any Renewal Term. Customer's total liability to DIMS arising out of or related to this Agreement shall be limited to the total amount of the Fee actually paid hereunder by Customer to DIMS for the Initial Term and any Renewal Term.

3.3 **Excusable Nonperformance.** If either party is delayed or prevented from performing its obligations under this Agreement due to any cause beyond its reasonable control, including natural disaster, fire, flood, unusually severe weather, Acts of God, labor disputes and governmental regulations, the delay shall be excused during the continuance of, and to the extent of, such cause, and the period of performance shall be extended to the extent necessary to allow performance after the cause of delay has been removed. Each party agrees to work with the other, at its own expense, to develop mutually agreeable alternatives in order to minimize the negative impact of any such delay.

3.4 **Confidentiality.** During the Initial Term and any Renewal Term of this Agreement, each party (the "Disclosing Party") may provide the other (the "Receiving Party") with certain proprietary and trade secret information that is labeled in writing as confidential ("Confidential Information"). Confidential Information includes the Documentation that is not publicly available and the Software, including both object and source code. "Confidential Information" will not include information that (a) is publicly known at the time of its disclosure; (b) is lawfully received by the Receiving Party from a third party not under an obligation of confidentiality to the Disclosing Party; (c) is published or otherwise made known to the public by the Disclosing Party; or (d) was generated independently by the Receiving Party before disclosure by the Disclosing Party. The Receiving Party will refrain from using the Disclosing Party's Confidential Information except to the extent necessary to exercise its rights or perform its obligations under this Agreement. The Receiving Party will likewise restrict its disclosure of the Disclosing Party's Confidential Information to those who have an absolute need to know such Confidential Information in order for the Receiving Party to perform its obligations and enjoy its rights under this Agreement. Such persons will be informed of and will agree to the provisions of this Section 3.4, and the Receiving Party will remain responsible for any unauthorized use or disclosure of the Confidential Information by any of them. The Receiving Party may also disclose Confidential Information of the Disclosing Party pursuant to the requirement or request of a governmental agency, a court or administrative subpoena, an order or other legal process or requirement of law, or in order to defend its rights hereunder, so long as it shall (x) first notify the Disclosing Party of such request, requirement or proposal for use in defense; (y) in the case of a required disclosure, furnish only such portion of the Confidential Information as is legally required to disclose; and (z) cooperate with the Disclosing Party, at the cost of the Disclosing Party in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to that portion of the Confidential Information that is required to be disclosed. Upon the termination of this Agreement in its entirety, each Receiving Party shall return all Confidential Information of the Disclosing Party which is in its possession or under its control if requested to do so in writing.

3.5 **Notice.** Any notice or other communication required or permitted hereunder shall be in writing, and will be deemed given when delivered personally, sent by commercial overnight courier (with written verification of receipt) or sent by registered or certified mail, return receipt requested, postage prepaid, when the return receipt or refusal to accept delivery is received. All communications shall be sent to the attention of the persons listed on the signature page to this Agreement and at the addresses set forth on such signature page unless other names, addresses or fax numbers are provided in writing by either or both parties.

3.6 **Entire Agreement.** This Agreement, including Attachment 1, Attachment 2 and Attachment 3 (which are specifically incorporated herein by this reference), contains the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces any and all other prior or contemporaneous discussions, negotiations, agreements or understandings between the parties, whether written or oral, regarding the subject matter hereof. Any provision of any purchase order, form or other agreement which conflicts with or is in addition to the provisions of this Agreement shall be of no force or effect. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of laws principles. Neither party may assign or transfer this Agreement in part or in whole without the prior written consent of the other party hereto, such consent not to be unreasonably withheld. DIMS may engage duly qualified subcontractors to perform certain of the Software Maintenance and Support upon the prior written consent of Customer, but shall remain fully responsible for such performance.

3.7 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

3.8 **Independent Contractor.** In performing its obligations or enjoying its rights under this Agreement, each party shall comply with all applicable laws and regulations. DIMS is providing Software and Software Maintenance and Support to Customer as an independent contractor. Except as provided in Paragraph 1.5 of this Agreement, DIMS will not be responsible for (a) user errors, (b) voter errors or (c) problems encountered by any individual in voting. Upon prior written approval by the Customer, DIMS may engage subcontractors to provide certain of the Software or Software Maintenance and Support, but shall remain fully responsible for such performance. The provisions of Sections 1.5, 1.6, 1.8 1.9, 2.7, 3.2, 3.4, and 3.8 shall survive the termination of this Agreement, to the extent applicable.

3.9 **Legality and Severability.** The parties' actions under the Agreement shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Agreement are specifically made severable. If a provision of the Agreement is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

3.10 **Public Records Disclosure.** All information received by the Customer from the DIMS or any source concerning this Agreement, including the Agreement itself, may be treated by the Customer as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 et seq. (the "Public Records Act"). DIMS understands that although all materials received by the Customer in connection with this Agreement are intended for the use of the Customer in its operations, they are potentially subject to disclosure under the provisions of the Public Records Act. In the event a request for disclosure of any part or all of any information which DIMS has reasonably requested Customer to hold in confidence is made to the Customer, the Customer shall notify DIMS of the request and shall thereafter disclose the requested information unless DIMS, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides Customer a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold Customer harmless in any/all actions brought to require disclosure. DIMS waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event Customer fails to notify DIMS of any such disclosure request and/or releases any information concerning this Agreement received from the Customer or any other source.

3.11 **Relationship of the Parties.** Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

3.12 **Agreement Modification.** DIMS agrees any alterations, variations, modifications, or waivers of the provisions of the Agreement, shall be valid only when reduced to writing, executed and attached to the original Agreement and approved by the person(s) authorized to do so on behalf of DIMS and Customer.

3.13 **Duration of Terms.** This Agreement, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Agreement.

3.14 **Time of the Essence.** Time is of the essence in performance of this Agreement and of each of its provisions.

3.15 **Strict Performance.** Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

3.16 **Mutual Covenants.** The parties to this Agreement mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

3.17 **Notification Regarding Performance.** In the event of a problem or potential problem identified by DIMS or the Customer that could impact the quality or quantity of work, services, or the level of performance under the Agreement, DIMS shall notify the Customer within two (2) working days, in writing and by telephone. DIMS shall also provide status updates on a regular basis.

3.18. **Attorney's Fees and Costs.** If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

3.19 **Venue.** The parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Agreement will be the Superior Court of California, County of San Bernardino, San Bernardino District or the Federal District Court, Riverside County. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

3.20 **Licenses, Permits and/or Certifications.** DIMS shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. DIMS shall maintain these licenses, permits and/or certifications in effect for the duration of this Agreement. DIMS will notify Customer immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Agreement.

3.21 **Conflict of Interest.** DIMS shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the Customer. DIMS shall make a reasonable effort to prevent employees, DIMS, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the Customer determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the Customer and such conflict may constitute grounds for termination of the Agreement. This provision shall not be construed to prohibit employment of persons with whom DIMS's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

3.22 **Improper Consideration.** DIMS shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the Customer in an attempt to secure favorable treatment regarding this Agreement. The Customer, by written notice, may immediately terminate this Agreement if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the Customer with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded. DIMS shall immediately report any attempt by a Customer officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from DIMS. The report shall be made to the supervisor or manager charged with supervision of the employee or the Customer Administrative Office. In the event of a termination under this provision, the Customer is entitled to pursue any available legal remedies.

3.23 **Former Customer Administrative Officials.** DIMS agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent DIMS. The information provided includes a list of former administrative officials of Customer who terminated employment with Customer within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of DIMS. For purposes of this provision, "administrative official of Customer" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

3.24 **Improper Influence.** DIMS shall make all reasonable efforts to ensure that no officer or employee of Customer, whose position in the County enables him/her to influence any award of the Agreement or any competing offer, shall have any direct or indirect financial

interest resulting from the award of the Agreement or shall have any relationship to the DIMS or officer or employee of the DIMS.

3.25 **Material Misstatement/Misrepresentation.** If during the course of the administration of this Agreement, the Customer determines that DIMS has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the Customer, this Agreement may be immediately terminated. If this Agreement is terminated according to this provision, the Customer is entitled to pursue any available legal remedies.

3.26 **Release of Information.** No news releases, advertisements, public announcements or photographs arising out of the Agreement or DIMS's relationship with Customer may be made or used without prior written approval of the Customer.

3.27 **Damage to Customer Property.** DIMS shall repair, or cause to be repaired, at its own cost, all damages to Customer vehicles, facilities, buildings or grounds caused by the willful or negligent acts of DIMS or its employees or agents. Such repairs shall be made immediately after DIMS becomes aware of such damage, but in no event later than thirty (30) days after the occurrence. If the DIMS fails to make timely repairs, the Customer may make any necessary repairs. DIMS, as determined by the Customer, shall repay all costs incurred by the Customer for such repairs, by cash payment upon demand, or Customer may deduct such costs from any amounts due to the DIMS from the Customer.

3.28 **Equal Employment Opportunity Program and Civil Rights Compliance:** DIMS agrees to and shall comply with the Equal Employment Opportunity Program and Civil Rights Compliance requirements:

a. **Equal Employment Opportunity Program:** DIMS agrees to comply with the provisions of the Equal Employment Opportunity Program and all rules and regulations adopted pursuant thereto: Executive Orders 11246, as amended by Executive Order 11375, 11625, 12138, 12432, 12250, and 13672; Title VII of the Civil Rights Act of 1964; Division 21 of the California Department of Social Services Manual of Policies and Procedures; California Welfare and Institutions Code section 10000), the California Fair Employment and Housing Act; and other applicable federal, state, and county laws, regulations and policies relating to equal employment, contracting opportunities, or social services to welfare recipients, including laws and regulations hereafter enacted.

DIMS shall not unlawfully discriminate against any employee, applicant for employment, or service recipient on the basis of race, color, national origin or ancestry, religion, religious creed, sex, gender, gender identity, gender expression, marital status, sexual orientation, age, political affiliation, physical or mental disability, genetic information, or military or veteran status. Information on the above rules and regulations may be obtained from Customer's Human Services Contracts Unit.

b. **Civil Rights Compliance:** DIMS shall develop and maintain internal policies and procedures to assure compliance with each factor outlined by state regulation. These policies must be developed into a Civil Rights Plan, which is to be on file with Customer within 30 days of awarding of the Agreement. The Plan must address prohibition of discriminatory practices, accessibility, language services, staff development and training, dissemination of information, complaints of discrimination, compliance review, and duties of the Civil Rights Liaison. Upon request, Customer shall supply a sample of the Plan format. DIMS

shall be monitored by Customer for compliance with provisions of its Civil Rights Plan. Additionally, DIMS shall submit to Customer an Assurance of Compliance with the California Department of Social Services Nondiscrimination in State and Federally Assisted Programs Statement annually.

c. DIMS agrees to comply with all applicable provisions of the Americans with Disabilities Act (ADA).

3.29 **Informal Dispute Resolution.** In the event the Customer determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

3.30 **Iran Contracting Act.** IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), DIMS certifies that at the time the Agreement is signed, DIMS signing the Agreement is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable. Contractors are cautioned that making a false certification may subject DIMS to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

3.31 **Records.** DIMS shall maintain all records and books pertaining to the delivery of services under this Agreement and demonstrate accountability for contract performance. All records shall be complete and current and comply with all contract requirements.

3.32 **American Recovery and Reinvestment Act Funding (ARRA):** The parties acknowledge and agree that the following does not currently apply to this Agreement as neither DIMS nor Customer will use the funds described below in connection with this Agreement. Notwithstanding the inapplicability of the following, due to Customer's requirements, this Paragraph 3.31 is included in the Agreement.

a. **Use of ARRA funds and requirements.** This Agreement may be funded in whole or in part with funds provided by the American Recovery and Reinvestment Act of 2009 ("ARRA"), signed into law on February 17, 2009. Section 1605 of ARRA prohibits the use of recovery funds for a project for the construction, alteration, maintenance or repair of a public building or public work (both as defined in 2 CFR 176.140) unless all of the iron, steel and manufactured goods (as defined in 2 CFR 176.140) used in the project are produced in the United States. A waiver is available under three limited circumstances: (i) Iron, steel or relevant manufactured goods are not produced in the United States in sufficient and reasonable quantities and of a satisfactory quality; (ii) Inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or (iii) Applying the domestic preference would be inconsistent with the public interest. This is referred to as the "Buy American" requirement. Request for a waiver must be made to the Customer for an appropriate determination. Section 1606 of ARRA requires that laborers and mechanics employed by contractors and subcontractors on projects funded

directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 31). This is referred to as the "wage rate" requirement. The above described provisions constitute notice under ARRA of the Buy American and wage rate requirements. DIMS must contact the Customer contact if it has any questions regarding the applicability or implementation of the ARRA Buy American and wage rate requirements. DIMS will also be required to provide detailed information regarding compliance with the Buy American requirements, expenditure of funds and wages paid to employees so that the Customer may fulfill any reporting requirements it has under ARRA. The information may be required as frequently as monthly or quarterly. DIMS agrees to fully cooperate in providing information or documents as requested by the Customer pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Agreement. DIMS may also be required to register in the Central Contractor Registration (CCR) database at <http://www.ccr.gov> and may be required to have its subcontractors also register in the same database. DIMS must contact the Customer with any questions regarding registration requirements.

b. Schedule of Expenditure of Federal Awards. In addition to the requirements described in "Use of ARRA Funds and Requirements," proper accounting and reporting of ARRA expenditures in single audits is required. DIMS agrees to separately identify the expenditures for each grant award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by the Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Nonprofit Organizations." This identification on the SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the recipient reports required by ARRA Section 1512 (c). In addition, DIMS agrees to separately identify to each subcontractor and document at the time of sub-contract and at the time of disbursement of funds, the Federal award number, any special CFDA number assigned for ARRA purposes, and amount of ARRA funds. DIMS may be required to provide detailed information regarding expenditures so that the Customer may fulfill any reporting requirements under ARRA described in this section. The information may be required as frequently as monthly or quarterly. DIMS agrees to fully cooperate in providing information or documents as requested by the Customer pursuant to this provision. Failure to do so will be deemed a default and may result in the withholding of payments and termination of this Agreement.

c. Whistleblower Protection. DIMS agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-Federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to the implementation or use of recovery funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.

ARTICLE 4

INDEMNIFICATION & INSURANCE REQUIREMENTS

4.1 **Indemnification.** DIMS agrees to indemnify, defend (with counsel reasonably approved by Customer) and hold harmless the Customer and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Customer on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. DIMS's indemnification obligation applies to the Customer's "active" as well as "passive" negligence but does not apply to the Customer's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782.

4.2 **Additional Insured.** All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the Customer and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the Customer to vicarious liability but shall allow coverage for the Customer to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

4.3 **Waiver of Subrogation Rights.** DIMS shall require the carriers of required coverages to waive all rights of subrogation against the Customer, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the DIMS and DIMS's employees or agents from waiving the right of subrogation prior to a loss or claim. DIMS hereby waives all rights of subrogation against the Customer.

4.4 **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the Customer.

4.5 **Severability of Interests.** DIMS agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between DIMS and the Customer or between the Customer and any other insured or additional insured under the policy.

4.6 **Proof of Coverage.** DIMS shall furnish Certificates of Insurance to the Customer department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Customer's department, and DIMS shall maintain such insurance from the time DIMS commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, DIMS shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

4.7 **Acceptability of Insurance Carrier.** Unless otherwise approved by Customer's Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

4.8 **Deductibles and Self-Insured Retention.** Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Customer's Risk Management.

4.9 **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, the Customer has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by the Customer will be promptly reimbursed by DIMS or Customer payments to DIMS will be reduced to pay for Customer purchased insurance.

4.10 **Insurance Review.** Insurance requirements are subject to periodic review by the Customer. The Customer's Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Customer's Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the Customer. In addition, if the Customer's Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Customer's Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the Customer, inflation, or any other item reasonably related to the Customer's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. DIMS agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the Customer to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the Customer.

4.11 DIMS agrees to provide insurance set forth in accordance with the requirements herein. If DIMS uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, DIMS agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto DIMS shall secure and maintain throughout the term of the Agreement the following types of insurance with limits as shown:

a. **Workers' Compensation/Employer's Liability** – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of DIMS and all risks to such persons under this Agreement.

If DIMS has no employees, it may certify or warrant to the Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the Customer's Director of Risk Management.

With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

b. Commercial/General Liability Insurance – DIMS shall carry General Liability Insurance covering all operations performed by or on behalf of DIMS providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- i. Premises operations and mobile equipment.
- ii. Products and completed operations.
- iii. Broad form property damage (including completed operations).
- iv. Explosion, collapse and underground hazards.
- v. Personal injury.
- vi. Contractual liability.
- vii. \$2,000,000 general aggregate limit.

c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If DIMS is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If DIMS owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

e. Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits or Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits


If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after contract completion.

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IN WITNESS WHEREOF, this Agreement has been executed effective as of the date it is signed by the last of the parties hereto.

DATA INFORMATION MANAGEMENT
SYSTEMS, LLC.
2999 Douglas Blvd., Ste. 310
Roseville, CA 95661

COUNTY OF SAN BERNARDINO
777 E. Rialto Avenue
San Bernardino, CA 92415


Richard Jablonski, VP of Finance

Date: 6/15/15


James Ramos, Chairman, Board of Supervisors

Date: JUN 23 2015

SIGNED AND CERTIFIED THAT
A COPY OF THIS DOCUMENT
HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

LAURA H. WELCH, Clerk of the Board of
Supervisors

By: 
Deputy

Date: JUN 23 2015

Approved as to Legal Form:

JEAN RENE BASLE, County Counsel
San Bernardino County, California

By: 
Agnes I. Cheng, Deputy County Counsel

Date: 6/15/15

ATTACHMENT 1

SOFTWARE LICENSE AND MAINTENANCE AND SUPPORT FEE

<u>Fee Summary:</u>		
Description	Refer To	Fee
Software License, Maintenance and Support Services (July 1, 2015 to August 31, 2016)	Attachment 3	\$160,434.55 per year or \$13,369.55 per month
Shipping and Handling	Note 1	\$0.00
Total Fee for July 1, 2015 to August 31, 2016		\$160,434.55 per year or \$13,369.55 per month
<u>Terms & Conditions:</u>		
Note 1: Any applicable state and local taxes are not included, and are the responsibility of Customer. See Section 3.1. Customer is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on DIMS or on any taxes levied on employee wages. The Customer shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the Customer pursuant to the Agreement. To the extent applicable, premium or rush transportation services incurred in connection with Software, if desired by Customer, shall be at an additional charge.		
Note 2: Customer acknowledges and agrees that DIMS may increase the Fee on July 1, 2016 and on each July thereafter during the Initial Term and any Renewal Term (each an "Adjustment Date") by no more than the increase, if any, in the U.S. Department of Labor, Bureau of Labor Statistic, CPI-U index for the Los Angeles area between July of each immediately preceding year and July of each adjustment year. The annual Fee payable as of each Adjustment Date shall be the annual Fee paid by Customer in the immediately preceding year multiplied by any increase in the CPI-U index for the Los Angeles Area.		
Note 3: <u>Payment terms are as follows:</u> <ul style="list-style-type: none">• The Fee due and payable hereunder shall be billed monthly in arrears and are payable within sixty (60) days after receipt of an invoice.• In lieu of paying monthly in arrears, Customer may opt to pay the Fee due in advance on a semi-annual or annual basis. If paid on a semi-annual basis, Customer shall discount the Fee due by multiplying the monthly fee by six (6) and subtracting an amount equal to two percent (2.0%) of the Fee due for six (6) months. If paid on an annual basis, Customer shall discount the Fee by multiplying the monthly fee by twelve (12) and subtracting an amount equal to two percent (2.0%) of the Fee due for twelve (12) months. In the event of any termination of this Agreement and if the Customer has paid any Fee due in advance, DIMS shall refund to Customer, within thirty (30) days of the effective termination date, any Fee paid for the period after the effective termination date.• DIMS shall accept all payments from Customer via electronic funds transfer (EFT) directly deposited into DIMS's designated checking or other bank account. DIMS shall promptly comply with directions and accurately complete forms provided by Customer required to process EFT payments.		

ATTACHMENT 2

SOFTWARE LICENSES

SOFTWARE DESCRIPTION NUMBER OF LICENSES	DESCRIPTION	SOFTWARE LICENSE AND MAINTENANCE AND SUPPORT FEE
1 unlimited use license of the Software that is accessible by all Customer's users and from all Customer's equipment and devices, including a minimum of two (2) public access points, in development, test, and production environments	DIMS Voter Registration Software, with use of the following modules: (a) DXI, and (b) DASS.net	Included in Attachment 1

ATTACHMENT 3

SOFTWARE MAINTENANCE AND SUPPORT SERVICES

Software Maintenance and Support Services Provided by DIMS Under the Agreement

1. Telephone support during Customer's normal business hours
2. Issue Resolution as set forth in Section 3.17 of the Agreement
3. DIMS will provide Technical Bulletins on a schedule to be determined by DIMS regarding specific issues the Customer may be experiencing

Software Maintenance and Support Services *NOT* Provided by DIMS Under the Agreement

1. Network design, layout or administration
2. Election set up and programming
3. Third Party Interface – Import from non DIMS Voter Registration System
4. Installation of third party hardware or software - User Guides, Installation Instructions are provided for these processes
5. Issue resolution for printers and modems not supported by DIMS applications
6. Issue resolution for requests made by non-DIMS service providers
7. Any services to support the Customers Voter Tabulation System

***Note: DIMS shall assess, and Customer hereby agrees to pay in full within sixty (60) days of receipt of an invoice, for any additional charges which DIMS assesses in the event Customer requests assistance to perform any of the foregoing services or tasks not included by DIMS in its performance of Software maintenance and support services.**

Software Maintenance and Support Services – Customer Responsibilities

1. Customer shall have completed all training session, if any, provided by DIMS for the Software and each module
2. Customer shall have reviewed a complete set of User Manuals, if any, provided by DIMS