

**COUNTY OF SAN BENITO AND
TENEX SOFTWARE SOLUTIONS, INC.
PURCHASE AGREEMENT FOR ELECTRONIC POLL BOOKS**

This Purchase Agreement, hereinafter referred to as "Contract" is made and entered into as of the date fully executed by and between the County of San Benito, a political subdivision of the State of California; hereinafter referred to as "County," and Tenex Software Solutions, Inc., with a place of business at 5402 W. Laurel St., Suite 206, Tampa, FL, 33607; hereinafter referred to as "Contractor," which are sometimes referred to as "Party", or collectively as "Parties."

ATTACHMENTS

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

Attachment A – Scope of Work
Attachment B – Fees, Compensation, And Payment
Attachment C – Staffing Plan

RECITALS

WHEREAS, County and Contractor are entering into this Contract for Electronic Poll Books under a firm fixed fee Contract; and

WHEREAS, Contractor agrees to provide Electronic Poll Books to the County as set forth in the Scope of Work, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Fees, Compensation and Payment, attached hereto as Attachment B.

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

1. **Definition, Acronyms, and Abbreviations:** Unless otherwise specified, the following capitalized terms shall be given the meanings below:
 - a. **Commercial Software** – Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
 - b. **Custom Software** – Software that does not meet the definition of Commercial Software.
 - c. **Deliverables** – Goods, Software, Information Technology, telecommunications technology, hardware, and other items (e.g., reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services described in the Scope of Work.
 - d. **Goods** – All types of tangible personal property, including, but not limited to, materials, supplies, and equipment (including computer and telecommunications equipment).

- e. **Information Technology** – Includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.
- f. **Intellectual Property Rights** – Intellectual property rights as may exist anywhere in the world, including without limitation rights in trade secrets, trademarks, copyrights, and patents.
- g. **Services** – The work to be performed by Contractor under this Contract as stated in Attachment A.
- h. **Software** – An all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor.

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in San Benito County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. **Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.
- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. **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 descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

F. Acceptance/Payment: Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

G. Warranty:

1. Unless Otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the Goods or services in question. The Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Scope of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the Parties have agreed to design specifications and incorporated the same or equivalent in the Scope of Work directly or by reference, the Contractor warrants that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, the Contractor warrants that such Software will perform in accordance with its license and accompanying documentation. The County's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
2. The Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any Intellectual Property Rights. Without limiting the generality of the foregoing, if the County believes that harmful code may be present in any Commercial Software delivered hereunder, the Contractor will, upon the County's request, provide a new or clean install of the Software.
3. Unless otherwise specified in the Scope of Work:

The Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.

The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the County, unless such modification is approved or directed by the Contractor, (B) use of Software in combination with or on products other than as specified by the Contractor, or (C) misuse by the County.

- a. Where the Contractor resells Commercial Software, it purchased from a third party, Contractor, to the extent it is legally able to do so, will pass through any such third-party warranties to the County and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth above.
4. All warranties, including special warranties specified elsewhere herein, shall inure to the County, its successors, assigns, customer agencies, and governmental users of the Deliverables or Services.

Except as may be specifically provided in Attachment A, Scope of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the County's exclusive remedy and the Contractor's sole obligation will be limited to:

- a. re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or

- b. should the County in its sole discretion consent, refund of all amounts paid by the County for the nonconforming Deliverable or service and payment to the County of any additional amounts necessary to equal the County's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or Services of equivalent capability, function, and performance.
5. Except for the express warranties specified in this section, the contractor makes no warranties either express or implied, including without limitation any implied warranties of merchantability or fitness for a particular purpose
- H. Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "Z" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.
- I. Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. Performance Warranty:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and

other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.

O. Insurance Provision:

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.

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

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

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

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

Qualified Insurer

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

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

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability, including coverage for owned, non-owned, and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence
Network Security and Privacy Liability *	\$1,000,000 per claims made
Technology Errors and 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 San Benito 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 San Benito 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 San Benito, 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 San Benito 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 San Benito, 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 San Benito, 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 shall constitute a material breach of the Contract, upon which the County may, in its discretion, suspend or terminate this Contract.

If Contractor's Professional Liability, 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 interest's clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

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

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

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

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

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

- R. Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- S. Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws and any other applicable laws, rules, and regulations relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. Freight:** Prior to the County's express acceptance of delivery of products 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.
- V. Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the parties and this Contract.
- Y. Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State

statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

- Z. Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. Audits/Inspections:** Contractor agrees to permit the County's Auditor- Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.
- The County reserves the right to audit and verify the Contractor's records before final payment is made. Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.
- Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the County's project manager.
- BB. Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. Expenditure Limit:** The Contractor shall notify the County of San Benito assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

ADDITIONAL TERMS AND CONDITIONS

1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure goods from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
2. **Contract Term:** This Contract shall commence on upon approval by the County and execution of all necessary signatures and continue [Vendor shall provide an anticipated date for which all Deliverables will be completed], unless otherwise terminated by County. This Contract may not be renewed.
3. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximations. The Contractor agrees to supply services and/or commodities requested, as needed by the County of San Benito, at rates/prices listed in the Contract, regardless of quantity requested.
4. **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.
5. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants, or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a. Terminate the Contract immediately, pursuant to Section K herein;
 - b. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and
 - d. Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
6. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable state and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex, or disability.
7. **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.

8. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and relatives; sub-tier Contractors; 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.
9. **Conflict of Interest – County Personnel:** The County of San Benito 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.
10. **Contractor Personnel Reference Check:** The Contractor warrants that all persons employed to provide service under this Contract have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this Contract. Contractor’s employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by the agency/department issuing this Contract.
11. **Contractor’s Project Manager and Key Personnel:** Contractor shall appoint a Project Manager to direct the Contractor’s efforts in fulfilling Contractor’s obligations under this Contract. This project manager shall be subject to approval by the County and shall not be changed without the written consent of the County’s project manager, which consent shall not be unreasonably withheld.

The Contractor’s project manager and key personnel shall be assigned to this project for the duration of this Contract and shall diligently pursue all work and services to meet the project time lines. Key personnel are those individuals who report directly to the Contractor’s project manager.

12. **County of San Benito Child Support Enforcement [Within Ten (10) Days Of Notification of Selection For Award Of Contract]:** In order to comply with the child support enforcement requirements of the County of San Benito, within ten (10) days of notification of selection of award of Contract but prior to official award of Contract, the selected Contractor agrees to furnish to the Contract administrator, the Purchasing Agent, or the agency/department deputy purchasing agent:
 - a. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address;
 - b. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity;
 - c. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
 - d. A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure of the Contractor to timely submit the data and/or certifications required may result in the Contract being awarded to another Contractor. In the event a Contract has been issued, failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within sixty (60) calendar days of notice from the County shall constitute grounds for termination of the Contract.

13. **Data- Title To:** All materials, documents, data, or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data, or information, including copies, must be returned to the County at the end of this Contract.
14. **Debarment:** Contractor shall certify that neither Contractor nor its principles are presently debarred, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction by any federal department or agency. Where Contractor, as the recipient of federal funds, is unable to certify to any of the statements in the certification, Contractor must include an explanation with their bid. Debarment, pending debarment, declared ineligibility, or voluntary exclusion from participation by any federal department or agency may result in the bid being deemed non-responsible.
15. **Default:** In case of default by Contractor, the County of San Benito may procure the goods and/or services from other sources. If the cost for those goods and/or services is higher than under the terms of the existing Contract, Contractor will be responsible for paying the County the difference between the Contract cost and the price paid, and the County may deduct this cost from any unpaid balance due the Contractor. The price paid by the County shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this Contract and under law.
16. **Disputes – Contract:** 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 Purchasing Agent by way of the following process:
- a. The Contractor shall submit to the agency/department assigned 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 provision of services under this Contract. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.
 - d. Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.
17. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b. Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. The organization's policy of maintaining a drug-free workplace;
 - iii. Any available counseling, rehabilitation and employee assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- c. Provide as required by Government Code Section 8355(c) that every employee who works under this Contract:
 - i. Will receive a copy of the company's drug-free policy statement; and
 - ii. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.
- d. Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County Contracts if the County determines that any of the following has occurred:
 - i. The Contractor has made false certification, or
 - ii. The Contractor violates the certification by failing to carry out the requirements as noted above.

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

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

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

19. **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 Contractor project manager and key personnel attached hereto, 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 without payment of additional compensation.
20. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
21. **Lobbying:** On best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person for influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
22. **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.
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 Parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by U.S. 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.

For Contractor: Tenex Software Solutions, Inc.,
Attention: Ravi Kallem
5402 W. Laurel St., Suite 206,
Tampa, FL, 33607

For County:

County of San Benito
Department of Elections
Attention: Joe Paul Gonzalez
440 Fifth Street Room 205
Hollister, CA 95023

24. **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 remains 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.
25. **Precedence:** The Contract documents consist of this Contract and its attachments and exhibits. 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 articles of this Contract, and then the exhibits and attachments.
26. **Project Manager, County:** 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. The County's project manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within fourteen (14) calendar days after written notice by the County's project manager. The County's project manager shall review and approve the appointment of the replacement for the Contractor's project manager and key personnel. Said approval shall not be unreasonably withheld.
27. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps, or graphs, including graphic at 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, a 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.
28. **Reports/Meetings:** The Contractor shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this Contract. The County's project manager and the Contractor's project manager will meet on reasonable notice to discuss the Contractor's performance and progress under this Contract. If requested, the Contractor's project manager and other project personnel shall attend all meetings. The Contractor shall provide such information that is requested by the County for the purpose of monitoring progress under this Contract.
29. **Sub-Contracting:** In the event that the Contractor is authorized by the County to subcontract pursuant to paragraph "T" above, this Contract shall prevail, and the terms of the subcontract shall incorporate by reference and not conflict with the terms of this Contract. In the manner in which the County expects to receive services, the County shall look to the Contractor for performance and not deal directly with any subcontractor. All matters related to this Contract shall be handled by the Contractor with the County; the County will have no direct contact with the subcontractor in matters related to the performance of this Contract. All work must meet the approval of the County of San Benito. The Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the County under this Contract.

30. **Substitutions:** The Contractor is required to meet all specifications and requirements contained herein. No substitutions will be accepted without prior County written approval.
31. **Waivers - Contract:** The failure of the County in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option contained herein shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.
32. **Rights in Work Product:**
- a. All inventions, discoveries, intellectual property, technical communications, and records originated or prepared by the Contractor pursuant to this Contract, including papers, reports, charts, computer programs, and other documentation or improvements thereto, and including the Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be the Contractor's exclusive property. The provisions of this subsection a) may be revised in the Scope of Work.
 - b. Software and other materials developed or otherwise obtained by or for the Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If the Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this paragraph (b) will be construed to interfere with the Contractor's or its affiliates' ownership of Pre-Existing Materials.
 - c. The County will have Government Purpose Rights to the Work Product as Deliverables under this Contract. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights, and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the County for any County government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any County government purpose. Such recipients of the Work Product may include, without limitation, County Contractors. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.
 - d. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the County may be used by either Party without obligation of notice or accounting.
 - e. This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the County pursuant to this Contract.
33. **Software License:** Contractor hereby grants to the County and the County accepts from the Contractor, subject to the terms and conditions of this Contract, a perpetual, irrevocable, royalty-free, non-exclusive, license to use the Software Products in this Contract (hereinafter referred to as "Software Products").
- a. The County may use the Software Products in the conduct of its own business, and any division thereof.
 - b. The license granted above authorizes the County to use the Software Products in machine-readable form on the County's computer system located at the site(s) specified in the Scope of

Work. Said computer system and its associated units (collectively referred to as CPU) are as designated in the Scope of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the County to use the Software Products, in machine-readable form, on any other County CPU until the designated CPU is returned to operation.

- c. By written notice, the County may redesignate the CPU in which the Software Products are to be used provided that the redesignated CPU is substantially similar in size and scale at no additional cost. The redesignation shall not be limited to the original site and will be effective upon the date specified in the notice of redesignation.
- d. Acceptance of Commercial Software (including third party Software) and Custom Software will be governed by the terms and conditions of this Contract and no separate agreement.

34. Protection of Proprietary Software and Other Proprietary Data:

- a. The County agrees that all material appropriately marked or identified in writing as proprietary and furnished hereunder are provided for the County's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Vendor. The County agrees to take all reasonable steps to ensure that such proprietary data are not disclosed to others, without prior written consent of the Vendor, subject to the California Public Records Act.
- b. The County will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c. The County agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations in this Contract with respect to use, copying, modification, protection, and security of proprietary software and other proprietary data.

35. Acceptance Testing: Other than Certification Requirements, as defined in Attachment A, all Deliverables shall be provided to the County by Contractor in conformity with all requirements, specifications, Acceptance Criteria, and time periods set forth or referenced in this Contract. Contractor shall at all times utilize complete and thorough Acceptance Testing Procedures, and appropriate Acceptance Criteria, all of which shall be subject to review and approval by the County's Project Manager, and no such activities shall be deemed completed until all Acceptance Criteria, whether set forth in this Contract or set forth in any schedule hereto or otherwise mutually agreed upon by the Parties in writing, have been successfully met.

- a. Acceptance Testing: Following Contractor's notification to County that Contractor has completed any component or Deliverable identified in this Contract, at a mutually agreed scheduled time thereafter, County shall begin testing the component or Deliverable to determine whether such component or Deliverable conforms to the applicable specifications and/or standards (collectively, the "Acceptance Criteria"). County shall notify Contractor in writing within ten (10) business days of Contractor's notification of completion of the Deliverable either that: (a) the component or Deliverable meets the Acceptance Criteria and that acceptance of such component or Deliverable has occurred ("Acceptance"); or (b) the Acceptance Criteria have not been met and the reasons therefor. If the component or Deliverable is identified as being part of a larger, integrated system being developed thereunder, then any Acceptance under the terms of this subsection shall be understood as being conditional acceptance ("Conditional Acceptance"), and such component or Deliverable shall be subject to Final Acceptance, as described below.

- b. Cure: If County determines that a component or Deliverable does not conform to the applicable Acceptance Criteria, and that it is in the County's interest to allow Contractor time to correct the problem, County shall deliver to Contractor a written exception report describing the nonconformity (the "Exception Report"). Within ten (10) calendar days following receipt of the Exception Report, Contractor shall: (a) perform a Root Cause Analysis to identify the cause of the nonconformity; (b) provide County with a written report detailing the cause of, and procedure for correcting, such nonconformity; (c) provide County with satisfactory evidence that such nonconformity will not recur; and (d) use best efforts to correct critical errors (as determined by County) and use commercially reasonable efforts to correct all other errors reasonably requested by County and accepted by Contractor; provided, however, that if the nonconformity of critical errors is incapable of cure within such ten (10)-calendar-day period then, within such ten (10)-calendar-day period, Contractor shall present to County a mutually agreeable plan to cure such nonconformity within a reasonable amount of time. Upon Contractor's notice to County that Contractor has cured any such nonconformity, County shall retest the defective component or Deliverable for an additional testing period of up to thirty (30) calendar days or such other period as the Parties may mutually agree upon in writing, at the end of which period the process described in subsection (b) above shall be repeated. In the event County rejects Deliverable(s) a second time and Contractor disagrees with such rejection, then the Parties shall escalate the issue(s) to senior management of both Parties for mutual resolution.
- c. Final Acceptance: Upon achievement of Conditional Acceptance for all identified components or Deliverables, County shall begin testing the system that is comprised of such components or Deliverables using the applicable test procedures and standards to determine whether such system performs as an integrated whole in accordance with the Acceptance Criteria. After County has completed such testing or upon expiration of the testing period (the "Final Acceptance Testing Period"), County shall notify Contractor in writing that: (a) the system, and all components and Deliverables that are a part thereof, meet the Acceptance Criteria and that final acceptance of the system and such components and Deliverables has occurred ("Final Acceptance"); or (b) that the Acceptance Criteria have not been met and the reasons therefor. If County determines that the Acceptance Criteria have not been so met, the process described in subsection (b) above shall be initiated, with all references to "component or Deliverable" being references to the "system," and all references to the "Acceptance Testing Period" being references to the "Final Acceptance Testing Period." Neither Conditional Acceptance, Acceptance nor Final Acceptance by County shall constitute a waiver by County of any right to assert claims based upon defects not discernible through conduct of the applicable test procedures and subsequently discovered in a component or Deliverable or the system following County's Final Acceptance thereof. Nothing else, including County's use of the system, or any component thereof, shall constitute Final Acceptance, affect any rights and remedies that may be available to County and/or constitute or result in "acceptance" under general contract law, any state uniform commercial code, or any other law.

36. Stop Work:

- a. The County may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to forty-five (45) days after the Stop Work Order is delivered to the Contractor, and for any further period to which the Parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this paragraph. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of forty-five (45)

days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the Parties shall have agreed, the County shall either:

- i. Cancel the Stop Work Order; or
 - ii. Terminate this Contract in whole or in part in writing as soon as feasible. County will provide thirty (30) days' advance notice of the termination of the Contract to Contractor if a Stop Work Order has been issued by County.
- b. If a Stop Work Order issued under this paragraph is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The County shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
- i. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
 - ii. The Contractor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if the County decides the facts justify the action, the County may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c. If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated, Contractor will be paid for accepted Deliverables, and for all work in progress properly performed in accordance with this Contract through the effective date of termination based on a reasonable percentage of completion.
- d. The County shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this paragraph.

37. **Data Location:** Except where Contractor obtains the County's prior written approval, the physical location of Contractor's data center where County Data is stored shall be within the Continental United States.

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

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

- a. **Security and Policies** – All performance under this Contract, shall be in accordance with the County's security requirements, policies, and procedures as set forth above and as modified, supplemented, or replaced by the County from time to time, in its sole discretion, by providing Vendor with a written copy of such revised requirements, policies, or procedures reasonably in advance of the date that they are to be implemented and effective (collectively, the "Security Policies"). Vendor shall at all times use industry best practices and methods with regard to the prevention, detection, and elimination, by all appropriate means, of fraud,

abuse, and other inappropriate or unauthorized access to County systems accessed in the performance of services in this Contract.

- b. **Information Access** – The County may require all Vendor personnel performing services under this Contract to execute a confidentiality and non-disclosure agreement concerning access protection and data security in the form provided by County. The County shall authorize, and Vendor shall issue, any necessary information-access mechanisms, including access IDs and passwords, and in no event shall Vendor permit any such mechanisms to be shared or used by other than the individual Vendor personnel to whom issued. Vendor shall provide its personnel with only such level of access as is required for such individual to perform his or her assigned tasks and functions. All County systems, and all data and Software contained therein, including County data, County hardware and County software, used or accessed by Vendor: (a) shall be used and accessed by such Vendor solely and exclusively in the performance of their assigned duties in connection with, and in furtherance of, the performance of Vendor's obligations hereunder; and (b) shall not be used or accessed except as expressly permitted hereunder, or commercially exploited in any manner whatsoever, by Vendor, at any time.
- c. **Enhanced Security Procedures** – The County may, in its discretion, designate certain areas, facilities, or systems as requiring a higher level of security and access control. The County shall notify Vendor in writing reasonably in advance of any such designation becoming effective. Any such notice shall set forth in reasonable detail the enhanced security or access-control procedures, measures, or requirements that Vendor shall be required to implement and enforce, as well as the date on which such procedures and measures shall take effect. Vendor shall fully comply with and abide by all such enhanced security and access measures and procedures as of such date.
- d. **Breach of Security** – Any breach or violation by Contractor of any of the foregoing shall be deemed a material breach of a material obligation of Contractor under this Contract and may be deemed an incurable and material breach of a material obligation of Contractor under this Contract resulting in termination.
- e. **Conduct on County Premises** – Contractor shall, at all times, comply with and abide by all reasonable policies and procedures of the County (or that may be established thereby, from time to time) that pertain to conduct on the County's premises, possession, or distribution of contraband, or the access to, and security of, the Party's real property or facilities, to the extent that the Contractor has been provided with a copy of each such policy or procedure. Contractor shall exercise due care and diligence to prevent any injury to persons or damage to property while on the other Party's premises. The operation of vehicles by either Party's personnel on the other Party's property shall conform to posted and other applicable regulations and safe-driving practices. Vehicular accidents occurring on a Party's property and involving either Party's personnel shall be reported promptly to the appropriate Party's personnel. Each Party covenants that at all times during the Term, it, and its employees, agents, and subcontractors shall comply with, and take no action that results in the other Party being in violation of, any applicable federal, state, and local laws, ordinances, regulations, and rules. Each Party's personnel shall clearly identify themselves as the appropriate Party's personnel and not as employees of the other Party. When on the other Party's premises, each Party's personnel shall wear and clearly display identification badges or tags, as approved by the other Party.
- f. **Security Audits** – Each Contract year, County may perform or have performed security reviews and testing based on an IT infrastructure review plan. Such testing shall ensure all



pertinent County security standards as well as any customer agency requirements, such as federal and state requirements.

39. **Liquidated Damages:** It is agreed by and between the Contractor and the County that if this Contract is not fully and completely performed within the terms of the Contract, damage will be sustained by the County. Said damage includes any additional costs resulting from a delay in scheduled time frames by the Contractor. Since it is and will be impractical and extremely difficult to determine the actual damage which the County will sustain by reason of such delay, it is therefore agreed that Contractor will pay to the County liquidated damages in a set amount of \$1,000 for each and e

SIGNATURE PAGE

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

Contractor*

Ravi Kallem	President
Print Name	Title
	September 7, 2018
Signature	Date
Alka Gupta	Secretary
Print Name	Title
	September 7, 2018
Signature	Date

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

The first corporate officer signature must be one of the following: 1) the Chairman of the Board; 2) the President; 3) any Vice President.

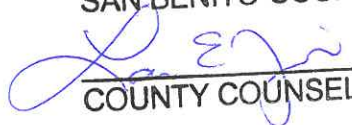
The second corporate officer signature must be one of the following: 1) Secretary; 2) Assistant Secretary; 3) Chief Financial Officer; 4) Assistant Treasurer.

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

County of San Benito, a political subdivision of the State of California

Print Name	Title
Signature	Date

APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL

 9/6/2018
COUNTY COUNSEL DATE

ATTACHMENT A

SCOPE OF WORK

A. Background: Growth and Changing Trends

1. California Election Laws and Regulations.

Electronic Poll Books require Certification by the California Secretary of State's office by March 31, 2018.

The Electronic Poll Books shall also meet all applicable requirements of federal law and State of California law/rules that address accessibility of Voting Systems. These laws/rules include:

- a. The Help America Vote Act (HAVA) of 2002
- b. The Americans with Disabilities Act (ADA) of 1990
- c. The Federal Rehabilitation Act
- d. The Voting Rights Act (VRA) of 1965
- e. State of California Elections Code

B. Services to be Provided:

1. Scope of Vendor Services

Contractor shall provide the Scope of Services in a professional manner using only individuals of suitable training and skill. Contractor shall provide the following services for an Electronic Poll Book Solution as follows:

- a. System development, delivery, installation, testing, and appropriate operational diagnostics.
- b. Software and hardware improvements, upgrades, and modifications throughout the term of the agreement.
- c. County staff training.
- d. Complete system testing during minor elections within the County. Should the County not hold a minor election with which to fully test the system, Contractor will provide a comprehensive test election to fully exercise the system.

2. Training of County Employees

Contractor shall provide a comprehensive program to train County staff in all aspects of the use of the proposed system. After this training, County staff will be able to fully utilize and support the proposed system without the intervention of Contractor staff.

3. Primary and Supplemental Services

Contractor agrees to provide services to the County required for the development, implementation, and continued support of the system during the term of the agreement. These services will include any supplemental services that are requested by the County and added to the scope or supplemental services that the Contractor deems a requirement to deliver quality services.

4. Deliverables

Contractor shall provide all Deliverables necessary for an all-inclusive solution of products and services necessary for the successful acquisition and implementation of new voting technology for a Check-In Management Solution, including twenty-four (24) Electronic Poll Books with a dashboard solution for the County to support the conducting of successful elections.

ATTACHMENT B
FEES, COMPENSATION, AND PAYMENT

A. Compensation:

This is a firm fixed fee Contract between the County and the Contractor for Electronic Poll Books as set forth in Attachment A, "Scope of Work," as defined by Exhibit A.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for perform all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the fixed rates specified herein unless authorized by amendment in accordance with Articles C, Amendments of the County Contract Terms and Conditions.**

The County shall have no obligation to pay any sum in excess of the fixed rates specified herein for the proposed Check-In Management solution including all listed hardware, software, project labor, material and annual maintenance as defined herein.

B. Payment:

1. Hardware Costs:

Item #	Description	Make	Model	Cost Per Unit	QTY	Total
01	iPad	Apple	iPad 5 th generation	\$329	24	\$7,896
02	Epson TM-m30 Bluetooth Printer	Epson	TM-m30	\$269	24	\$6,456
03	Flip & Share Case/Stand	Tenex	2.2	\$85	24	\$2,040
04	Transport Case for One Complete Unit	Gemstar	Sentinel 1116-6	\$100	24	\$2,400
05	10-foot Apple MFi Certified Charging Cables for iPad	Belkin	N/A	\$15	24	\$360
Subtotal						\$19,152.00
Tax (7.75%)						\$1,484.28
Grand Total						\$20,636.28

(Continued)

2. Software Costs: County shall pay the following fees for the purchase of the initial quantity of Precinct Central Touchpad Licenses as stated below. Contractor shall provide any additional licenses at no additional cost to the County.

Item #	Description	Make	Model	Cost Per Unit	QTY	Total
01	Precinct Central Touchpad License	Tenex	4.0.0	\$600	24	\$14,400
02	Data Conversion Software License (Precinct Central Data Studio)	Tenex	4.0.0	Included	1	\$0.00
03	Management System Software License (Precinct Central Console)	Tenex	4.0.0	Included	1	\$0.00
04	Dedicated Cloud Server	Amazon	AWS	Included	1	\$0.00
Grand Total						\$14,400.00

3. Project Labor Cost:

Item No.	Description	Cost Per Unit	QTY	Total
01	Device configuration and shipping	\$25	24	\$600
02	Training	\$2,200/day	2	\$4,400
Grand Total				\$5,000.00

4. As Needed Additional Costs:

Description	Cost Per Unit
Support per Election Event Day	\$1,000/ Per Day
Additional On-Site Support	\$2,000/ Per Day (1 Day min. with 2-Days of Travel)
County Specific Training Videos	\$175/ dev. Hour (6-hour minimum per video)
On-Site Travel (If Needed for Video)	\$1,600/day (3-day minimum)
Printing Training Guides	\$10/ Per guide
Online Help Guides	Included

5. Annual Maintenance for Touchpad Software Support including but not limited to: warranty, operations, maintenance, licensing, application and election support to the County.

Item No.	Description	Cost Per Unit	QTY	Total
01	Touchpad Software Annual Maintenance and Licensing for Year 1	Included	24	\$0.00
02	Touchpad Software Annual Maintenance and Licensing for Year 2	\$125	24	\$3,000
03	Touchpad Software Annual Maintenance and Licensing for Year 3	\$125	24	\$3,000
04	Touchpad Software Annual Maintenance and Licensing for Year 4	\$125	24	\$3,000
05	Touchpad Software Annual Maintenance and Licensing for Year 5	\$125	24	\$3,000
06	Pre-Election Consultation & Support	Included	N/A	\$0.00
07	Post-Election Consultation Support	Included	N/A	\$0.00
08	Management System Maintenance Years 1-5	Included	N/A	\$0.00
09	Set-up and Configuration of Data	Included	N/A	\$0.00
10	Data Analysis	Included	N/A	\$0.00
11	Out-of-the-box Software customization	Included	N/A	\$0.00
12	Data Validation	Included	N/A	\$0.00
13	Database Generation and Updates	Included	N/A	\$0.00
14	Voter History Generation and Updates	Included	N/A	\$0.00
15	Report Generation	Included	N/A	\$0.00
16	Data Extraction and Generation Scripts	Included	N/A	\$0.00
17	Election Day Software Component Monitoring	Included	N/A	\$0.00
18	Server Capacity Management	Included	N/A	\$0.00
Grand Total				\$12,000

C. Schedule

1. County shall pay Vendor for Services according to the following schedule:

TABLE A				
Payment Deliverable Schedule				
Deliverable Name	Deliverable Description and Acceptance Criteria	Delivery Date	Deliverable Fixed Price	Invoice Amount
Project Commencement	50% of contract amount (less post implementation support) will be invoiced to purchase hardware and facilitate the beginning of the project	Upon Execution of Contract	\$20,018.14	\$20,018.14
Acceptance Testing/Signoff Completion	When all equipment has been delivered and acceptance tested by county.	Written Acceptance Completed	\$20,018.14	\$20,018.14
Annual License	Touchpad Annual License Year 2	1 Year After Execution of Contract	\$3,000.00	\$3,000.00
Annual License	Touchpad Annual License Year 3	2 Years After Execution of Contract	\$3,000.00	\$3,000.00
Annual License	Touchpad Annual License Year 4	3 Years After Execution of Contract	\$3,000.00	\$3,000.00

2. Warranty shall be provided as follows:

TABLE B		
Post-Implementation Support Cost Table		
Warranty Category	Warranty Period (Years)	Post Warranty
Operations Support	1	Included in Annual Maintenance
Maintenance Support	1	Included in Annual Maintenance
Application/ Software Support	Included in Annual Maintenance	Included in Annual Maintenance

D. Price Increase/Decreases:

No price increases will be permitted during the first period of the Contract. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of San Benito. The County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.

E. Firm Discount and Pricing Structure:

Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.

F. Contractor's Expense:

The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.

G. Payment Terms

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

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of San Benito for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments will be made based upon the Deliverable schedule specified above (payment upon completion of a Deliverable). Payments shall consist of the total due for the Deliverable, less ten (10) percent retention. The retained amount shall be paid ninety (90) days after the completion of all Contract requirements in accordance with Paragraph F, Acceptance/Payment.

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

- a. Perpetual License and Implementation: For all Perpetual License and Implementation and Integration charges, invoices shall be submitted to the address specified below, upon acceptance of the Software by County, in accordance with Paragraph 35, "Acceptance Testing," of this Contract.
- b. Recurring Annual Fees: Invoices for any annual software maintenance shall be submitted annually in to the address specified below.
- c. Training: For all training charges, invoices shall be submitted in arrears upon completion of training services.

G. Taxpayer ID Number:

The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.

H. Payment – Invoicing Instructions:

The Contractor will provide an invoice on Contractor's letterhead for services rendered. Each invoice will have a number and will include the following information:

- a. Contractor's name and address
- b. Contractor's remittance address (if different from 1 above)
- c. Name of County Agency/Department
- d. County Contract Number (TBD-_____)
- e. Date of Order
- f. Product/Service Description, Quantity, and Prices
- g. Sales Tax, if applicable
- h. Contractor's Federal I.D. number
- i. Total

Invoice(s) are to be sent to:

The County of San Benito
Department of Elections
Attn: Accounts Payable
440 Fifth Street, Room 205
Hollister, CA 95023

ATTACHMENT C
STAFFING PLAN

The Proposer should demonstrate that it employs a competent team of people that are readily available to work on this project. All proposed key project personnel, including subcontractor staff, must be identified in the Proposal. Each person's role must be identified and documented in the following format:

Provide a list of the Classification, role/positions, onsite hours per month, and duration of assignment for each of your personnel that may be assigned to the project. Substitution or addition of Contractor's key personnel in any given category or classification shall be allowed only with prior written approval of the County.

1. Key Personnel

Classification /Designation	Role/Position	Hours (Per Month)	Duration
Bradley Campbell	Trainer	20	2 months
Ashley Ellison	Project Manager	20	6 months
Matt Moreno	Data Manager	20	6 months

Contractor understands that the individuals represented as assigned to the Contract must remain working on the Contract throughout the duration of the Contract unless otherwise requested or approved by County. Substitution of Contractor's Key Personnel shall be allowed only with prior written approval of County's Project Manager.