City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685

Software Maintenance Agreement
between the City and County of San Francisco and

DFM Associates
1000023129

This Agreement is made this **27 day of September, 2021**, in the City and County of San Francisco ("City"), State of California, by and between DFM Associates, 10 Chrysler, Suite A, Irvine, California, 92618, ("Contractor") and City.

Recitals

WHEREAS, the Department of Elections ("Department") wishes to obtain software maintenance and support services from Contractor; and

WHEREAS, the Department previously purchased perpetual software licenses from Contractor for use of Contractor's Election Information Management System (EIMS) in the June 1, 2011 Agreement; and

WHEREAS, Contractor represents and warrants that it has the authority and it is qualified to perform the maintenance services required by City as set forth under this Agreement; and.

Now, THEREFORE, the parties agree as follows:

Article 1   Definitions

The following definitions apply to this Agreement:

1.1   "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein.

1.2   "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and OCA.

1.3   "Contractor" means DFM Associates, 10 Chrysler Suite A, Irvine, California, 92618.

1.4   "Documentation" means the technical publications relating to the use of the Licensed Software, such as reference, installation, administrative and programmer manuals, provided by Contractor to City.

1.5 "Errors, Defects and Malfunctions" means either a deviation between the function of the Software and the Documentation furnished by Contractor for the Software, or a failure of the Software which degrades the use of the Software.

1.6 "Fix" means repair or replacement of source, object or executable code in the Software to remedy an Error, Defect or Malfunction.

1.7 "Licensed Software" or "Software" means the proprietary computer software programs identified in Appendix A, all related materials, Documentation, all corrections, patches or updates thereto, and other written information received by City from Contractor, whether in machine-readable or printed form.

1.8 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.9 "Party" or "Parties" means, respectively, the City and Contractor either individually or collectively.

1.10 "Patch" means a temporary repair or replacement of code in the Software to remedy an Error, Defect or Malfunction. Patches may be made permanent and released in Subsequent Releases of the Software.

1.11 "Priority Category" means a priority assigned to an Error, Defect or Malfunction, designating the urgency of correcting an Error, Defect or Malfunction. Assignment of a Priority Category to an Error, Defect or Malfunction is based on City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.

1.12 "Priority Protocol" mans a priority based on the Priority Category, rules specifying the turnaround time for correcting Errors, Malfunctions and Defects; escalation procedures, and personnel assignment.

1.13 "Subsequent Release" means a release of the Software for use in a particular operating environment which supersedes the Software. A Subsequent Release is offered and expressly designated by Contractor as a replacement to a specified Software product. A Subsequent Release will be supported by Contractor in accordance with the terms of this Agreement. Multiple Subsequent Releases may be supported by Contractor at any given time.

1.14 "Support Services" means the Software support service required under this Agreement. Support Services include correcting an Error, Defect or Malfunction; providing telephone and/or online support concerning the installation and use of the Software; training in the installation and use of the Software; on-site consulting and application development services; detection, warning and correction of viruses; and disabled/disabling code.

1.15 "Upgrade" means either an enhancement to the Software code to add new features or functions to the system or software programming revisions containing corrections to Errors, Defects and Malfunctions that have been reported by users or discovered by the Contractor.

1.16 "Workaround" means a change in the procedures followed or end user operation of the software to avoid an Error, Defect or Malfunction without significantly impairing functionality or degrading the use of the Software.

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the Department. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the Department, unless otherwise indicated by the context.

Article 2   Term of the Agreement

2.1   **Term of Licensed Software Maintenance Support Services.**

2.1.1   **Term.** The term of the Software Maintenance Agreement shall commence on **10/01/2021** and expire on **09/30/2031**, unless earlier terminated as otherwise provided herein.

Article 3   Financial Matters

3.1   **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2   **Guaranteed Maximum Costs**. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 12.5, "Modification of this Agreement."

3.3 **Compensation.**

3.3.1 **Calculation of Charges.**

(a)   Contractor shall provide an invoice to the City on a monthly basis for goods delivered and/or Services completed in the immediate, preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for goods and/or Services identified in the invoice that the City, in his or her sole discretion, concludes has been satisfactorily performed. In no event shall the amount of this Agreement exceed $1,911,000. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges." In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any services covered by this Agreement.

(b)   **Annual Maintenance and Support Charges.** Annual maintenance and Support Services charges are fixed by the Calculation of Charges for 10 years.

3.3.2 **Payment Limited to Satisfactory Services and Delivery of Goods.** Contractor is not entitled to any payments from City until City approves the goods and/or Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory delivery of goods and/or Services even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. Goods and/or Services delivered pursuant to this Agreement that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.3 **Withhold Payments.** If Contractor fails to provide goods and/or Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 **Invoice Format**. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of goods delivered or Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.5 **Payment Terms.**

(a)   **Payment Due Date**: Unless City notifies the Contractor that a dispute exists, Payment shall be made within 30 calendar days, measured from the date of receipt of the invoice, as set forth in Appendix B (Calculation of Charges). Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted electronic payment to Contractor.

(b)　　**Reserved (Payment Discount Terms)**

(c)　　No additional charge shall accrue against City in the event City does not make payment within any time specified by Contractor.

3.3.6　**Reserved. (LBE Payment and Utilization Tracking System)**

3.3.7　**Getting paid by the City for Goods and/or Services.**

(a)　　The City and County of San Francisco utilizes the Paymode-X® service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b)　　At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system (PeopleSoft) via eSettlement. Refer to https://sfcitypartner.sfgov.org/pages/training.aspx for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through sfemployeeportalsupport@sfgov.org.

3.3.8　**Reserved (Grant Funded Contracts).**

3.4　**Audit and Inspection of Records**. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5　**Submitting False Claims**. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code § 21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6   **Reserved. (Payment of Prevailing Wages)**

Article 4   License

4.1   **Grant of License.** The Parties hereby acknowledge the City's previous payment of the applicable one-time license fee, receipt of which is hereby acknowledged by Contractor, Contractor did grant and continues to grant City a non-exclusive and non-transferable perpetual license to use the Licensed Software, EIMS, listed in Appendix A. City acknowledges and agrees that the Licensed Software is the proprietary information of Contractor and that this Agreement grants City no title or right of ownership in the Licensed Software.

Article 5   Services and Resources

5.1   **Services Contractor Agrees to Perform**. Contractor agrees to perform the maintenance and Support Services provided for in this Agreement.

5.2   **Qualified Personnel**. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

5.3   **Subcontracting**.

5.3.1   Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 11 ("Additional Requirements Incorporated by Reference") of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

5.3.2   Contractor will not employ subcontractors.

5.4   **Independent Contractor; Payment of Employment Taxes and Other Expenses.**

5.4.1   **Independent Contractor**. For the purposes of this Section 5.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor

shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

5.4.2 **Payment of Employment Taxes and Other Expenses**. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 5.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

5.5 **Assignment**. The licensing, maintenance and Support Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from

transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

Article 6   Software Maintenance

6.1   Maintenance and Support Services.

6.1.1   **Maintenance and Support Services.** Contractor will provide City with Maintenance and Support Services for the Licensed Software, EIMS, as set forth in Appendix C (Maintenance and Support Services) and as follows: (i) Contractor will provide such assistance as necessary to cause the Licensed Software to perform in accordance with the Specifications as set forth in the Documentation; (ii) Contractor will provide, for City's use, whatever improvements, enhancements, Upgrades, extensions and other changes to the Licensed Software Contractor may develop, and (iii) Contractor will update the Licensed Software, as required, to cause it to operate under new versions or releases of the operating system specified in this Agreement so long as such updates, or Upgrades, are made generally available to Contractor's other licensees.

Article 7   Insurance and Indemnity

7.1.1   **Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a)   Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. Reserved (Commercial Automobile Liability Insurance).

(b)   Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than $1,000,000 each accident, injury, or illness.

(c)   Reserved (Professional Liability Insurance).

(d)   Reserved (Technology Errors and Omissions Liability Coverage).

(e)   Reserved (Cyber and Privacy Coverage).

(f)   Reserved. (Pollution Liability Insurance)

7.1.2 **Additional Insured Endorsements**

(a)   The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b)   Reserved. (Commercial Automobile Liability Insurance Insured Endorsement).

(c)   Reserved. (Pollution Auto Liability Insurance Additional Insured Endorsement)

7.1.3   Waiver of Subrogation Endorsements

(a)   Reserved. (Workers Compensation Insurance Waiver of Subrogation Endorsement)

7.1.4   Primary Insurance Endorsements

(a)   The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b)   Reserved. (Commercial Automobile Liability Insurance Primary Insurance Endorsement

(c)   Reserved. (Pollution Liability Insurance Primary Insurance Endorsement)

7.1.5   Other Insurance Requirements

(a)   Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 entitled "Notices to the Parties."

(b)   Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c)   Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(d)   Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e)   Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f)   If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the

City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

7.2 **Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorney's fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Maintenance Agreement.

Article 8   Liability of the Parties

8.1 **Liability of City**. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1 ("PAYMENT") OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

8.2 **Liability for Use of Equipment**. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor,

or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

8.3 **Reserved (Liability for Incidental and Consequential Damages)**.

8.4. **Express Warranty - Licensed Software.** Contractor warrants, for the sole benefit of the City and no other person or entity, that the Licensed Software, EIMS, shall be capable of performing to the specifications contained in the Documentation and Appendix A (Licensed Software Description). This is Contractor's sole express warranty with respect to the Licensed Software. Any claim by the City against Contractor for breach of its express warranty must be in writing and must be promptly delivered by the City to Contractor. In the event of any breach of Contractor's express warranty, the City's sole and exclusive remedy against Contractor, and Contractor's sole and exclusive liability to the City, shall be that Contractor, at its sole cost and expense, shall exercise good faith (for all purposes of this Agreement, the term "good faith" shall have the same meaning as that term is defined and used in California Commercial Code Section 1201) reasonable efforts to provide adequate programming services to correct such inherent defect, as Contractor and the City deem necessary or appropriate.

Warranty service performed in accordance with this Section shall be performed during normal weekday business hours, excluding legal holidays. With respect to any reported errors that result or will result in significant interruption of the City's productivity or down time ("Business Impacting Failures"), Contractor shall use its best efforts to begin error correction procedures within twenty-four (24) hours after receipt of such report. With respect to any reported errors that do not constitute Business Impacting Failures, Contractor shall use its good faith reasonable efforts to begin error correction procedures no later than seventy-two (72) hours after receipt of such report. Contractor's sole and exclusive obligation under the foregoing warranty shall be to exercise its good faith reasonable efforts to implement appropriate error corrections in response to notices from the City of such errors.

8.5. **Warranty Limitations - Licensed Software.** Notwithstanding the warranty provisions set forth in Section 8.4 above, Contractor's obligations with respect to such warranties shall be contingent upon the Department's use of the Licensed Software in accordance with this Agreement and in accordance with instructions provided by Contractor from time to time, including those set forth in the Documentation, as the same may be amended, supplemented or modified from time to time. Contractor shall have no warranty obligation:

(a) With respect to any portion of the Licensed Software which has been:

(i) Operated by the City or its employees, agents, contractors, subcontractors or licensees in a manner inconsistent with the requirements set forth in the Documentation, or that has been modified by any party other than Contractor;

(ii) Damaged in any manner by any cause other than any act or omission of Contractor;

(iii) Operated or maintained in environmental conditions outside the parameters designated by Contractor in the Documentation;

(iv) Reinstalled without the prior written consent of Contractor; or

(v) Determined by Contractor to have an error or defect, which fact is conveyed to the Department together with supplemental instructions on how to avoid or

circumvent the Error, Defect or Malfunction, and the City fails or refuses to follow the supplemental instructions.

       (b)   As a result of, or in any way connected with, any error or defect in the Department's Windows Operating System and/or any application software provided by any Third-Party Software Vendor; provided, however, in such event Contractor will use its good faith reasonable efforts to resolve the problem to the extent that a resolution is reasonably available by reprogramming the Contractor's software.

       (c)   As a result of, or in any way connected with, the City's failure or refusal to use its Windows Operating System or to upgrade its Computer Hardware as requested by Contractor; or

       (d)   As a result of, or in any way connected with, errors that result from errors in any of the Department's data.

    8.6.   **Disclaimer of Warranties - Licensed Software.** CONTRACTOR DOES NOT REPRESENT OR WARRANT THAT THE LICENSED SOFTWARE WILL BE FREE FROM ERRORS OR THAT ALL NON-MATERIAL ERRORS IN ANY LICENSED SOFTWARE WILL BE CORRECTED. THE WARRANTIES STATED IN SECTIONS 8.4 AND 8.5 ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY CONTRACTOR. THERE ARE NO OTHER WARRANTIES REGARDING THE LICENSED SOFTWARE, EIMS, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF DESIGN, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF CONTRACTOR HAS BEEN INFORMED OR IS OTHERWISE MADE AWARE OF SUCH PURPOSE. NO AGENT OF CONTRACTOR IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS OF CONTRACTOR.

    8.7   **Limitation on Liability and Remedy.** THE CITY ACKNOWLEDGES THE COMPLEXITY AND INTERRELATIONSHIPS OF EACH OF THE COMPONENT AND CONSTITUENT PARTS COMPRISING THE LICENSED SOFTWARE. THE CITY FURTHER ACKNOWLEDGES AND AGREES THAT THE AMOUNT WHICH CONTRACTOR IS CHARGING FOR THE LICENSED SOFTWARE DOES NOT INCLUDE ANY CONSIDERATION FOR ASSUMPTION BY CONTRACTOR OF THE RISK OF THE CITY'S INCIDENTAL OR CONSEQUENTIAL DAMAGES WHICH MAY ARISE OUT OF CONTRACTOR'S PERFORMANCE OF THIS AGREEMENT. ACCORDINGLY, THE CITY AGREES THAT CONTRACTOR SHALL NOT BE RESPONSIBLE TO THE CITY, OR ANY DEPARTMENT, AGENCY OR SUBDIVISION THEREOF, FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF CONTRACTOR'S PERFORMANCE OF THIS AGREEMENT.

The limitation set forth above shall not apply to liability resulting from the contractor's breach of the following sections:

    7.2. Indemnification

    3.5. Submitting False Claims

    7.   Insurance and Indemnity

The parties further stipulate and agree that the limitation set forth in this Section 8.7 shall not apply to damages caused by default, statutory damages specified in this Agreement, damages caused by Contractor's gross negligence, reckless conduct or willful acts or omissions, claims of bodily injury or wrongful death, punitive or treble damages, and that they do not intend for punitive or treble damages to be considered consequential, indirect or special damages for the purposes of this Agreement.

Article 9   Payment of Taxes

9.1   **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

9.2   **Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 10   Termination and Default

10.1   **Termination for Convenience.** City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective. In the event of such termination, Contractor will be paid for those services performed, pursuant to this Maintenance Agreement, to the satisfaction of the City up to the date of termination. In no event will City be liable for costs incurred by Contractor after receipt of notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on this Maintenance Agreement, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not authorized or reasonable under this section.

10.2   **Termination for Cause.** In the event Contractor fails to perform any of its obligations under this Maintenance Agreement, this Maintenance Agreement may be terminated and all of Contractor's rights hereunder ended. Termination will be effective after ten days written notice to Contractor. In the event of such termination, Contractor will be paid for those services performed under this Maintenance Agreement to the satisfaction of the City, up to the date of termination. However, City may offset from any such amounts due Contractor any costs City has or will incur due to Contractor's non-performance. Any such offset by City will not

constitute waiver of any other remedies City may have against Contractor for financial injury or otherwise.

        10.3   **Default**. Failure or refusal of Contractor to perform or do any act herein required shall constitute a default. In the event of any default, in addition to any other remedy available to the City, this Maintenance Agreement may be terminated by the City upon ten days' written notice. Such termination does not waive any other legal remedies available to the City.

        10.3.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

        (a)   Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims	Article 9	Payment of Taxes
5.5	Assignment	11.3	Alcohol and Drug-Free Workplace
Article 7	Insurance and Indemnity	12.10	Compliance with Laws

        (b)   Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

        (c)   Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

        (d)   A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

        10.3.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses

incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City. This Section 10.2.2 shall survive the termination of this Agreement.

10.3.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

10.3.4 Any notice of default must be sent by registered mail to the address set forth in Section 12.1 ("Notices to the Parties").

10.4   **Non-Waiver of Rights**. The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

10.5   **Rights and Duties upon Termination or Expiration.**

10.5.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	Article 9	Payment of Taxes
3.3.7(a)	Grant Funded Contracts – Disallowance	10.4	Non-Waiver of Rights
3.4	Audit and Inspection of Records		
3.5	Submitting False Claims	12.7	Agreement Made in California; Venue
5.3	Subcontracting	12.8	Construction
5.4	Independent Contractor; Payment of Employment Taxes and Other Expenses	12.9	Entire Agreement
5.5	Assignment	12.10	Compliance with Laws
Article 7	Insurance and Indemnity	12.11	Severability
8.1	Liability of City	12.12	Protection of Private Information
8.3	Liability for Incidental and Consequential Damages	12.15	Provisions Controlling

10.5.2 Subject to the survival of the Sections identified in Section 10.5.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City of any deliverables created for City pursuant to this Agreement, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Maintenance Agreement.

Article 11   Additional Requirements Incorporated by Reference

11.1   **Laws Incorporated by Reference**. The full text of the laws listed in this Article 11, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/.

11.2   **Conflict of Interest**. By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

11.3   **Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

11.4   **Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party

to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

Article 12   General Provisions

12.1   **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City:

John Arntz
Department of Elections
1 Dr Carlton B Goodlett Pl, #48
San Francisco, California 94102
john.arntz@sfgov.org

To Contractor:

Thomas G. Diebolt
DFM Associates
10 Chrysler Suite A,
Irvine, California, 92618.
tgdiebolt@dfmassociates.com

Any notice of default must be sent by trackable overnight mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

12.2   **Compliance with Americans with Disabilities Act**. Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

12.3   **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

12.4   **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code § 6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

12.5   **Modification of this Agreement**. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 12.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement.

12.6   **Dispute Resolution Procedure**.

12.6.1   **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

12.6.2   **Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

12.7   **Agreement Made in California; Venue**. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

12.8   **Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

12.9   **Entire Agreement**. This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 12.5, "Modification of this Agreement."

12.10   **Compliance with Laws**. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

12.11   **Severability**. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or

unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

12.12 **Confidential Information.** In the performance of Services, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

12.13 **Protection of Private Information.** Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

12.14 **Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Maintenance Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Maintenance Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two years. The Controller will not consider Contractor's use of profit as a violation of this section.

12.15 **Provisions Controlling.** Contractor agrees that in the event of conflicting language between this "Software Maintenance Agreement" and Contractor's printed form, the provisions of this "Software Maintenance Agreement" shall take precedence.

12.16 **Cooperative Drafting**. This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY

Recommended by:

DocuSigned by:

John Arntz

—0F561D2EB484497...

John Arntz, Director
Department of Elections

CONTRACTOR

DFM Associates

DocuSigned by:

Thomas Diebolt

—7D8AFFED507942D...

Mr. Thomas G. Diebolt, President
City Supplier Number: 21944

Approved as to Form:

Dennis J. Herrera
City Attorney

DocuSigned by:

Andrew Shen

By: _____
—5F1808C99621402...

Andrew Shen
Deputy City Attorney

Approved:

DocuSigned by:

Taraneh Moayed

—9AEA44694D514E7...

Sailaja Kurella
Acting Director of the Office of Contract
Administration, and Purchaser

Appendices
A: Licensed Software Description
B: Calculation of Charges
C: Maintenance and Support Services

Appendix A
Licensed Software Description

Contractor shall provide software maintenance and support services for its Election Information Management System (EIMS) in a manner that ensures EIMS meets the following performance specifications met under the original agreement.

EIMS must be capable of being modified to continue to meet all requirements of the California Elections Code and other applicable regulations and laws. These modifications are the responsibility of the Contractor with the updates provided to the Department.

In addition to and in conjunction with the services outlined in this Agreement and appendices, during the term of the Agreement the Licensed Software shall provide the following functions.

1.   Security

The Licensed Software shall provide features that ensure data file integrity, allow selective access, prevent unauthorized access, provide audit trails for work performed and provide audit trails of who performed the work. The Licensed Software shall be integrated with the Department's network log-on to allow access to the Licensed Software without requiring a separate user account.

2.   EIMS shall be fully integrated with VoteCal during the term of this contract. Contractor will implement any modifications necessary for EIMS to allow the Department to connect and interact with VoteCal.

3.   Entering and Verifying Voter Registration Information

The Licensed Software shall:

a.   Provide an efficient and logical means of storing scanned images such as registration cards and signatures.

b.   Allow for the modification of index fields for different versions of the California voter registration form.

c.   Provide screen layouts that are in a format consistent with current registration forms andable to be modified to match changes in the formatting of future California voter registration forms.

d.   Provide methods to verify the data entered into the licensed software.

e.   Permit scrolling forward and backward from point of entry, one screen at a time, throughspecific batches of voters or the entire table of registered voters.

f.   Ensure that any voter registering to vote will be eighteen (18) years of age on or before the next election.

g.   Produce, either in batch or on demand for individual voters, voter notification cards

onaccepted forms pursuant to California election code § 2155.

      h.   Provide an efficient mechanism to check for duplicate registrations.

      i.   Provide for the ability to prepare and print user-defined notices that either request additional registration information from registrants or give the reason for rejection when a voter registration affidavit is incomplete.

      j.   Have the capability of holding a voter record until the missing data is entered into thelicensed software.

      k.   Seamlessly interface with VoteCal.

4. Management of Street Addresses

The Licensed Software shall:

      a.   Permit the comparison of address files from other agencies against the Department's existingMaster Voter File, and establish street ranges based on the valid addresses in those files and flag inconsistent address information.

      b.   Provide for on-screen as well as printed reports of street address files by such means as alphanumerically by street name and address range or by precinct.

      c.   Be capable of producing a Precinct Street Index with alphabetic page breaks.

      d.   Provide for online or batch proliferation of street and/or precinct changes to the Master VoterFile.

      e.   Reflect the proliferation of street and/or precinct changes to the Master Voter File in the votertransaction history.

      f.   Permit duplicate or multiple streets within the county to have the same name and/or commonstreet numbers.

      g.   Utilize address ranges from 0 to 99999.

      h.   Define physical location of addresses: odd, even, or both sides of a street.

      i.   Provide the capability to apply single-point addressing to registration records.

5. "User Friendly" Features

The Licensed Software shall:

      a.   Display, with minimal user interaction with the Licensed Software, signature images andessential voter information such as residential addresses, mailing addresses, vote-by-mailstatus, and voter ID numbers, such as driver's license numbers and the last four digits of Social Security numbers.

      b.   Display intuitively the signature, voter registration image, and other attached documents.

      c.   Allow for quick, easy to access one-screen display of key voter data such as residential address, mailing address, active/inactive/cancelled status, ongoing vote-by-mail status,

precinct assignment, polling place location, voter history, voting districts, date of birth, andvoter ID numbers such as driver's license numbers and the last four digits of Social Securitynumbers.

    d.   Allow for custom-designed fields, user-defined text fields, user-defined field titles, etc. Thatcan be configured without requiring programming changes to the Licensed Software.

    e.   Enable a field that provides notice when a ballot or other document for specific voters areprocessed.

6.   **Automated Features**

The Licensed Software shall:

    a.   Allow the Department to implement Intelligent Character Recognition/Optical Character Recognition (ICR/OCR) processes to capture and store data from scanned voter registration forms and other documents. The ICR/OCR processes will allow for the creation of relevant indices for record retrieval purposes, the verification of data, the minimization of the numberof keystrokes necessary to review and verify the captured data, and the ability to identify fields that may not have scanned properly.

    b.   Allow for automated batch processing of bar-coded incoming envelopes (vote-by-mail ballots, undeliverable ballots, address changes, etc.). The batch of envelopes/postcards will be scanned in a high-speed scanner supported by third-party applications, and the voters' recordsretrieved and displayed side-by-side in the same order as the batch. The voters' records will be displayed concurrently with the scanned image of the envelope/card so processing can be completed.

    c.   Accept electronically the National Change of Address (NCOA) data from VoteCal and other sources. Name and address fields in the database must be structured and printed on mailings so as to conform with and allow update via the Address Change Service and/or NCOA.

    d.   Allow users to scan and digitally store voter registration cards and additional voter-related documents, create a signature clip and enable staff to re-clip signature when more recent signatures are received, while maintaining links to the previous signature files from withinspecific voters' files.

    e.   Provide for a quick and efficient means of uploading information obtained from scanningprecinct rosters and then updating and tracking individual voter histories.

7.   **Voter and Transaction history**

The Licensed Software shall:

    a.   Maintain records of all active and inactive voters in accordance with California state law.

    b.   Allow inquiry of registration information by name, address, date of birth, voter ID numbers,any combination thereof, and by using optional wildcard characters.

    c.   Provide an audit trail of all transactions on each voter record.

    d.   Record voter history for all elections without limit of time or the number of elections.

    e.   Provide a method to print confirmation letters to mail to voters whenever changes

occur totheir registration records.

      f.   Allow Department to manage voter status (inactive, cancelled, etc.) According to criteriaspecified by California state law.

      g.   Identify inactive voters and cancelled voters and provide a means to move an inactive voteror a cancelled voter to active status.

      h.   Provide for a means of producing reports of voting history by user-defined areas, districts, precincts, etc., in commonly accepted formats.

      i.   Produce daily audit trail reports for such actions related to changes, additions, deletions, etc.

      j.   Maintain a historical record of all transactions such as additions, deletions, changes, etc., andrecord all transactions according to user, terminal, date, and time.

8.   Accounting for Voter Registration Forms

The Licensed Software shall:

      a.   Provide methodologies that allow for the tracking of registration cards provided to individuals, campaigns, NVRA agencies, etc., for registration drives and a means of trackingthe registration forms as they are returned and entered into the Licensed Software.

      b.   Provide for the recording and reporting of the sources of registration information, e.g., DMV,Social Services, and other agency-based registration points listed under NVRA, for new applications or changes in registrant information.

      c.   Enable data entry using a display of a scanned image of voter registration forms.

      d.   Provide for the ability to record and report the source and "delivery" of registration information to the Department.

9.   Election Preparation and Management

The Licensed Software shall:

      a.   Permit the definition of multiple and possibly overlapping and concurrent elections.

      b.   Identify voters who are eligible for an election.

      c.   Allow for the extraction of relevant data necessary to print precinct rosters.

      d.   Define ballot styles required for each election based on jurisdictions and districts in eachelection.

      e.   Provide tools for determining number of ballots to order for each ballot style, exporting ballotstyles, assigning ballot styles to voters, and creating ballot data for use with department's voting system.

      f.   Allow for voter registration deadlines and eligible voters for multiple elections running ondifferent dates.

      g.   Allow for the entry of registration for people not eligible to vote in an upcoming

election butwho will be eligible in a succeeding election (i.e., under 18 years of age).

h.   Allow for voter registration for local elections after the 15-day close.

i.   allow for global or automated updates of all database tables.

j.   Record unaffiliated voters' party selections for primary elections in accordance with California state law.

k.   Support, in the future, regional polling centers with networked access to the voter registrationrecords contained the department's servers located in City Hall.

10. **Candidate Filing**

The Licensed Software shall:

a.   Provide a candidate profile that records, maintains, and tracks the candidate and associateddata, including but not limited to:

1.   Declaration of Intent to Solicit and Accept Contributions

2.   FPPC Form 501

3.   Signatures in Lieu of Filing Fee

4.   Withdrawal of Declaration of Intent or Declaration of Candidacy

5.   Ballot designation

6.   Whether a candidate qualified for the ballot

7.   Whether a candidate won a contest

8.   Notes and comments

And applies the data for the following functions:

1.   Calculating the dollar value of the Signatures in Lieu of Filing Fee

2.   Calculating/flagging period of time required to be domiciled in a county/state/district and/or registered to vote at the time potential candidates filean intent to run for specific offices

3.   Calculating/flagging the period of registration required to run for a partisan office

4.   Flagging candidates who live out of the district at the time a declaration of intentis filed

5.   Creating Certificates of Election for winning candidates

6.   Creating reports based on any of the above

And also provides the following alternate data fields, and the capability to selectivelyprint the data:

1.   Registered address

2.   Contact address

      3.   Public contact telephone number

      4.   Public e-mail address

    b.   Provide a candidate filing system with the ability to electronically transfer pertinent candidatedata to external systems such as the Department's voting system, and to outside entities by fax or e-mail.

    c.   Provide a candidate petition tracking capability and produce required statistical report; mustinclude computation of prorated filing fees and the number of supplemental signatures required.

    d.   Provide online inquiry by residence address to list a candidate's or voter's political subdivisions.

11. **Petition Processing**

The Licensed Software shall:

    a.   Allow for users to process and track progress in reviewing the names and signatures on filed petition.

    b.   interface with the signature verification system for comparison of signatures to the original voter registration signature.

    c.   Track and maintain an ongoing list of valid and invalid signatures by affidavit numbers.

    d.   Flag voter files to prevent acceptance of multiple signings on a petition by one person.

    e.   Establish customized 'challenge codes' for signatures not accepted and allow users to createor delete 'challenge codes' as needed.

    f.   Possess the capability of allowing the department to concurrently review multiple petitions.

    g.   Provide flexible reporting methods that allow for modifications.

    h.   Set required parameters for accepting petition signatures and enable automatic disqualification of signers due to wrong districts or party affiliations.

    i.   Effectively detect and track statistics for other reasons for disqualifying signers (no signaturematch, not registered, etc.).

    j.   Allow voter searches while in petition mode (by address, first name, last name, zip code, orcombinations of these).

12. **Vote-by-Mail Ballot Processing**

The Licensed Software shall:

    a.   Maintain records and transactions related to permanent vote-by-mail voters.

    b.   Maintain and track mailed and received ballots to voters for a particular election.

    c.   Alert users if a duplicate vote-by-mail ballot is requested and/or returned.

d.   Accept temporary mailing addresses, including out-of-county mailing addresses, with theoption of setting active dates for these addresses.

e.   Retain federal applications for registration and vote-by-mail voting for one year with theability to purge separately from non-federal applications.

f.   Accept updates to the original vote-by-mail voter information entered and be capable of suppressing the original information so that a replacement vote-by-mail ballot can be issued.

g.   Interface with automated signature verification systems and automated vote-by-mail sortingsystems.

h.   Retain and display information on whether a vote-by-mail ballot was issued to someone inperson, by regular mail, in a mailed ballot precinct, or by international mail.

i.   Print labels for the issuance and mailing of vote-by-mail ballots with the voter names, addresses, voter id numbers, precincts, election type and dates, and record in voters' historythat labels were printed for the issuance and mailing of vote-by-mail ballots.

j.   Track and print information for use during the official canvass of vote-by-mail ballots.

k.   Provide method to generate notices to mail-ballot voters and out-of-county voters.

l.   Support the exporting of voter data associated with the mass addressing of envelopes as wellas the exporting of voter data for "supplemental" one-time requests.

13. **Poll Worker Management**

The Licensed Software shall:

a.   Allow online maintenance, inquiry and reporting of information associated with the pollworkers assigned for each election.

b.   Automatically build and maintain files of current as well as prospective poll workers fromexisting voter files as well as high school poll workers who are not registered voters.

c.   Categorize and generate reports for poll workers by job title, alpha name sequence, foreignlanguage capability, function, and/or precinct number.

d.   Maintain an ongoing file of poll worker assignments, previous positions held, dates worked,training and testing completed.

e.   Maintain and track poll worker status categories such as: active, qualified, unqualified, "no-show," etc.

f.   Include the ability to log comments without overwriting existing comments in overlappingelections as well as rate poll workers on an individual basis.

g.   Automatically carry over assigned poll workers during precinct consolidations, sort them byrating, and retain their work history during all transfers.

h.   Include a training class component to assign, reassign, track and print training class schedulesand attendance lists and print information for all poll workers scheduled to attend a training class even when they may not be assigned to a polling place.

i.   Calculate payout data for poll workers and export data in flexible text and spreadsheet

formats.

  j. Track performance for each poll worker through a numerical rating system.

  k. Maintain files for poll workers even if their voter registration status becomes inactive or iscancelled.

  l. Have the ability to create ad-hoc files that the department can format for specific purposes.

  m. Produce the following reports and printed materials based on print job criteria specified.

    1. Assignment notices

    2. Master poll worker list

    3. Poll worker required/scheduled list

    4. Poll worker earning report

    5. Assigned poll worker list

    6. Poll worker mailing labels

    7. Training class attendance report

  n. Assist in the recruitment of poll workers by tracking contact information, including phonenumber lists, mailed letters, address labels, etc.

  o. Allow poll worker data to flow from voter database so voter address changes are shown inpoll worker module.

  p. Have the capability to assign different poll workers to the same precinct in an election, toaccommodate two separate days of polling place voting countywide.

14. **Polling Place Administration**

The Licensed Software shall:

  a. Establish, identify, and maintain information to include, but not be limited to, the followingfor each polling place:

    1. site name, precinct number, address, cross streets, contact name(s), and telephonenumber(s)

    2. precinct in which polling place is physically located, if outside of the boundaries ofassigned precinct(s)

    3. fees and rental charges

    4. additional supplies needed (table, chairs, extension cords, etc.)

    5. delivery requirements, instructions, schedule

    6. level and description of accessibility

    7. physical dimensions of polling place

8.   availability of parking, telephones, restrooms

9.   tax number of polling place owner

10.   poll worker(s) associated with a specific polling place

11.   comments on fields

b.   Maintain histories of polling sites, e.g., whether the polling site was available for use, if it wasused, and for what precinct it was used.

c.   Allow the storage of and linking to digital images that the department obtained during thesurveying of possible polling places.

d.   Provide for online and/or printed reports detailing historical use of polling places, current pollworker assignments, and accessibility surveys.

e.   Allow for the transfer of data to outside entities, e.g., local newspapers or websites for thepublication of assigned polling place sites.

f.   Display and print maps of polling place locations.

g.   Allow for precinct assignments for special elections that are different from those assignmentsused for primary and general elections.

h.   Assist in managing information related to polling place equipment and materials.

i.   Generate polling place change notices to mail to voters and allow for the option to issuepolling place change notices to candidates and campaigns.

j.   Track information about poll locations, e.g., dimensions of location, accessibility, block andlot information.

k.   Use separate modules to maintain a pool file of all poll locations and an election-specific file.

l.   Have the capability to assign different polling place locations to the same precinct in an election, to accommodate two separate days of voting at polling places countywide duringone election.

15. **Precinct Management**

The Licensed Software shall:

a.   Allow the establishment of district and precinct boundary lines in an efficient manner.

b.   Allow users to inquire about, set up, change or delete precinct boundary information.

c.   Maintain a historical record of all transactions such as additions, deletions, changes etc.Made in the precinct and/or district files according to user, terminal, date, and time.

d.   Provide the import/export of data using commonly accepted file formats.

e.   Provide a means to identify or link all of the districts associated with specific precincts.

f. Not allow for the deletion of a precinct number unless the total voter count for that precinct is zero.

g. Provide for online, user-maintained tables which will define all district political

h. Subdivision attributes such as congressional, legislative, municipal, school , etc., within the county.

i. Allow for the numeric and alpha naming of precincts and split precincts.

j. Allow re-precincting on a "what if" basis for testing proposed consolidation of precincts orcreating new districts which also includes graphically displaying precinct boundary lines.

k. Provide precinct locator street files that are compliant with U.S. Postal Service abbreviations and street naming conventions.

l. Seek to provide an interface with ArcView GIS software and other GIS databases.

m. Seek to allow for the import of ArcView files which have been modified to reflect redistricting or creating new districts and precincts.

n. Automatically assign voters to the correct precinct based on residential address matchedagainst the street file.

o. Allow for street names to have aliases.

p. Maintain boundaries for all jurisdictions and districts.

16. Election Reports

The Licensed Software shall have the capability to create flexible, customized reports on an ad-hoc basis. More specifically, the Licensed Software shall:

a. Export data to text files, Excel spreadsheets, and Access databases.

b. Provide export parameters that include: jurisdiction, date registered, date voted, date vote-by-mail ballot received, and permanent vote-by-mail voters.

c. Provide access to data tables or views of key data using an ODBC connection.

d. Provide secure, web-enabled features for voters to look up data about their registration.

e. Allow for the design and production of rosters with flexible layouts and precinct combinationoptions that are in compliance with HAVA requirement to flag certain first-time voters to provide identification.

f. Produce reports of various voter registration activities, including NVRA reports.

g. Download files of registered voters compliant with California Secretary of State requirements, including signature file embedded in voter records.

h. Create reports and generate correspondence to voters on an ad-hoc basis.

i. Ability to create new, user defined reports using Crystal Reports.

j. Incorporate access to pre-designed reports.

17. **Public Access Workstations:**

The Licensed Software shall:

      a.   Have the capability of suppressing selected data so that the Department can allow the publicto use the Licensed Software at accessible workstations in the Department's office to view non-confidential information.

18. **Phonebank/Customer Service**

The Licensed Software shall provide a phone bank/customer service module capable of:

      a.   tracking voter requests by inputting information into a transaction log.

      b.   printing labels instantly for the purpose of mailing election materials.

      c.   displaying and printing maps of polling place locations/directions, precinct lines, and/ordistrict lines,

      d.   printing a report/history of voter requests for, vote-by-mail ballots, voter registration cards,cancellations, etc.

      e.   Track organization, person, e-mail address, payment information, remarks, cost and processing time for voter record extracts.

Appendix B
Calculation of Charges

In accordance with Section 3.3 (Compensation) of this Agreement, the Contractor's total compensation under this Agreement is detailed below, inclusive of all costs required to complete all work specified in Appendix B. In no event shall the total costs under this Agreement exceed the amount provided in Section 3.3 of this Agreement.

Invoices and Insurance Documentation should be sent to: Department of Elections

1 Dr. Carlton B. Goodlett Place City Hall, Room 48

San Francisco, CA 94102-4608

Payments for Services

The City will pay Contractor for software maintenance and support fees associated with EIMS per the schedule below. Payments for deliverables will be paid on a "not-to-exceed" fixed price basis. "Not-to-exceed" means that Contractor shall perform its obligations under the Agreement for the amounts listed in the schedule below unless amended in accordance with Section 12.5 (Modification of Agreement). Partial payments will not be made for deliverables/tasks that are not completed.

Payments will be made by City to Contractor in advance for each pending year of service within 30 days after the City has received Contractor's invoice, provided that:

1) The City has accepted as satisfactory, in the City's sole and absolute discretion, the maintenance and support services for the prior year rendered by the Contractor to the City in accordance with this Agreement; and
2) Insurance documentation is current in accordance with Section 7 of the Agreement.
3)

Deliverable	Year One	Year Two	Year Three	Year Four	Year Five
Maintenance and Support*	$191,100	$191,100	$191,100	$191,100	$191,100
Deliverable	**Year Six**	**Year Seven**	**Year Eight**	**Year Nine**	**Year Ten**
Maintenance and Support*	$191,100	$191,100	$191,100	$191,100	$191,100

Contract Deliverables

Deliverable	Amount	Description
Maintenance and Support in Year One	$191,100	Due net 30 days from receipt of annual
Maintenance and Support in Year Two	$191,100	Due net 30 days from receipt of annual
Maintenance and Support in Year Three	$191,100	Due net 30 days from receipt of annual
Maintenance and Support in Year Four	$191,100	Due net 30 days from receipt of annual
Maintenance and Support in Year Five	$191,100	Due net 30 days from receipt of annual
Maintenance and Support in Year Six	$191,100	Due net 30 days from receipt of annual
Maintenance and Support in Year Seven	$191,100	Due net 30 days from receipt of annual
Maintenance and Support in Year Eight	$191,100	Due net 30 days from receipt of annual
Maintenance and Support in Year Nine	$191,100	Due net 30 days from receipt of annual
Maintenance and Support in Year Ten	$191,100	Due net 30 days from receipt of annual

Appendix C
Maintenance and Support Services

In addition to and in conjunction with the services outlined in this Agreement and appendices, during the term of the Agreement the Contractor shall provide the following services and support.

1. Maintenance

The Contractor shall provide the personnel and material required to perform maintenance of each component of the Licensed Software during the term of the Agreement.

In addition, the Contractor shall maintain a quality control system, covering all aspects of the design, fabrication, testing and delivery of the Licensed Software, including any modifications made thereto. This quality control system will include documentation of all inspections and tests performed on all components of the Licensed Software and any modifications made to the Licensed Software.

2. Troubleshooting and Technical Support

The Contractor shall provide prompt and thorough responses to all problems that arise concerning the Licensed Software.

In accordance with the Priority Categories listed in Section 3 below, the Contractor shall immediately respond to and resolve problems that arise on or close in time to the Department reporting problems to the Contractor. The Contractor shall provide a Project Manager either on-site or from a remote location for troubleshooting during the most critical periods of elections preparation, as specified by the Department, and during Election Day. In accordance with the Priority Categories, the Contractor shall promptly acknowledge each problem, propose a solution, and propose a timeline for the solution to be implemented. During the course of resolving the problem, the Contractor shall provide a means for the Department to track the troubleshooting process. The Contractor shall also document the problem, proposed solution, and actual solution inwriting to the Department. In addition, the Contractor shall track and maintain a written history of which components of the system experienced problems and the action taken to resolve the problems, and provide this record to the Department on a quarterly basis.

The Contractor shall provide support using on-line documentation of all processes. Additionally, the Contractor shall offer an on-line help feature allowing the Department to submit problems and receive resolution using this on-line feature.

The Department shall be able to simultaneously operate on separate servers the live version of the current Licensed Software, test versions of the same Licensed Software, and/or newer versions of the Licensed Software the Department has yet to put into service. The test versions of the software shall allow the Department to recreate problems occurring in the live version in order to resolve such problems, and to train personnel on upgraded versions of the software.

The Contractor shall provide operational support that will provide for real-time resolution of problems that develop while the Department uses the Licensed Software. The Contractor shall provide adequate personnel who have the skills necessary to provide operational support to the Department during the Department's critical use periods. During the term of the Agreement, the Contractor shall establish and staff a hotline with which the Department can phone or e-mail the Contractor to request resolution to problems with the Licensed Software. The Contractor must use City approved methods to securely connect to the Department's system to resolve problems and perform software upgrades.

3. Scope of Service Coverage

a. Contractor shall provide Support Services and provide Upgrades during the term of this Maintenance Agreement for the Licensed Software.

b. During the term of this Maintenance Agreement, Contractor will furnish Error, Defect or Malfunction correction in accordance with the Priority Categories listed below, based on the City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.

1) Priority 1: An Error, Defect or Malfunction which renders the Licensed Software inoperative; or causes the Licensed Software to fail catastrophically.

2) Priority 2: An Error, Defect or Malfunction which substantially degrades the performance of the Licensed Software, but does not prohibit the City's use of the Licensed Software.

3) Priority 3: An Error, Defect or Malfunction which causes only a minor impact on the use of the Licensed Software.

c. Contractor will furnish Error, Defect or Malfunction correction in accordance with the following protocols:

1) Priority 1 Protocol: Within two hours, Contractor assigns a product technical specialist(s) to diagnose and correct the Error, Defect or Malfunction; thereafter, Contractor shall provide ongoing communication about the status of the correction; shall proceed to immediately provide a Fix, a Patch or a Workaround; and exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Subsequent Release. Contractor will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect or Malfunction is corrected.

2) Priority 2 Protocol: Within four hours, Contractor assigns a product technical specialist(s) to diagnose the Error, Defect or Malfunction and to commence correction of the Error, Defect or Malfunction; to immediately provide a Workaround; to provide escalation procedures as reasonably determined by Contractor's staff; and to exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Licensed Software maintenance release.

3) Priority 3 Protocol: Contractor may include a Fix or Patch in the next Licensed Software major release.

4. Hotline Support.

Contractor shall provide remote access hotline support to City to help City answer routine questions with respect to the use of the Licensed Software. Contractor also shall provide remote access hotline support to City to initiate resolution of Priority 1 and Priority 2 Errors, Defects and Malfunctions. Hotline support shall be made available by phone between the hours of 8 a.m. and 6 p.m. Pacific time Monday through Friday, except legal holidays. Emergency maintenance may be accessed after normal business hours from Contractor by dialing (888) 336-6483. Hotline support shall be available by electronic bulletin board, electronic mail or other service 24-hours a day, seven-days a week. Responses to questions posted by electronic means will be made within the time frame established under Priority Protocols for an Error, Defect or Malfunction in the Licensed Software.

5. City Responsibilities Related to Support.

City shall use reasonable efforts to make available to Contractor reasonable access to the equipment on which City experienced the Error, Defect or Malfunction, the Licensed Software and all relevant documentation and records. City shall also provide reasonable assistance to Contractor, including sample output and diagnostic information, in order to assist Contractor in providing Support Services. City shall be responsible for the interface between the Licensed Software and other software products installed on City equipment. Unless otherwise agreed inwriting between City and Contractor, City is responsible for managing and operating any Software delivered under this Agreement.