BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

○ Award   ● Contract   ○ Grant

Requested Board Meeting Date: February 15, 2022

* = Mandatory, information must be provided

or Procurement Director Award: ☐

*Contractor/Vendor Name/Grantor (DBA):

Tenex Software Solutions, Inc. (Headquarters: Tampa, FL)

*Project Title/Description:

Tenex Election Desk Modules

*Purpose:

Award: Master Agreement No. MA-PO-22-080. This Master Agreement is for an initial term of one (1) year in the initial contract amount of $1,500,000.00 (including sales tax) and includes three (3) one-year renewal options in the annual award amount of $270,000.00 (including sales tax). Administering Department: Elections & Information Technology.

*Procurement Method:

Pursuant to Pima County Procurement Code 11.12.050, Sole source procurement, award of Requisition No. 22-104 is recommended to Tenex Software Solutions, Inc. which has accepted the terms of the County's Sole Source Procurement Agreement.

PRCUID: 436872

Attachment: Sole Source Procurement Agreement.

*Program Goals/Predicted Outcomes:

Securely enhance and improve current votice procedures using updated technology and equipment.

*Public Benefit:

A faster and easier voting experince for voters at each polling station; more efficient processing of provisional ballots resulting in timelier election results.

*Metrics Available to Measure Performance:

Comparison of the count of provisional ballots received at each polling site against the counts received previous years; reduction in funding required for staff to process provisional ballots.

*Retroactive:

No.

To: COB 01-21-22(1)
Pgs: 27
Vers: 1

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED
Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: <u>MA</u>   Department Code: <u>PO</u>   Contract Number (i.e., 15-123): <u>22-080</u>

Commencement Date: <u>02/15/2022</u>   Termination Date: <u>02/14/2023</u>   Prior Contract Number (Synergen/CMS): _____

☒ Expense Amount $ <u>1,500,000.00</u> *   ☐ Revenue Amount: $ _____

*Funding Source(s) required: <u>General Fund / HAVA Grant</u>

Funding from General Fund?   ⦿ Yes ○ No   If Yes $ _____   % <u>50</u>

Contract is fully or partially funded with Federal Funds?   ⦿ Yes ○ No

　 If Yes, is the Contract to a vendor or subrecipient? <u>Vendor</u>

Were insurance or indemnity clauses modified?   ○ Yes ⦿ No
　 If Yes, attach Risk's approval.

Vendor is using a Social Security Number?   ○ Yes ⦿ No
　 If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: _____   Department Code: _____   Contract Number (i.e., 15-123): _____

Amendment No.: _____   AMS Version No.: _____

Commencement Date: _____   New Termination Date: _____

                                                Prior Contract No. (Synergen/CMS): _____

○ Expense ○ Revenue   ○ Increase ○ Decrease   Amount This Amendment: $ _____

Is there revenue included?   ○ Yes ○ No   If Yes $ _____

*Funding Source(s) required: _____

Funding from General Fund?   ○ Yes ○ No   If Yes $ _____   % _____

Grant/Amendment Information (for grants acceptance and awards)   ○ Award ○ Amendment

Document Type: _____   Department Code: _____   Grant Number (i.e., 15-123): _____

Commencement Date: _____   Termination Date: _____   Amendment Number: _____

☐ Match Amount: $ _____   ☐ Revenue Amount: $ _____

*All Funding Source(s) required: _____

*Match funding from General Fund? ○ Yes ○ No   If Yes $ _____   % _____

*Match funding from other sources? ○ Yes ○ No   If Yes $ _____   % _____
　 *Funding Source: _____

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: <u>Procurememt Officer</u> Troy McMaster   *Digitally signed by Troy McMaster Date: 2022.01.19 15:02:05 -07'00'*   **Division Manager** Ana Wilber   *Digitally signed by Ana Wilber Date: 2022.01.20 07:38:20 -07'00'*

Department: <u>Procurement</u> Terri Spencer   *Digitally signed by Terri Spencer Date: 2022.01.20 08:41:43 -07'00'*   Telephone: <u>520.724.8728</u>

Department Director Signature: Mary Martinson   *Digitally signed by Mary Martinson Date: 2022.01.20 09:56:06 -07'00'*   Date: _____

Deputy County Administrator Signature: _____   Date: _____

County Administrator Signature: _____   Date: 1/20/2022

Pima County Procurement Department	
Administering Department: Elections	
Project: Tenex Election Desk Modules	
Contractor: Tenex Software Solutions, Inc. 5021 W Laurel Street, Suite 206 Tampa, FL 33607	
Amount: $ 1,500,000.00	
Contract No.: MA-PO-22-080	
Funding: General Fund and HAVA Grant 2020	

SOLE SOURCE PROCUREMENT AGREEMENT

1. **Parties, Background and Purpose.**

   1.1. <u>Parties</u>. This Contract is Pima County, a political subdivision of the State of Arizona ("County"), and Tenex Software Solutions, Inc. ("Contractor").

   1.2. <u>Purpose.</u> The Pima County Elections Department requires a single agreement governing the implementation and continuing maintenance of Tenex Election Desk and Precinct Central Electronic Poll Book (hereafter collectively referred to as the "Solutions").

   1.3. <u>Authority</u>. County selected Contractor pursuant to Pima County Procurement Code 11.12.050, Sole source procurement.

2. **Term.**

   2.1. <u>Initial Term</u>. The term of this Contract commences on February 15, 2022 and will terminate on February 14, 2023 ("Initial Term"). "Term," when used in this Contract, means the Initial Term plus any exercised extension options under Section 2.2. If the commencement date of the Initial Term is before the signature date of the last party to execute this Contract, the parties will, for all purposes, deem the Contract to have been in effect as of the commencement date.

   2.2. <u>Extension Options</u>. County may renew this Contract for up to three (3) additional periods of up to one year each (each an "Extension Option"). An Extension Option will be effective only upon execution by the Parties of a formal written amendment.

3. **Scope of Services.**

   3.1. <u>Services</u>. County and Contractor are entering into the Tenex Election Desk (TED) Contract attached as **Exhibit A** (7 pages) and the Precinct Central Electronic Poll Book Contract attached as **Exhibit B** (7 pages).

   3.2. <u>Order of Precedence</u>. In case of conflict between the terms in Exhibits A or B and the terms in this Contract, the terms of this Contract shall prevail including but not limited to Section 2, Term, prevails over Section 8.1 in Exhibits A and B; Section 17, Termination by County, prevails over Section 8.2 in Exhibits A and B; and Section 24, Public Records, prevails over Section 10.2 in Exhibits A and B.

4. Intentionally Omitted.

5. Compensation and Payment.

5.1. <u>Rates; Adjustment</u>. County will pay Contractor at the rates set forth in **Exhibit A** and **Exhibit B**. Those rates will remain in effect during an Extension Option period unless Contractor, at least 90 days before the end of the then-existing Term, or at the time the County informs Contractor that the County intends to extend the Term, if that is earlier, notifies County in writing of any adjustments to those rates, and the reasons for the adjustments.

5.2. <u>Not-To-Exceed (NTE) Amount</u>. County's initial payments to Contractor under this Contract, including any sales taxes, may not exceed $ 1,500,000.00 (the "NTE Amount"). County's annual payments to Contractor under this Contract, including any sales taxes, may not increase the NTE Amount by more than $ 270,000.00 per year. The NTE Amount can only be changed by a formal written amendment executed by the Parties. Contractor is not required to provide any services, payment for which will cause the County's total payments under this Contract to exceed the NTE Amount; if Contractor does so, it is at the Contractor's own risk.

5.3. <u>Sales Taxes</u>. The payment amounts or rates in **Exhibit A** and **Exhibit B** do not include sales taxes. Contractor may invoice County for sales taxes that Contractor is required to pay under this Contract. Contractor will show sales taxes as a separate line item on invoices.

5.4. <u>Timing of Invoices</u>. Contractor will invoice County according to the billing periods set forth in **Section 6.3** of **Exhibit A** and **Exhibit B** for the Solutions. County must receive invoices no more than 30 days after the end of the billing period in which Contractor delivered the invoiced products or services to County. County may refuse to pay for any product or service for which Contactor does not timely invoice the County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than 6-months late.

5.5. <u>Content of Invoices</u>. Contractor will include detailed documentation in support of its invoices and assign each amount billed to an appropriate line item.

5.6. <u>Invoice Submittal</u>. Invoices are to be sent to:

Pima County Finance & Risk Management – Accounts Payable
P.O. Box 791
Tucson, AZ 85701

5.7. <u>Invoice Adjustments</u>. County may, at any time during the Term and during the retention period set forth in Section 23 below, question any payment under this Contract. If County raises a question about the propriety of a past payment, Contractor will cooperate with County in reviewing the payment. County may set-off any overpayment against amounts due to Contractor under this or any other contract between County and Contractor. Contractor will promptly pay to County any overpayment that County cannot recover by set-off.

6. **Insurance.** The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. Contractor's insurance shall be placed with companies licensed in the State of Arizona and the insureds shall have an "A.M. Best" rating of not less than A- VII, unless otherwise approved by County. County in no way warrants that the minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

6.1. <u>Minimum Scope and Limits of Insurance</u>. Contractor will procure and maintain at its own expense, until all contractual obligations have been discharged, the insurance coverage with limits of liability not less than stated below. County in no way warrants that the minimum insurance limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract. If necessary, Contractor may obtain commercial umbrella or excess insurance to satisfy the County's Insurance Requirements.

6.1.1. <u>Commercial General Liability (CGL)</u>. Occurrence Form with limits of $2,000,000 Each Occurrence and $2,000,000 General Aggregate. Policy shall include cover for liability arising from premises, operations, independent contractors, personal injury, bodily injury, property damage, broad form contractual liability coverage, personal and advertising injury and products – completed operations.

6.1.2. <u>Business Automobile Liability</u>. Bodily Injury and Property Damage for any owned, leased, hired, and/or non-owned automobiles assigned to or used in the performance of this Contract with a Combined Single Limit (CSL) of $1,000,000 Each Accident.

6.1.3. <u>Workers' Compensation (WC) and Employers' Liability</u>. Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employers' Liability coverage with limits of $1,000,000 each accident and $1,000,000 each person - disease.

6.1.4. <u>Technology Errors and Omissions (E&O) Insurance</u>. The Technology E&O coverage shall have minimum limits not less than 2,000,000 Each Claim and $2,000,000 Annual Aggregate.

6.1.5. Such insurance shall cover any, and all errors, omissions, or negligent acts in the delivery of products, services, and/or licensed programs under this contract.

6.1.6. Coverage shall include or shall not exclude settlement and/or defense of claims involving intellectual property, including but not limited to patent or copyright infringement.

6.1.7. In the event that the Technology E&O insurance required by this Contract is written on a claims-made basis, Contractor shall warrant that continuous coverage will be maintained as outlined under "Additional Insurance Requirements – Claims-Made Coverage" section.

6.1.8. <u>Network Security (Cyber)/Privacy Insurance</u>. Coverage shall have minimum limits not less than $2,000,000 Each Claim with a $2,000,000 Annual Aggregate.

6.1.9. Such insurance shall include, but not be limited to, coverage for third party claims and losses with respect to network risks (such as data breaches, unauthorized access or use, ID theft, theft of data) and invasion of privacy regardless of the type of media involved in the loss of private information, crisis management and identity theft response costs. This should also include breach notification costs, credit remediation and credit monitoring, defense and claims expenses, regulatory defense costs plus fines and penalties, cyber extortion, computer program and electronic data restoration expenses coverage (data asset protection), network business interruption, computer fraud coverage, and funds transfer loss.

6.1.10. In the event that the Network Security and Privacy Liability insurance required by this Contract is written on a claims-made basis, Contractor must warrant that either continuous coverage will be maintained as outlined under "Additional Insurance Requirements – Claims-Made Coverage" section, or an extended discovery period will be exercised for a period of two (2) years beginning at the time of work under this Contract is completed.

6.2. <u>Additional Insurance Requirements</u>. The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions.

6.2.1. <u>Claims Made Coverage</u>. If any part of the Required Insurance is written on a claims-made basis, any policy retroactive date must precede the effective date of this Contract, and Contractor must maintain such coverage for a period of not less than three (3) years following Contract expiration, termination or cancellation.

6.2.2. <u>Additional Insured Endorsement</u>. The General Liability, Business Automobile, Technology E&O, Network Security & Privacy Liability policies must each be endorsed to include Pima County and all its related special districts, elected officials, officers, agents, employees and volunteers (collectively "County and its Agents") as additional insureds with respect to vicarious liability arising out of the activities performed by or on behalf of the Contractor. The full policy limits and scope of protection must apply to the County and its Agents as an additional insured, even if they exceed the Insurance Requirements.

6.2.3. <u>Subrogation Endorsement</u>. The General Liability, Business Automobile Liability, Workers' Compensation and Technology E&O Policies shall each contain a waiver of subrogation endorsement in favor of Pima County, and its departments, districts, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

6.2.4. <u>Primary Insurance Endorsement</u>. The Contractor's policies shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by Pima County, its agents, officials, or employees shall be excess and not contributory insurance. The Required Insurance policies may not obligate the County to pay any portion of a Contractor's deductible or Self Insurance Retention (SIR).

6.2.5. Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

6.2.6. <u>Subcontractors</u>. Contractor must either (a) include all subcontractors as additional insureds under its Required Insurance policies, or (b) require each subcontractor to separately meet all Insurance Requirements and verify that each subcontractor has done so, Contractor must furnish, if requested by County, appropriate insurance certificates for each subcontractor. Contractor must obtain County's approval of any subcontractor request to modify the Insurance Requirements as to that subcontractor.

6.3. <u>Notice of Cancellation</u>. Each Required Insurance policy must provide, and certificates specify, that County will receive not less than thirty (30) days advance written notice of any policy cancellation, except 10-days prior notice is sufficient when the cancellation is for non-payment of a premium. Notice must be mailed, emailed, hand-delivered or sent via facsimile transmission to the County Contracting Representative, and must include the County project or contract number and project description.

6.4. <u>Verification of Coverage</u>. Contractor shall furnish County with certificates of insurance (valid ACORD form or equivalent approved by County) as required by this Contract. An authorized representative of the insurer shall sign the certificates. Each certificate must include.

6.4.1. The Pima County tracking number for this Contract, which is shown on the first page of the Contract, and a project description, in the body of the Certificate.

6.4.2. A notation of policy deductibles or SIRs relating to the specific policy.

6.4.3. Certificates must specify that the appropriate policies are endorsed to include additional insured and subrogation wavier endorsements for the County and its Agents. Note: Contractors for larger projects must provide actual copies of the additional insured and subrogation endorsements.

6.5. All certificates and endorsements, as required by this written agreement, are to be received and approved by County before, and be in effect not less than 15 days prior to, commencement of work. A renewal certificate must be provided to County not less than 15 days prior to the policy's expiration date to include actual copies of the additional insured and waiver of subrogation endorsements. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

6.6. All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include the County project or contract number and project description on the certificate. County reserves the right to require complete copies of all insurance policies required by this Contract at any time.

6.7. <u>Approval and Modifications</u>. The Pima County Risk Manager may approve a modification of the Insurance Requirements without the necessity of a formal Contract amendment, but the approval must be in writing. Neither the County's failure to obtain a required insurance certificate or endorsement, the County's failure to object to a non-complying insurance certificate or endorsement, or the County's receipt of any other information from the Contractor, its insurance broker(s) and/or insurer(s), constitutes a waiver of any of the Insurance Requirements.

7. **Indemnification.** To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnitee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorney fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by any act or omission of Contractor or any of Contractor's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all Claims. Contractor is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Contract.

8. **Laws and Regulations.**

    8.1. <u>Compliance with Laws</u>. Contractor will comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders.

    8.2. <u>Licensing</u>. Contractor warrants that it is appropriately licensed to provide the services under this Contract and that its subcontractors will be appropriately licensed.

    8.3. <u>Choice of Law; Venue</u>. The laws and regulations of the State of Arizona govern the rights and obligations of the parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

9. **Independent Contractor.** Contractor is an independent contractor. Neither Contractor, nor any of Contractor's officers, agents or employees will be considered an employee of County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under County's Merit System. Contractor is responsible for paying all federal, state and local taxes on the compensation received by Contractor under this Contract and will indemnify and hold County harmless from any and all liability that County may incur because of Contractor's failure to pay such taxes.

10. **Subcontractors.** Contractor is fully responsible for all acts and omissions of any subcontractor, and of persons directly or indirectly employed by any subcontractor, and of persons for whose acts any of them may be liable, to the same extent that the Contractor is responsible for the acts and omissions of its own employees. Nothing in this Contract creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.

11. **Assignment.** Contractor may not assign its rights or obligations under this Contract, in whole or in part, without the County's prior written approval. County may withhold approval at its sole discretion.

12. **Non-Discrimination.** Contractor will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Contractor will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

13. **Americans with Disabilities Act.** Contractor will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C.§§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).

14. **Authority to Contract.** Contractor warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to Contractor or any third party by reason of such determination or by reason of this Contract.

15. **Full and Complete Performance.** The failure of either party to insist, in one or more instances, upon the other party's complete and satisfactory performance under this Contract, or to take any action based on the other party's failure to completely and satisfactorily perform, is not a waiver of that party's right to insist upon complete and satisfactory performance, or compliance with any other covenant or condition in this Contract, either in the past or in the future. The acceptance by either party of sums less than may be due and owing it at any time is not an accord and satisfaction.

16. **Cancellation for Conflict of Interest.** This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.

17. **Termination by County.**

   17.1. <u>Without Cause</u>. County may terminate this Contract at any time, without cause, by serving a written notice upon Contractor at least 30 days before the effective date of the termination. In the event of such termination, County's only obligation to Contractor will be payment for services rendered prior to the date of termination.

   17.2. <u>With Cause</u>. County may terminate this Contract at any time without advance notice and without further obligation to County when County finds Contractor to be in default of any provision of this Contract.

   17.3. <u>Non-Appropriation</u>. Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining County or other public entity obligations under this Contract. In the event of such termination, County will have no further obligation to Contractor, other than to pay for services rendered prior to termination.

18. **Notice.** Any notice required or permitted to be given under this Contract must be in writing and be served by personal delivery or by certified mail upon the other party as follows:

County:	Contractor:
Terri Spencer, Procurement Director	Timothy Vlach, Project Manager
Pima County Department	Tenex Software Solutions, Inc.
150 W Congress, 5th Floor	5021 W Laurel Street
Tucson, AZ 85701	Tampa, FL 33607
520.724.3722	813.6183639
terri.spencer@pima.gov	Timothy.Vlach@tenexsolutions.com

19. **Intentionally Omitted.**

20. **Remedies.** Either party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.

21. **Severability.** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.

22. **Use of County Data.** Unless it receives County's prior written consent, Contractor: (a) shall not access, process, or otherwise use County Data other than as necessary to provide contracted services or products; and (b) shall not intentionally grant any third party access to County Data, including without limitation Contractor's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, Contractor may disclose County Data as required by applicable law or by proper legal or governmental authority. Contractor shall give County prompt notice of any such legal or governmental demand and reasonably cooperate with County in any effort to seek a protective order or otherwise to contest such required disclosure, at County's expense. Upon termination or completion of the Contract, Contractor will, within 60 calendar days, either return all County Data to County or will destroy County Data and confirm destruction to County in writing. As between the parties, County retains ownership of County Data. "County Data" means data in electronic or paper form provided to Contractor by County, including without limitation personal identifying information as defined in A.R.S. § 13-2001(10).

23. **Books and Records.** Contractor will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Contractor will retain all records relating to this Contract for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.

24. **Public Records.**

    24.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., all documents related to this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.

    24.2. Records Marked Confidential; Notice and Protective Order. If Contractor reasonably believes that some of its records contain proprietary, trade-secret or otherwise-confidential information, Contractor must prominently mark those records "CONFIDENTIAL" before submitting them to County. In the event a public-records request is submitted to County for records marked CONFIDENTIAL, County will notify Contractor of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Contractor has, within that period, secured an appropriate order from a court of competent jurisdiction in Arizona, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.

25. Legal Arizona Workers Act Compliance.

25.1. <u>Compliance with Immigration Laws</u>. Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor will further ensure that each subcontractor who performs any work for Contractor under this Contract likewise complies with the State and Federal Immigration Laws.

25.2. <u>Books & Records</u>. County has the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

25.3. <u>Remedies for Breach of Warranty</u>. Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of Contractor.

25.4. <u>Subcontractors</u>. Contractor will advise each subcontractor of County's rights, and the subcontractor's obligations, under this Section 25 by including a provision in each subcontract substantially in the following form:

> "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

26. Grant Compliance. Contractor will comply with all requirements attached in **Exhibit C: Basic Clauses for Federally-Funded Purchases** (2 pages).

27. Written Orders. County will order products or services under this Contract by issuing a Delivery Order (DO) document. Order documents will be furnished to Contractor via e-mail or telephone.

Contractor must not supply materials or services pursuant to the contract that are not documented or authorized by a Delivery Order (DO) at the time of provision. County accepts no responsibility for control of or payment for materials or services not documented by a County Delivery Order (DO).

Contractor will establish, monitor, and manage an effective contract administration process that assures compliance with all requirements of this Contract. In particular, Contractor will not provide goods or services other than those described in this Contract, in excess of the Maximum Payment Amount, or after the Term of the Contract has ended, without a Contract amendment properly executed and issued by County, as provided below. Any items provided in excess of that stated in this Contract are at Contractor's own risk.

28. **Counterparts.** The parties may execute the Contract that County awards pursuant to the solicitation in any number of counterparts, each counterpart is considered an original, and together such counterparts constitute one and the same instrument.

29. **Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Contractor engages in for-profit activity and has 10 or more employees, and if this Contract has a value of $100,000.00 or more, Contractor certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

30. **Amendment.** The parties may modify, amend, alter or extend this Contract only by a written amendment signed by the parties.

31. **Entire Agreement.** This document constitutes the entire agreement between the parties pertaining to the subject matter it addresses, and this Contract supersedes all prior or contemporaneous agreements and understandings, oral or written.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

This Contract will become effective when all parties have signed it. The effective date of the Contract will be the date this Contract is signed by the last party (as indicated by the date associated with that party's signature).

IN WITNESS WHEREOF, the parties have approved this Sole Source Procurement Agreement and agree to be bound by the terms and conditions of the Contract on the dates written below.

Authorized Officer Signature
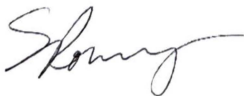
_____
Date

Ravi Kalkem
Printed Name and Title

01/19/2022
Date

ATTEST

_____
Clerk of the Board

_____
Date

APPROVED AS TO FORM

_____
Deputy County Attorney

Stacey Roseberry
_____
Print DCA Name

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Tenex Software Solutions, Inc.

Tenex Software Solutions, Inc.

TENEX ELECTION DESK (TED) CONTRACT

This contract ("Agreement") is entered into on this _____ day of December, 2021 (the "Effective Date") by and between Tenex Software Solutions, Inc., a Florida corporation, having its principal place of business at 5021 W. Laurel St., Tampa, Florida 33607 ("Tenex" "Vendor" or "Company"), and Pima County, Arizona ("Customer"), and governs the provision of the Tenex Election Desk (TED) Solution (the "Solution(s)" as defined herein) by Tenex to Customer, and the use of the System(s) (as defined below) by Customer, together with related services provided by Tenex to Customer, all in accordance with its terms. For convenience, Tenex and Customer are sometimes referred to in the Contract Documents as "Parties".

1.0 DEFINITIONS

The following definitions will apply:

a. **System.** "System" means the modules or products that make up the Tenex Election Desk (TED) system.
b. **Customer Data.** "Customer Data" means any of the customer's information, documents, or electronic files that are provided to Tenex.
c. **Service.** "Service" means Tenex's work product necessary for providing the Tenex Election Desk (TED) modules and election related support.
d. **Support.** "Support" means the ongoing services by Tenex to support & maintain the System as defined below.
e. **Solution(s).** "Solution(s)" means the Tenex Election Desk (TED) modules provided by Tenex, under the Agreement, inclusive of all software and services required to make the Tenex Election Desk (TED) System fully functional.
f. **Contract Documents.** "Contract Documents" means this Agreement, including all exhibits and attachments.
g. **Agreement.** "Agreement" shall mean this software purchase agreement document, including all exhibits and attachments hereto.
h. **Deliverables.** "Deliverables" shall mean any products furnished or services provided by or through Tenex under the Contract Documents.
i. **CAS.** "CAS" or "Custom Application Software" means custom software components of the Solution(s) developed by Tenex and required to fulfill the specifications in the Contract Documents including, but not limited to, parametric instructions, program source statements, and customization of standard software components. CAS does not include software developed by other or third parties ("TPS").
j. **TPS.** "TPS" means the software components of the Solution(s) other than CAS, including computer program, documentation, updates and related material. Software developed by entities other than Tenex.
k. **Software.** "Software" means a collection of computer programs, codes or data used to direct the operation of a computer or tablet device, including any documentation giving instructions on how to use them, including CAS and TPS.
m. **Acceptance.** "Acceptance" means written acceptance of Deliverables provided by Tenex under the Agreement following successful completion of acceptance testing of the Solution(s) by Customer. Payment, progress payments, or partial use of the Solution(s) by the Customer shall not constitute acceptance of Deliverables not furnished, implemented or operating in accordance with the requirements of the Contract Documents.
o. **Contract Price.** "Contract Price" means the maximum price to be paid by Customer for all Deliverables to be rendered by or through Tenex under the Agreement for all Deliverables, including a fully implemented and fully functioning Solution(s) as described in the Contract Documents, together with the cost of the Warranty Period following Acceptance.
p. **Purchased Product(s).** "Purchased Product(s)" means the complete Solution(s) being licensed to Customer by Tenex on a yearly basis.
q. **Warranty Period.** "Warranty Period" means the 12-month period after Acceptance of the Solution(s) by Customer during which period Tenex will correct any material deficiencies in the Solution(s) or Deliverables at Tenex's expense.
r. **Prime Time Hours.** "Prime Time Hours" means any time during the 30 days prior to election day, election day, and 21 days after election day.
s. **Major Downtime.** "Major Downtime" means problem(s) with Tenex Election Desk (TED) or its components which significantly interfere with the functionality or reliability of its operations or intended purpose.
t. **Project.** "Project" means the implementation of the Precinct Central solution for Pima County.
u. **Project Schedule.** "Project Schedule" means the agreed upon time for the implementation to be completed and all applicable deliverables.
v. **Customer's Users.** "Customer's Users" means any Pima County users allowed to use the Precinct Central solution for its designed purpose.

2.0 DELIVERABLES, DEADLINES, & BREACH

Tenex shall perform the Services and provide the software ("Software") to Customer, according to a Project Schedule to be outlined at the outset of the Project during the Project Kickoff call which will be scheduled between Tenex and the Customer upon contract signing. Tenex will implement the 10X University, Election AIM, Election Force, Election PAL, Election Response, and Ready Board ("Solution(s)") for the Customer, overviewed below.

10X University: An e-learning platform capable of delivering multi-media training to poll workers in a browser-based environment and conduct pre-planned testing to evaluate the competence of the student in the tasks that will be required of them during the election period. The system will deliver this training using a combination of PowerPoint presentations, video files and audio files. The testing will be conducted using multiple choice questions with either a test score or a pass/fail grade depending on the needs of the class.

Election AIM: Keep track of all election assets and supplies with Election Asset and Inventory (AIM) solution. You will always know where all your equipment is, how much is needed for each election, how election equipment should be packed, all chain of custody and seal information, if equipment has been delivered or returned, and more.

Election Force: Staffing and training for elections is indeed a daunting and labor-intensive task. Poll workers must be scheduled for training, scheduled for work, and paid accordingly. While most systems today provide some amount of functionality for managing poll workers, the management requirements do not end at poll workers; there is also the complexity of managing schedules for trainers, early voting staff, roving technicians, and temporary office-staff to name a few. Election Force is an integrated and innovative solution that is designed specifically for the staffing and scheduling requirements for election offices. It also includes a front facing portal that allows workers to apply for work, provide availability, schedule training, and more.

Election PAL: Election Precincts and Locations (Election PAL) you can maintain all your locations, such as absentee drop-off, equipment and supply drop-off sites, early voting sites, and voting locations. Maintain a complete history of how locations are used, unlimited numbers of contacts for each location, documents, and more.

Election Response: Election Response is a call tracking and trouble ticket management solution designed specifically to fit the election tracking and reporting needs. The software was designed from the ground up with input from elections offices for a system that can automate the paper-based process for handling and escalating issues on Election Day and the days leading up to the election.

Ready Board: Ready Board is solution that allows Customers to receive a high-level overview of the statuses of tasks relating to an election. "Ready Boards" are color-coded, customizable boards that allow users to manage and maintain statuses based on specific election related tasks as the county deems fit. Ready Board works in conjunction with Election AIM to provide high level information by precinct, location, or vote center, on tasks and equipment statuses quickly and efficiently.

Any delays in Tenex's performance caused by Customer third parties shall not constitute a breach of this Agreement by Tenex. A Customer third party would be any additional agency and/or vendor that the Customer contracts with. Any delays in Customer's performance caused by Tenex or third parties shall not constitute a breach of this Agreement by Customer.

3.0 SOFTWARE LICENSE AND SERVICE AGREEMENT

3.1 Use Rights
During the term and subject to the terms of this Agreement, Tenex hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right to permit Customer's Users to use the Solution and its Components for Customer's business purposes as defined in Section 7.3 Permitted Uses.

3.2 License and Use Restrictions
Customer shall not, directly, indirectly, alone or with another party, (i) copy, disassemble, reverse engineer, or decompile the System or its Components; (ii) modify, create derivative works based upon, or translate the System or its components; (iii) license, sell, rent, lease, transfer, grant any rights in or otherwise commercially exploit the System In any form to any other party, (iv) describe, show, tell, or explain any feature or portion of features or capabilities to any party including other vendors of Customer nor shall Customer attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder. The Customer acknowledges and agrees that Tenex shall own all right, title, and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the System and any suggestions, enhancement requests, feedback, recommendations, or other information provided by Customer.

3.3 Customer Data
Customer owns all right, title, and interest in the Customer Data. Customer hereby grants to Tenex, a non-exclusive, non-transferable, non-sublicensable right and license to use, copy, transmit, modify, and display the Customer Data solely for the

purposes of the Customer's use of the System. Tenex shall not use the Customer Data except to improve the System and as necessary to perform its obligations set forth in this Agreement.

3.4 Security

Customer is solely responsible for maintaining the security of all usernames and passwords granted to it, for the security of its information systems used to access the System, and for its user's compliance with the terms of this Agreement. Tenex will act as though any electronic communications it receives under Customer's usernames have been sent by Customer. Customer will immediately notify Tenex if it becomes aware of any loss or theft or unauthorized use of any Customer's passwords or usernames. Tenex has the right at any time to terminate or suspend access to any Customer if Tenex believes in good faith that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the System or Tenex's network.

Vendor's performance under this Agreement shall be in accordance with the Customer's security requirements, policies, and procedures. Vendor shall at all times use industry best practices and methods with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to Customer systems accessed in the performance of services in this Agreement.

The Customer agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations in this Agreement with respect to use, copying, modification, protection, and security of proprietary software and other proprietary data.

4.0 SUPPORT

4.1 Updates

Tenex shall deliver applicable Updates to the System that apply to the Customer's current edition at no additional charge. Only those Updates that apply to the Customer's current edition will be delivered automatically to the Customer at no additional charge.

4.2 Error Correction

Tenex shall use commercially reasonable efforts to correct all errors or to provide a reasonable workaround as soon as is possible using its reasonable efforts during Tenex's normal business hours. Errors are defined as any issue that impedes the Customer and its Users from using the Precinct Central solution. Customer shall provide such access, information, and support as Tenex may reasonably require in the process of resolving any error.

4.3 Support Exclusions

Tenex is not obligated to correct any errors or provide any other support to the extent such errors or need for support was created in whole or in part by: (i) the acts, omissions, negligence, or willful misconduct of the Customer, including any unauthorized modifications of the System or its operating environment; or (ii) any failure or defect of Customer's or a third party's equipment, software, facilities, third party applications, or internet connectivity (or other causes outside of Tenex's firewall).

5.0 OWNERSHIP OF PURCHASED PRODUCTS

5.1 Warranties

Tenex warrants and represents that it is, and on the date of the delivery of the Purchased Product(s) shall be, the sole owner and copyright holder of the Purchased Product(s); that it has, and on the date of the delivery of the Purchased Product(s) shall have, the full right and authority to grant this license; and that neither this license nor performance under this Agreement does or shall conflict with any other agreement or obligation to which Tenex is a party or by which it is bound.

5.2 Deliverables

Title to all other Deliverables, such as training documentation, to be provided to Customer by or through Tenex as a part of this Agreement shall remain sole property of Tenex and should not be distributed, shared or shown to any other party without written explicit permission from an authorized Tenex employee.

6.0 FEES, EXPENSES & PAYMENT

6.1 Project Fees

Customer agrees to pay the following fees for use of the 10X University Solution.
- **$31,500.00** to be billed on the date this Agreement commences ("Effective Date"). (Attachment A)
- **$31,500.00** to be billed on the 1st year anniversary of this Agreement.

- **$31,500.00** to be billed on the 2nd year anniversary of this Agreement.
- **$31,500.00** to be billed on the 3rd year anniversary of this Agreement.

Customer agrees to pay the following fees for use of the Election AIM Solution.
- **$50,400.00** to be billed on the date this Agreement commences ("Effective Date"). (Attachment A)
- **$50,400.00** to be billed on the 1st year anniversary of this Agreement.
- **$50,400.00** to be billed on the 2nd year anniversary of this Agreement.
- **$50,400.00** to be billed on the 3rd year anniversary of this Agreement.

Customer agrees to pay the following fees for use of the Election Force Solution.
- **$50,400.00** to be billed on the date this Agreement commences ("Effective Date"). (Attachment A)
- **$50,400.00** to be billed on the 1st year anniversary of this Agreement.
- **$50,400.00** to be billed on the 2nd year anniversary of this Agreement.
- **$50,400.00** to be billed on the 3rd year anniversary of this Agreement.

Customer agrees to pay the following fees for use of the Election PAL Solution.
- **$18,900.00** to be billed on the date this Agreement commences ("Effective Date"). (Attachment A)
- **$18,900.00** to be billed on the 1st year anniversary of this Agreement.
- **$18,900.00** to be billed on the 2nd year anniversary of this Agreement.
- **$18,900.00** to be billed on the 3rd year anniversary of this Agreement.

Customer agrees to pay the following fees for use of the Election Response Solution.
- **$44,100.00** to be billed on the date this Agreement commences ("Effective Date"). (Attachment A)
- **$44,100.00** to be billed on the 1st year anniversary of this Agreement.
- **$44,100.00** to be billed on the 2nd year anniversary of this Agreement.
- **$44,100.00** to be billed on the 3rd year anniversary of this Agreement.

Customer agrees to pay the following fees for use of the Ready Board Solution.
- **$12,600.00** to be billed on the date this Agreement commences ("Effective Date"). (Attachment A)
- **$12,600.00** to be billed on the 1st year anniversary of this Agreement.
- **$12,600.00** to be billed on the 2nd year anniversary of this Agreement.
- **$12,600.00** to be billed on the 3rd year anniversary of this Agreement.

6.2 Expenses
Unless an expense is approved in advance by Customer, Tenex shall be responsible for all expenses incurred while performing services under this Agreement.

6.3 Payment Terms
Customer will pay Tenex as follows:

- Tenex will submit an invoice at Agreement signing date ("Effective Date") for the full amount of year 1 software to be paid by the Customer upon receipt of invoice.

- Tenex will submit an invoice annually at the anniversary of the contract year. Payment will be due from Customer on receipt of invoice.

7.0 INTELLECTUAL PROPERTY

7.1 Intellectual Property Ownership
Tenex owns the entire copyright, title, and interest in the following content:

- All information regarding the Tenex Election Desk (TED), scripts used to create reports, data transformation utilities and monitoring modules used to keep track of the health of the System.

- All training materials and documentation provided to the Customer.

Customer will secure all necessary rights to copyright, trademark or other intellectual property to any materials it submits to Tenex Software Solutions, Inc. for use in the Services.

Nothing in this section will affect ownership of intellectual property created and owned by any entities not a party to this Agreement and not pursuant to an agreement with Tenex. Prior agreements for other products will not be affected by this Agreement.

7.2 Warranty
Tenex warrants that it has the rights and authority to grant all assignments and licenses granted by Tenex Software Solutions, Inc. in this Agreement.

7.3 Permitted Uses
Tenex grants to the Customer a non-exclusive license to use the Precinct Central solution at their polling locations for verifying voter eligibility and checking in voters for an election event. Customer agrees to protect the intellectual and confidential property of Tenex unless Tenex provides a written waiver for the terms of this requirement.

8.0 TERM & TERMINATION

8.1 Term
The term of this Agreement shall commence on the Effective Date and shall renew for one year terms, subject to review, for up to four years and shall automatically terminate four years after the Agreement has commenced ("Effective Date"), Tenex has fulfilled their software as a service subscription agreement obligation, and payment of all Project Fees and Expenses as specified in this Agreement has been completed, unless otherwise extended by mutual written agreement or terminated in accordance with this Agreement.

8.2 Termination
(a) Either party may terminate this Agreement effective immediately if the other party (i) commits any material breach or default of this Agreement; (ii) becomes the subject of any voluntary or involuntary proceeding under the U.S. Bankruptcy Code or state insolvency proceeding and such proceeding is not terminated within sixty (60) days of its commencement; or (iii) ceases to be actively engaged in business and has not assigned this Agreement.

(b) If this Agreement is terminated other than by reason of a material breach by Tenex, Tenex Software Solutions, Inc. shall be entitled to a pro-rated payment for work in progress based on the percentage of the Services then completed, as reasonably determined by Tenex.

9.0 CONTRACTOR RELATIONSHIP

Tenex Software Solutions, Inc. is an independent contractor, and neither Tenex Software Solutions, Inc. nor Tenex's employees or contract personnel are, or shall be deemed, Customer's employees. This Agreement does not create a partnership relationship. Neither Tenex Software Solutions, Inc. nor Customer has authority to enter into contracts on the other's behalf.

10.0 NON-SOLICITATIONS & CONFIDENTIAL INFORMATION

10.1 Non-solicitation
During, and for a period of one year after termination of this Agreement, Customer agrees not to solicit or recruit Tenex 's employees, contractors, or freelancers of which Customer becomes aware as a result of Tenex 's Services for Customer.

11.0 WARRANTIES & REPRESENTATIONS

Tenex warrants that it is able to complete the Services in a professional and timely manner; that any project Deliverables shall be original, or all necessary permissions and releases obtained and paid for; and that any project Deliverables shall not contain any false, misleading, libelous, or unlawful matter.

Customer warrants that any material given by Customer to Tenex for use in the Services under this Agreement shall be original or all necessary permissions and releases obtained and paid for; and that any such material shall not contain any false, misleading, libelous or unlawful matter.

12.0 LIABILITY

12.1 Total Liability

In no event shall Tenex's aggregate liability for all cases or controversies arising out of the subject matter of this Agreement, whether in contract, tort or otherwise, exceed the aggregate payments actually received by Tenex Software Solutions, Inc. under this Agreement. In no event will Tenex Software Solutions, Inc. be liable to Customer or any third party for any special, incidental or consequential damages or lost profits, whether based in breach of contract, tort (including negligence), product liability or otherwise, and whether or not Tenex Software Solutions, Inc. has been advised of the possibility of such damage.

12.2 Limitation of Remedies

Customer's exclusive remedy, and Tenex's sole liability for any case or controversy arising out of Tenex's failure to perform any of its obligations hereunder shall be to terminate this Agreement pursuant to **Section 8.2** and receive a refund from Tenex Software Solutions, Inc. of the unearned portion of any fees paid with respect to the Services.

Pima County, AZ Software Solutions Quote

Date: **November 3, 2021**
To: Pima County, AZ   From: Tenex Software Solutions, Inc

Item #	Product Description	Quantity	Unit Price	Total
1	Software - 10X Library Yearly Software License (Election Office TED Documentation Portal)	1	Included	Included
2	Software - 10X University Yearly Software License (Online Training Platform)	1	$ 31,500.00	$ 31,500.00
3	Software - Election AIM Yearly Software License (Asset & Inventory Tracking)	1	$ 50,400.00	$ 50,400.00
4	Software - Election Force Yearly Software License (Election Worker Management & Online Portal)	1	$ 50,400.00	$ 50,400.00
5	Software - Election PAL Yearly Software License (Voting Locations & Election Offices Management)	1	$ 18,900.00	$ 18,900.00
6	Software - Election Response Yearly Software License (Help Desk & Issue Tracking)	1	$ 44,100.00	$ 44,100.00
7	Software - Election Setup Yearly Software License (Election Setup & Ballot Style Management)	1	Included	Included
8	Software - Email Management Yearly Software License (TED Email Tracking & Management)	1	Included	Included
9	Software - Form Builder Yearly Software License (Build, Manage & Store Forms for TED)	1	Included	Included
10	Software - Letters & Labels Yearly Software License (Customer Letter & Label Builder)	1	Included	Included
11	Software - Ready Board Yearly Software License (Voting Location Status Tracking)	1	$ 12,600.00	$ 12,600.00
12	Software - Security Management Yearly Software License (Protocol/Password Structure & Management)	1	Included	Included
13	Software - TED Mobile Yearly Software License (Smartphone App for Election AIM & Election Response)	1	Included	Included

Yearly SaaS Fees - Total Price: $ **207,900.00**

Terms:

This quote is valid for 90 days and subject to change based upon contract terms and conditions or any change in configuration.

Tenex Software Solutions, Inc.

Tenex Software Solutions, Inc.

PRECINCT CENTRAL ELECTRONIC POLL BOOK CONTRACT

This contract ("Agreement") is entered into on this _____ day of January, 2022 (the "Effective Date") by and between Tenex Software Solutions, Inc., a Florida corporation, having its principal place of business at 5021 W. Laurel St., Tampa, Florida 33607 ("Tenex" "Vendor" or "Company"), and Pima County, Arizona ("Customer"), and governs the provision of the Precinct Central ePollbook Solution (the "Solution" as defined herein) by Tenex to Customer, and the use of the System (as defined below) by Customer, together with related services provided by Tenex to Customer, all in accordance with its terms. For convenience, Tenex and Customer are sometimes referred to in the Contract Documents as "Parties".

1.0 DEFINITIONS

The following definitions will apply:

a. **System.** "System" means the individual modules or products that make up the system. The overall system suite is known as "Precinct Central".
b. **Customer Data.** "Customer Data" means any of the customer's information, documents, or electronic files that are provided to Tenex including Election and/or Voter data.
c. **Service.** "Service" means Tenex's work product necessary for providing electronic check-ins, voter processing and election related functions.
d. **Support**. "Support" means the ongoing services by Tenex to support and maintain the System as defined below.
e. **Solution, Solution Components, and Components.** "Solution" means the Precinct Central ePollbook system provided by Tenex, under the Agreement, inclusive of all hardware, Software and services required to make the Precinct Central ePollbook system fully functional.
f. **Contract Documents.** "Contract Documents" means this Agreement, including all exhibits and attachments
g. **Agreement.** "Agreement" shall mean this software purchase agreement document, including all exhibits and attachments hereto.
h. **Deliverables. "**Deliverables" shall mean any products furnished or services provided by or through Tenex under the Contract Documents.
i. **CAS.** "CAS" or "Custom Application Software" means custom software components of the Solution developed by Tenex and required to fulfill the specifications in the Contract Documents including, but not limited to, parametric instructions, program source statements, and customization of standard software components. CAS does not include software developed by other or third parties ("TPS").
j. **TPS.** "TPS" means the software components of the Solution other than CAS, including computer program, documentation, updates, and related material. Software developed by entities other than Tenex.
k. **Software.** "Software" means A collection of computer programs, codes or data used to direct the operation of a computer or iPad device, including any documentation giving instructions on how to use them, including CAS and TPS.
m. **Acceptance.** "Acceptance" means written acceptance of Deliverables provided by Tenex under the Agreement following successful completion of acceptance testing of the Solution by Customer. Payment, progress payments, or partial use of the Solution by the Customer shall not constitute acceptance of Deliverables not furnished, implemented, or operating in accordance with the requirements of the Contract Documents.
o. **Contract Price.** "Contract Price" means the maximum price to be paid by Customer for all Deliverables to be rendered by or through Tenex under the Agreement for all Deliverables, including a fully implemented and fully functioning Solution as described in the Contract Documents, together with the cost of the Warranty Period following Acceptance.
p. **Precinct Central or Purchased Product.** "Precinct Central" or "Purchased Product" means the complete solution for maintaining voter lists, voter eligibility to cast a vote, capture a signature and make consolidated and individual reports available to the Customer. The full features of the software for the purposes of this Agreement and license are outlined in Section A of this agreement and in the Contract Documents.
q. **Warranty Period.** "Warranty Period" means the 12-month period after Acceptance of the Solution by Customer during which period Tenex will correct any material deficiencies in the Solution or Deliverables at Tenex's expense.
r. **Prime Time Hours.** "Prime Time Hours" means any time during the 30 days prior to election day, election day, and 21 days after election day.

s**. Major Downtime.** "Major Downtime" means problem(s) with Precinct Central or its components which significantly interfere with the functionality or reliability of its operations or intended purpose.

t. **Project.** "Project" means the implementation of the Precinct Central solution for Pima County.

u. **Project Schedule.** "Project Schedule" means the agreed upon time for the implementation to be completed and all applicable deliverables.

v. **Customer's Users.** "Customer's Users" means any Pima County users allowed to use the Precinct Central solution for its designed purpose.

2.0 DELIVERABLES, DEADLINES, & BREACH

Tenex shall perform the Services and provide the software ("Software") to Customer, according to a Project Schedule to be outlined at the outset of the Project during the Project Kickoff call which will be scheduled between Tenex and the Customer upon contract signing.

Tenex will implement the Precinct Central electronic poll book solution ("Solution") for the Customer. Precinct Central is an electronic poll book solution that runs on an iPad and provides functionality for checking-in voters at the polls. The Solution provides powerful tools for verifying voter eligibility to vote during an election, allowing the voter to sign for a ballot, poll worker payroll tracking, ballot inventory tracking, and more. The Software consists of webhosting and storage provided on Amazon Cloud Server, remote support during implementation, remote training for administrative staff (20 hours included), and a solution for verifying voter eligibility and checking them in during an election. The Hardware included with the system depends on the configuration of the Customer and usually consists of: Enterprise locked iPad, Tenex proprietary Flip & Share stand, wireless receipt printer, and carrying case for all equipment.

Any delays in Tenex's performance caused by Customer third parties shall not constitute a breach of this Agreement by Tenex. A Customer third party would be any additional agency and/or vendor that the Customer contracts with. Any delays in Customer's performance caused by Tenex or third parties shall not constitute a breach of this Agreement by Customer.

3.0 SOFTWARE LICENSE AND SERVICE AGREEMENT

3.1 Use Rights
During the term and subject to the terms of this Agreement, Tenex hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right to permit Customer's Users to use the Solution and its Components for Customer's business purposes as defined in Section 7.3 Permitted Uses.

3.2 License and Use Restrictions
Customer shall not, directly, indirectly, alone or with another party, (i) copy, disassemble, reverse engineer, or decompile the System or its Components; (ii) modify, create derivative works based upon, or translate the System or its Components; (iii) license, sell, rent, lease, transfer, grant any rights in or otherwise commercially exploit the System In any form to any other party, (iv) describe, show, tell, or explain any feature or portion of features or capabilities to any party including other vendors of Customer nor shall Customer attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder. The Customer acknowledges and agrees that Tenex shall own all right, title, and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the System and any suggestions, enhancement requests, feedback, recommendations, or other information provided by Customer.

3.3 Customer Data
Customer owns all right, title, and interest in the Customer Data. Customer hereby grants to Tenex, a non-exclusive, non-transferable, non-sublicensable right and license to use, copy, transmit, modify, and display the Customer Data solely for the purposes of the Customer's use of the System. Tenex shall not use the Customer Data except to improve the System and as necessary to perform its obligations set forth in this Agreement.

3.4 Security
Customer is solely responsible for maintaining the security of all usernames and passwords granted to it, for the security of its information systems used to access the System, and for its user's compliance with the terms of this Agreement. Tenex will act as though any electronic communications it receives under Customer's usernames have been sent by Customer. Customer will immediately notify Tenex if it becomes aware of any loss or theft or unauthorized use of any Customer's passwords or usernames.

Tenex has the right at any time to terminate or suspend access to any Customer if Tenex believes in good faith that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the System or Tenex's network.

Vendor's performance under this Agreement shall be in accordance with the Customer's security requirements, policies, and procedures. Vendor shall at all times use industry best practices and methods with regard to the prevention, detection, and elimination, by all appropriate means, of fraud, abuse, and other inappropriate or unauthorized access to Customer systems accessed in the performance of services in this Agreement.

The Customer agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations in this Agreement with respect to use, copying, modification, protection, and security of proprietary software and other proprietary data.

4.0 SUPPORT

4.1 Updates
Tenex shall deliver applicable Updates to the System that apply to the Customer's current edition at no additional charge. Only those Updates that apply to the Customer's current edition will be delivered automatically to the Customer at no additional charge. The Customer will be informed of what is included in the update and if the Customer wishes to have the updates or chooses to not apply the updates. The updates will be deployed afterhours on a date agreed upon by Tenex and the Customer to ensure minimal downtime for Customer's Users.

4.2 Error Correction
Tenex shall use commercially reasonable efforts to correct all errors or to provide a reasonable workaround as soon as is possible using its reasonable efforts during Tenex's normal business hours. Errors are defined as any issue that impedes the Customer and its Users from using the Precinct Central solution. Customer shall provide such access, information, and support as Tenex may reasonably require in the process of resolving any error.

4.3 Support Exclusions
Tenex is not obligated to correct any Errors or provide any other support to the extent such errors or need for support was created in whole or in part by: (i) the acts, omissions, negligence, or willful misconduct of the Customer, including any unauthorized modifications of the System or its operating environment; or (ii) any failure or defect of Customer's or a third party's equipment, software, facilities, third party applications, or internet connectivity (or other causes outside of Tenex's firewall.

5.0 OWNERSHIP OF PURCHASED PRODUCTS

5.1 Warranties
Tenex warrants and represents that it is, and on the date of the delivery of the Product shall be, the sole owner and copyright holder of the Purchased Product; that it has, and on the date of the delivery of the Purchased Product shall have, the full right and authority to grant this license; and that neither this license nor performance under this Agreement does or shall conflict with any other agreement or obligation to which Company is a party or by which it is bound.

5.2 Deliverables
Title to all other Deliverables, such as training documentation, to be provided to Customer by or through Tenex as a part of this Agreement shall remain sole property of Tenex and should not be distributed, shared, or shown to any other party without written explicit permission from an authorized Tenex employee.

6.0 FEES, EXPENSES & PAYMENT

6.1 Project Fees
Customer agrees to pay the following fees for use of the Precinct Central ePollbook Solution.
- **$720,560.00** to be billed on the date this Agreement commences (Effective Date). (Attachment A)
    - **$125.00** per ePollbook to be billed on the 1st year anniversary of this Agreement.
    - **$125.00** per ePollbook to be billed on the 2nd year anniversary of this Agreement.
    - **$125.00** per ePollbook to be billed on the 3rd year anniversary of this Agreement.

Customer agrees to pay the following fees for use of the Air Ballot hardware.
- **$408,100.00** to be billed on the date this Agreement commences (Effective Date). (Attachment B)

6.2 Expenses
Unless an expense is approved in advance by Customer, Tenex shall be responsible for all expenses incurred while performing services under this Agreement.

6.3 Payment Terms
Customer will pay Tenex as follows:

- Tenex will submit an invoice at Agreement signing for the full amount of all hardware and year 1 software to be paid by the customer upon delivery.

- Tenex will submit an invoice annually at the beginning of the Agreement year. Payment will be due from Customer on receipt of invoice.

7.0 INTELLECTUAL PROPERTY

7.1 Intellectual Property Ownership
Tenex owns the entire copyright, title, and interest in the following content ("Content"):

- All information regarding Precinct Central and Precinct Central software, scripts used to create reports, data transformation utilities and monitoring modules used to keep track of the health of the system.

- All training materials and documentation provided to the customer.

Customer will secure all necessary rights to copyright, trademark, or other intellectual property to any materials it submits to Tenex Software Solutions, Inc. for use in the Services.

Nothing in this section will affect ownership of intellectual property created and owned by any entities not a party to this Agreement and not pursuant to an agreement with Tenex. Prior agreements for other products will not be affected by this agreement.

7.2 Warranty
Tenex warrants that it has the rights and authority to grant all assignments and licenses granted by Tenex Software Solutions, Inc. in this Agreement.

7.3 Permitted Uses
Tenex grants to the Customer a non-exclusive license to use the Precinct Central solution at their polling locations for verifying voter eligibility and checking in voters for an election event. Customer agrees to protect the intellectual and confidential property of Tenex unless Tenex provides a written waiver for the terms of this requirement.

8.0 TERM & TERMINATION

8.1 Term
The term of this Agreement shall commence on the Effective Date and shall renew for one year terms, subject to review, for up to four years and shall automatically terminate four years after the Agreement has commenced, Tenex has fulfilled their software as a service subscription agreement obligation, and payment of all Project Fees and Expenses as specified in this Agreement has been completed, unless otherwise extended by mutual written agreement or terminated in accordance with this Agreement.

8.2 Termination
(a) Either party may terminate this Agreement effective immediately if the other party (i) commits any material breach or default of this Agreement; (ii) becomes the subject of any voluntary or involuntary proceeding under the U.S. Bankruptcy Code or state insolvency proceeding and such proceeding is not terminated within sixty (60) days of its commencement; or (iii) ceases to be actively engaged in business and has not assigned this Agreement.

(b) If this Agreement is terminated other than by reason of a material breach by Tenex, Tenex Software Solutions, Inc. shall be entitled to a pro-rated payment for work in progress based on the percentage of the Services then completed, as reasonably determined by Tenex.

9.0 CONTRACTOR RELATIONSHIP

Tenex Software Solutions, Inc. is an independent contractor, and neither Tenex Software Solutions, Inc. nor Tenex's employees or contract personnel are, or shall be deemed, Customer's employees. This Agreement does not create a partnership relationship. Neither Tenex Software Solutions, Inc. nor Customer has authority to enter into contracts on the other's behalf.

10.0 NON-SOLICITATIONS & CONFIDENTIAL INFORMATION

10.1 Non-Solicitation
During, and for a period of one year after termination of this Agreement, Customer agrees not to solicit or recruit Tenex 's employees, contractors, or freelancers of which Customer becomes aware as a result of Tenex 's services for Customer.

11.0 WARRANTIES & REPRESENTATIONS

Tenex warrants that it is able to complete the Services in a professional and timely manner; that any Project Deliverables shall be original, or all necessary permissions and releases obtained and paid for; and that any Project Deliverables shall not contain any false, misleading, libelous, or unlawful matter.

Customer warrants that any material given by Customer to Tenex for use in the Services under this Agreement shall be original or all necessary permissions and releases obtained and paid for; and that any such material shall not contain any false, misleading, libelous, or unlawful matter.

12.0 LIABILITY

12.1 Total Liability
In no event shall Tenex's aggregate liability for all cases or controversies arising out of the subject matter of this Agreement, whether in contract, tort or otherwise, exceed the aggregate payments actually received by Tenex Software Solutions, Inc. under this Agreement. In no event will Tenex Software Solutions, Inc. be liable to Customer or any third party for any special, incidental, or consequential damages or lost profits, whether based in breach of contract, tort (including negligence), product liability or otherwise, and whether or not Tenex Software Solutions, Inc. has been advised of the possibility of such damage.

12.2 Limitation of Remedies
Customer's exclusive remedy, and Tenex's sole liability for any case or controversy arising out of Tenex's failure to perform any of its obligations hereunder shall be to terminate this Agreement pursuant to Section 8.2 and receive a refund from Tenex Software Solutions, Inc. of the unearned portion of any fees paid with respect to the Services.

Pima County, AZ Precinct Central Quote

Date: **November 4, 2021**

To: Pima County, AZ

From: Tenex Software Solutions, Inc.

Item #	Product Description	Quantity	Unit Price		Total
1	Hardware - 8th Generation iPad (10.2" touchscreen, 32 GB, charging block, & 3' lightning cable	440	$	329.00	$ 144,760.00
2	Hardware - Flip & Share Stand (includes stylus & cleaning cloth)	440	$	100.00	$ 44,000.00
3	Hardware - 10' Apple Certified Lightning Cable	440	$	18.00	$ 7,920.00
4	Hardware - Epson TM-M30 Bluetooth Thermal Printer	400	$	300.00	$ 120,000.00
5	Hardware - Brother QL820 Bluetooth Label Printer	40	$	300.00	$ 12,000.00
6	Hardware - Large Carrying Case & Luggage Tag (holds 2 Touchpads, 2 Epson printers, & accessories)	420	$	180.00	$ 75,600.00
7	Hardware - Touchpad Color Coding Stickers	440	$	15.00	$ 6,600.00
8	Hardware - Large Touchpad Charging Cart (holds 75 iPads)	6	$	1,800.00	$ 10,800.00
9	Software - Precinct Central Software License & Maintenance (includes Touchpad, Console, & Data Studio)	440	$	600.00	$ 264,000.00
10	Software - Precinct Central Public Widgets	1	Included		Included
11	Service - Shipping and Configuration	440	$	48.00	$ 21,120.00
12	Service - Onsite Training or Support (per day)	4	$	2,200.00	$ 8,800.00
13	Service - Online Train-the-Trainer	1	Included		Included
14	Consumable - Epson TM-M30 Thermal Paper (50 rolls per case)	32	$	80.00	$ 2,560.00
15	Consumable - Brother QL820 Labels (per roll)	100	$	24.00	$ 2,400.00
	Year 1 - Total Purchase Price:			$	**720,560.00**

Item #	Annual Software License & Maintenance Fees (after year 1)	Quantity	Unit Price		Total
15	Software - Precinct Central Software License & Support (per unit, after year 1)	440	$	125.00	$ 55,000.00
	Estimated Recurring Annual License & Maintenance Fees:			$	**55,000.00**

Terms:

This quote is valid for 90 days and subject to change based upon contract terms and conditions or any change in configuration.

Pima County, AZ Air Ballot Quote

Date: **November 4, 2021**

To: Pima County, AZ From: Tenex Software Solutions, Inc.

Item #	Product Description	Quantity	Unit Price		Total	
1	Hardware - Color Air Ballot Printer (19" duplex tray included)	220	$	825.00	$	181,500.00
2	Hardware - Air Ballot Printer Network Card	220	$	140.00	$	30,800.00
3	Hardware - BOD Printer Storage and Transfer Trolley (holds 1 Air Ballot color printer & accessories)	220	$	275.00	$	60,500.00
4	Consumables - 4-Color Super High Yield Toner Cartridge Set (includes black, cyan, magenta, & yellow)	220	$	615.00	$	135,300.00
5	Service - Air Ballot Shipping and Configuration	220	Included		Included	

Year 1 - Total Purchase Price: **$ 408,100.00**

Terms:

This quote is valid for 90 days and subject to change based upon contract terms and conditions or any change in configuration.

EXHIBIT C

Contract Provisions for Non–Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non–Federal entity, County is required to include the following additional provisions, as applicable, under 2 C.F.R. Pt. 200, Appendix II.

(A) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(B) Davis–Bacon Act, as amended (40 U.S.C. 3141–3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non–Federal entities must include a provision for compliance with the Davis–Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non–Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non–Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti–Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non–Federal entity must report all suspected or reported violations to the Federal awarding agency.

(C) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). Where applicable, all contracts awarded by the non–Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(D) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(E) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non–Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(F) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(G) Byrd Anti–Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non–Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non–Federal award.

(H) *See* § 200.323, Procurement of recovered materials.

(I) *See* § 200.216, Prohibition on certain telecommunications and video surveillance services or equipment.

(J) *See* § 200.322, Domestic preference for procurements.

(K) Compliance with 1933 Buy American Act requirements if applicable.

<center>END OF EXHIBIT C</center>