

**SOFTWARE LICENSE, HARDWARE OWNERSHIP AND SERVICES AGREEMENT
WITH
CITY OF REDONDO BEACH**

W I T N E S S E T H :

A. The City of Redondo Beach (Subscriber) seeks to engage the services and partner with the City of Whittier (Whittier), through their City Clerk/Elections Official Office, as related to Subscriber's conduct of its Municipal Elections on October 19, 2022 and March 7, 2023.

B. Whittier represents that it has that degree of specialized expertise contemplated within California Government Code Section 37103, and holds all necessary licenses to practice and perform the services herein contemplated.

C. Subscriber desire to contract for the specific services described in Scope of Work and desire to set forth their rights, duties and liabilities in connection with the services to be performed.

D. No official or employee of Whittier has a financial interest, within the provisions of Sections 1090-1092 of the California Government Code, in the subject matter of this agreement.

E. Through this agreement, the Subscriber owns one-third share of the server for usage and storage of their voter records.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

Project Terms

This Agreement shall commence August 2, 2022 and expire on August 1, 2023. Each election shall have its own Project Term as set forth below and shall be incorporated into the Agreement term.

Project Term 1: This term shall commence August 2, 2022 and continue through the conclusion of all election activities required by the City of Redondo Beach Charter, California Elections and Government Code, and applicable State laws and regulations, including but not limited to, election challenge and recall proceedings for the Special Election of October 19, 2022. At the conclusion of all lawful election activities, the server and all data shall be deleted; and

Project Term 2: This term shall commence November 1, 2022 and continue through the conclusion of all election activities required by the City of Redondo Beach Charter, California Elections and Government Code, and applicable State laws and regulations, including but not limited to, election challenge and subsequent runoff proceedings for the General Municipal Election of March 7, 2023. At the conclusion of all lawful election activities, the server and all data shall be deleted;

Scope of Work

Whittier, through its City Clerk/Election Official's Office, shall provide the following:

- A. License the software from the Subscriber for the cost-effective development and implementation of technology related to the issue, receipt, authentication, processing, and canvass of Vote-by-Mail materials and ballots.

Item A – Software License:

Whittier has developed 'General Election Management' ("GEM Software"), a custom voter tracking software for the conduct of a standalone election.

Functions of Software:

- Voter Management
- Compare voter files to filter for new, modified, and removed voters.
- Issue Ballots and track returned ballots.
- Voter Signature validation lookup and tracking.
- In-Person Voting Tracking

Excel Report Functionality:

- Confidential Voters
- Voter ID Report
- Summary of Voter Status by Precinct Report
- Military Overseas Voters Report
- Voted Voters Report
- Multiple Ballot Report
- Signature Verified Report
- Pending Signature Report
- Signature Missing/Challenge Report and Letters

Export Functionality:

- Initial Mailing file for Vote-by-mail issuing
- Mailing file or labels for supplemental mailings
- Voter status for candidates – Daily Ballots Issued
- Voter status for candidates – Daily Ballots Returned
- E-Poll Book Roster

Subscriber is responsible for the delivery of digital files in a form mutually agreed upon. The digital files include:

- I. One Precinct Consolidation File
- II. Three Election Voter Files
- III. One Signature Image File

The precinct consolidation, voter, and signature files will be stored on the Subscriber's portion of the standalone server with redundancy measures and proper firewall and anti-virus measures in place. Subscriber at all times remains the owner and custodian of their own records and can at any time remove their records. This agreement shall not constitute any selling, leasing, loaning, or third-party possession of voter records. Whittier grants to Subscriber a license to use software 'GEM' with up to ten user accounts. Manuals and training will be provided by the City of Whittier.

Whittier will setup one (1) consolidation file, three (3) voter files, and one (1) signature image file for the Subscriber's use per Project:

Proposed Dates:

88 Days before Election (E-88): Import Precinct File
64 Days before Election (E-64): Import Signature Files
65 Days before Election (E-65): Initial Voter Mailing File
29 Days before Election (E-29): Supplemental Voter Mailing File
14 Days before Election (E-14): Supplemental Voter Mailing File

Whittier and Subscriber shall mutually determine a schedule after execution of this agreement.

License Fee (Compensation):

In exchange for Whittier granting to Subscriber the non-exclusive license to use the GEM Software, Subscriber will pay to Whittier a license fee of \$10,000, 30 days after the certification of the election for each Project Term in an amount not to exceed \$20,000

Additional Services may be granted with a mutually agreed upon amendment.

ADDITIONAL CONDITIONS

- 1.1 **Security Obligations.** Subscriber agrees its Authorized Users shall securely manage their respective password(s) for access to the GEM Software. Subscriber agrees it shall notify Whittier promptly in the event it becomes aware of any unauthorized access or use of the GEM Software, or of any of its or its Authorized Users passwords or accounts.
- 1.2 **Title.** As between Whittier and Subscriber, Whittier retains title to and ownership of the GEM Software, including all copyrights and other Intellectual Property Rights relating thereto. Any suggestions for changes or improvements to Services that Subscriber provides to Whittier, whether solicited by Whittier or not, shall be owned by Whittier and Subscriber hereby irrevocably assigns, and shall assign, to Whittier all right, title, and interest in and to such suggestions. Whittier shall have no obligation to incorporate such suggestion into its products or Services. Subscriber for the period of this agreement maintains ownership to their portion of the server.
- 1.3 **Subscriber Data.** As between Whittier and Subscriber, Subscriber shall retain all right, title, and interest, including, without limitation, all Intellectual Property Rights, in and to the Subscriber Data. Subscriber shall have the sole responsibility for the accuracy, quality, and legality of the Subscriber Data, including obtaining all rights and consents necessary to share the Subscriber Data with Whittier as set forth in this agreement. Notwithstanding the foregoing, Whittier may not sell or offer for sale any Subscriber Data, whether in Subscriber identifiable, or anonymized and aggregated form. Whittier shall comply with its obligations under all Laws applicable to Whittier's provision of the Service, including all such Laws related to privacy, data security, and data protection.
- 1.4 **Use of Third-Party Components.** Whittier may use Vendors to provide certain functions of the Services, including without limitation, hosting and data analysis, but notwithstanding any other provision of this agreement to the contrary, Whittier shall ensure that the Vendors provide the Services to the level required of Whittier by this agreement at no additional cost to Subscriber.

Subscriber acknowledges that each Vendor may have its own policies and terms and conditions.

- 1.5 **Excusable Delays.** Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, material shortages, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party. If a delay beyond the control of Whittier is encountered, a time extension may be mutually agreed upon in writing by Whittier and the Subscriber.
- 1.6 **Notice of Termination.** Whittier reserves and has the right and privilege of canceling, suspending or abandoning the execution of all or any part of the work contemplated by this agreement, with or without cause, at any time, by providing at least thirty (30) days prior written notice to Subscriber. The termination of this agreement shall be deemed effective upon receipt of the notice of termination. In the event of such termination, Whittier shall immediately stop rendering services under this agreement unless directed otherwise by the Subscriber.
- 1.7 **No Other Warranties.** Use of GEM Software is not intended to be a substitute for professional judgment of users. GEM Software does not provide legal advice. Subscriber shall be responsible for all its own actions or failure to act in connection with the GEM Software. Whittier cannot guarantee that every error in the GEM Software or problem raised by Subscriber will be resolved. The services, the third party components, and the third party data are provided "as is." Whittier assumes no responsibility or risk for Subscriber's use or misuse of, or failure to use, the information provided through the GEM Software. Whittier does not guarantee that every error in the GEM Software or problem raised by Subscriber will be resolved. To the extent that a party may not as a matter of applicable law disclaim any implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.
- 1.8 **Indemnification.** Each party shall indemnify, defend, and hold harmless each other, including its elected and appointed, officers, employees, agents, attorneys, and designated volunteers from and against any and all liability, including, but limited to demands, claims, actions, fees, costs, and expenses (including reasonable attorney's and expert witness fees), arising from or connected with the respective acts of each party arising from or related to this agreement. Notwithstanding anything contrary in this agreement, this indemnification obligation shall not apply to acts of gross negligence or willful misconduct.
- 1.9 **Limitation of Damages.** Whittier's maximum liability arising out of or relating to this agreement or the services provided hereunder, regardless of the cause of action (whether in contract, tort, breach of warranty or otherwise), will not exceed the greater of the aggregate amount of the fees paid and payable to Whittier by Subscriber. Whittier shall have no liability arising out of or relating to the third-party components (including, without limitation, any components or services provided by third-party data). In no event shall either party be liable to the other for any indirect, special, punitive damages arising from the furnishing, performance, or use, or failure of services, or third-party components. Notwithstanding the foregoing, this limitation of damages shall not apply for any cause of action arising out of gross negligence or willful misconduct.
- 1.10 **Responsibilities for Planned Updates.** Whittier shall undertake commercially reasonable efforts to patch, repair or update the Software in order to integrate it with the updated Integrated Third Party Software.
- 1.11 **Notices.** Any notices, documents, correspondence or other communications concerning this Agreement or the work hereunder may be provided by personal delivery, facsimile or if mailed,

shall be addressed as set forth below and placed in a sealed envelope, postage prepaid, and deposited in the United States Postal Service. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 72 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO SUBSCRIBER:

City of Redondo Beach
415 Diamond Street
Redondo Beach, CA 90277

Tel: (310) 318-0656
Email: Eleanor.Manzano@redondo.org
Attn: Eleanor Manzano

IF TO CITY:

City of Whittier
13230 Penn Street
Whittier, CA 90602

Tel: (562) 567-9850
Email: rgarcia@cityofwhittier.org
Attn: Rigoberto Garcia

- 1.11 **Severability.** If any provision of this agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this agreement, based upon the substantial benefit of the bargain for any party, is materially impaired, which determination made by the presiding court or arbitrator of competent jurisdiction shall be binding, then both parties agree to substitute such provision(s) through good faith negotiations.
- 1.12 **Counterparts.** This agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF WHITTIER,
A municipal corporation

RIGOBERTO GARCIA, JR. City Clerk
(seal)

Date: _____

CITY OF REDONDO BEACH,
A chartered municipal corporation

William C. Brand, Mayor

Date: _____

APPROVED AS TO FORM:

Michael W. Webb, City Attorney

Date: _____

ATTEST:

Eleanor Manzano, City Clerk

Date: _____