



ANTHONY C. MARRONE  
FIRE CHIEF  
FORESTER & FIRE WARDEN

*"Proud Protectors of Life,  
the Environment, and Property"*

## COUNTY OF LOS ANGELES FIRE DEPARTMENT

1320 NORTH EASTERN AVENUE  
LOS ANGELES, CALIFORNIA 90063-3294  
(323) 881-2401  
[www.fire.lacounty.gov](http://www.fire.lacounty.gov)



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FIFTH DISTRICT

July 23, 2024

## ADOPTED

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

42 July 23, 2024

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

*Edward Yen*  
EDWARD YEN  
EXECUTIVE OFFICER

Dear Supervisors:

### APPROVAL OF A SOLE SOURCE CONTRACT WITH ZETRON INC. TO PROVIDE DISPATCH CONSOLE SYSTEM MAINTENANCE AND SUPPORT SERVICES (ALL DISTRICTS) (3 VOTES)

**CIO RECOMMENDATION: APPROVE (X) APPROVE WITH MODIFICATION ( )  
DISAPPROVE ( )**

### SUBJECT

The Consolidated Fire Protection District of Los Angeles County (District) is requesting Board of Supervisors' (Board) approval to establish a sole source Contract with Zetron Inc. (Zetron), to provide continued maintenance and support services (Services) for the District's dispatch console and console switch interface systems (Systems).

**IT IS RECOMMENDED THAT YOUR HONORABLE BOARD, ACTING AS THE  
GOVERNING BODY OF THE CONSOLIDATED FIRE PROTECTION DISTRICT OF  
LOS ANGELES COUNTY:**

1. Approve and instruct the Fire Chief, or his designee to sign the enclosed Contract (Enclosure A), which has been approved as to form by County Counsel, between the District and Zetron. The initial term of the contract will be for five years, and two one-year extension options, for a maximum contract term of seven years. This contract shall be effective August 1, 2024.

SERVING THE UNINCORPORATED AREAS OF LOS ANGELES COUNTY AND THE CITIES OF:

AGOURA HILLS  
ARTESIA  
AZUSA  
BALDWIN PARK  
BELL  
BELL GARDENS  
BELLFLOWER  
BRADBURY  
CALABASAS

CARSON  
CERRITOS  
CLAREMONT  
COMMERCE  
COVINA  
CUDAHY  
DIAMOND BAR  
DUARTE

EL MONTE  
GARDENA  
GLEN DORA  
HAWAIIAN GARDENS  
HAWTHORNE  
HERMOSA BEACH  
HIDDEN HILLS  
HUNTINGTON PARK  
INDUSTRY

INGLEWOOD  
IRVINDALE  
LA CANADA-FLINTRIDGE  
LA HABRA  
LA MIRADA  
LA PUENTE  
LAKEWOOD  
LANCASTER

LAWNDALE  
LOMITA  
LYNWOOD  
MALIBU  
MAYWOOD  
NORWALK  
PALMDALE  
PALOS VERDES ESTATES  
PARAMOUNT

PICO RIVERA  
POMONA  
RANCHO PALOS VERDES  
ROLLING HILLS  
ROLLING HILLS ESTATES  
ROSEMEAD  
SAN DIMAS  
SANTA CLARITA

SIGNAL HILL  
SOUTH EL MONTE  
SOUTH GATE  
TEMPLE CITY  
VERNON  
WALNUT  
WEST HOLLYWOOD  
WESTLAKE VILLAGE  
WHITTIER

2. Authorize the maximum contract sum of \$5,582,559.50, including the initial contract term of five-years and two one-year extension options. The maximum contract sum is comprised of (a) base contract aggregate sum of \$3,690,754.19; (b) Pool Dollars with an aggregate sum of \$369,075.42; and (c) a hardware refresh in the amount of \$1,522,729.89.
3. Delegate authority to the Fire Chief, or his designee, to execute amendments and change notices, suspensions, or termination if deemed necessary, and in accordance with the approved contract terms and conditions in order to: (1) effectuate modifications; (2) exercise option terms; (3) add new or revised standard County contract provisions adopted by the Board, as periodically required; (4) effectuate the assignment and delegation/mergers or acquisitions provision; (5) engage Zetron to provide Optional Work (e.g., programming modifications, professional services, and acquire relevant additional hardware and software), as required by the County, using available Pool Dollars, with concurrence of the County's Office of the Chief Information Officer (OCIO), and approval as to form by County Counsel; and (6) terminate the Contract, either in whole or in part, by the provision of a 30-day written notice.
4. Find that this Contract is exempt from the provisions of the California Environmental Quality Act (CEQA).

#### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS**

Zetron is the sole source manufacturer of its proprietary System. Zetron does not train, certify, license, or otherwise endorse any third party to provide support, maintenance, and/or upgrade services to its dispatch technology.

Zetron's System allows the District's Dispatch Console to interface and communicate with units in the field via voice or data. The System is a critical component of the District's voice communication system, which connects the District's Computer Aided Dispatch (CAD) system with the voice radio system, including dispatchers in the District's communications center. The System provides mission critical radio communications for all aspects of the District's radio operations.

The System was instrumental in moving the District forward with the implementation of the Los Angeles Regional Interoperable Communications System by providing a modern interface that could connect and process both analog and digital radio communications systems seamlessly. In the event that either the District's or the Los Angeles County Sheriff Department's (Sheriff) radio system fails, each department would be able to switch to the other department's core system and bring up a limited amount of radio communications. This functionality provided a much needed and highly sought after failover/backup solution for both departments.

Implementation of Strategic Plan Goals

Approval of the recommended actions is consistent with the County’s Strategic Plan North Star 3.G. Internal Controls and Processes, by continually maximizing revenue, managing, and maximizing County assets, measuring impact and effectiveness of our collective efforts, and enhancing County’s fiscal strength through long-term planning. Zetron has the specialized experience, qualifications, and equipment to provide this service effectively, efficiently, and in a responsive manner that will support the District in meeting this goal.

**FISCAL IMPACT/FINANCING**

The District, as a Special District, is funded independently from the County’s General Fund, and relies primarily on property tax revenue to provide essential fire protection and life safety services.

The maximum contract sum for the Contract will not exceed \$5,582,559.50, which includes \$369,075.42 in Pool Dollars for any required optional work and \$1,522,729.89 for a hardware refresh to be implemented in the second year of the Contract, at the District’s sole discretion. All maintenance and support fees will be paid yearly in advance. The fees will be applied as follows:

Description of Work	Cost
Maintenance and Support – Year 1	\$ 453,297.76
Maintenance and Support – Year 2	\$ 475,962.65
Maintenance and Support – Year 3	\$ 499,760.78
Maintenance and Support – Year 4	\$ 524,748.82
Maintenance and Support – Year 5	\$ 550,986.26
Maintenance and Support – Option Year 1	\$ 578,535.57
Maintenance and Support – Option Year 2	\$ 607,462.35
Contract Sum:	<b>\$3,690,754.19</b>
Pool Dollars @ 10% of Contract Sum:	\$ 369,075.42
Hardware Refresh:	\$1,522,729.89
Maximum Contract Sum:	<b>\$5,582,559.50</b>

Sufficient funding is available in the District’s Fiscal Year 2024-25 Adopted Budget for Year 1 and the District will continue to allocate the necessary funds throughout the duration of the contract. This Contract does not include an allowance for Cost-of-Living Adjustment, as all costs for the term of this contract along with its possible extensions are included in the Contract. The allocation of Pool Dollars will be used to procure as needed goods and/or Services throughout the term of the Contract, given the potential for unforeseen circumstances or future changes to performance requirements.

There is no impact to net County cost.

## **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

Zetron agrees to maintain compliance with all Board and CEO requirements throughout the term of the contract. The enclosed Contract provides that the District has no obligation to pay for expenditures incurred by Zetron beyond the contract pricing mechanisms. Additionally, Zetron will not be asked to perform services that exceed the approved scope of work or contract term.

In compliance with Board Policy 6.020, "Chief Information Office Board Letter Approval," the OCIO reviewed the information technology (IT) components (management, design, development, acquisition, expansion, or purchase of IT systems and/or related services) of this request and recommends approval. The OCIO determined this recommended action does not include any new IT items that would necessitate a formal written CIO analysis.

## **ENVIRONMENTAL DOCUMENTATION**

This Contract will not have a significant effect on the environment; and therefore, is exempt from CEQA, pursuant to Section 15061 (b)(3) of the CEQA Guidelines.

## **CONTRACTING PROCESS**

On May 21, 2012, the District, in a joint requisition with Sheriff, entered into an agreement with Raytheon Company (Raytheon) to purchase a new radio dispatch console. On July 20, 2016, the parties executed an amendment to memorialize the change from Raytheon's subcontractor Pantel International to Zetron.

On June 11, 2019, Zetron successfully completed the implementation of its System for the District, with the System reaching final acceptance shortly thereafter. The initial term of the maintenance agreement has run for a period of five years, from August 1, 2019, through July 31, 2024.

On November 1, 2020, the parties executed an amendment to fully transfer the novation of Raytheon's obligations and liabilities for services to Zetron. Under this amendment, Raytheon was released of all contractual obligations, including any responsibility for maintenance and support of the System.

On March 21, 2024, the District notified your Board of its intent to enter into negotiations with Zetron for a new sole source contract, pursuant to Board of Supervisors' policy 5.100, Sole Source Contracts. The Sole Source Checklist was approved by the CEO and is attached (Enclosure B).

## **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

Approval of the recommended actions will ensure uninterrupted Services that are critical for the continued operation of the System.

Award of this Contract will not result in the displacement of any County employees as these services are presently obtained from Zetron. The Contract will not result in a reduction of service and there is no change in risk exposure to the County.

**CONCLUSION**

Upon approval by your Board, please instruct the Executive Officer of the Board to return the adopted stamped Board Letter to the following:

Consolidated Fire Protection District of Los Angeles County  
Executive Office - Business Operations  
Attention: Marissa Martin Jensen, Administrative Services Manager II  
1320 North Eastern Avenue  
Los Angeles, CA 90063  
[Marissa.MartinJensen@fire.lacounty.gov](mailto:Marissa.MartinJensen@fire.lacounty.gov)

The District's contact may be reached at (323) 881-6173.

Respectfully submitted,



ANTHONY C. MARRONE, FIRE CHIEF

Reviewed by:



PETER LOO  
CHIEF INFORMATION OFFICER

ACM:cs

Enclosures

c: Chief Executive Officer  
Executive Officer, Board of Supervisors  
County Counsel  
Chief Information Officer

**CONTRACT**



**CONTRACT BY AND BETWEEN  
CONSOLIDATED FIRE PROTECTION DISTRICT OF  
LOS ANGELES COUNTY  
AND  
ZETRON, INC.  
FOR  
ACOM DISPATCH CONSOLE SYSTEM  
MAINTENANCE AND SUPPORT SERVICES**

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**CONTRACT BETWEEN  
THE CONSOLIDATED FIRE PROTECTION DISTRICT OF  
LOS ANGELES COUNTY  
AND  
ZETRON INC.  
FOR  
ACOM DISPATCH CONSOLE SYSTEM  
MAINTENANCE AND SUPPORT SERVICES**

This Contract (Contract) made and entered into this 1st day of August, 2024 by and between the Consolidated Fire Protection District of Los Angeles County (District) , and Zetron, Inc (Contractor), to provide maintenance and support Services.

**RECITALS**

WHEREAS, Contractor is qualified by reason of experience, preparation, equipment, organization, qualifications and staffing to provide to the District the Work contemplated by this Contract, and

WHEREAS, the District is authorized by, inter alia, California Government Code sections 26227 and 31000 to contract for goods and services, including the Work contemplated herein, and

WHEREAS, the District desires Contractor to provide maintenance and support Services, and

WHEREAS, this Contract (as defined below) is authorized pursuant to Government Code Sections 23005 and 31000 and otherwise.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties agree to the following:

**1.0 APPLICABLE DOCUMENTS**

Exhibits A, B, C, D, E, F1, G, and H1, H2, H3 and H4 are attached to and form a part of this Contract. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any Task, Deliverable, goods, Service, or other Work, or otherwise between the base Contract and the Exhibits, or between Exhibits and Attachments, such conflict or inconsistency will be resolved by giving precedence first to the terms and conditions of the Contract and then to the Exhibits and Attachments according to the following priority.

**Exhibits:**

**1.1 Exhibit A – Statement of Work**

- 1.2 Exhibit B – Equipment List and Locations
- 1.3 Exhibit C – Service Level Agreement
- 1.4 Exhibit D – County’s Administration
- 1.5 Exhibit E – Contractor’s Administration
- 1.6 Exhibits F1 – Contractor Acknowledgement and Confidentiality Agreement
- 1.7 Exhibit G – Safely Surrendered Baby Law
- 1.8 Exhibits H1, H2, H3 and H4 – Information Security and Privacy Requirements

This Contract constitutes the complete and exclusive statement of understanding between the parties, and supersedes all previous contracts, written and oral, and all communications between the parties relating to the subject matter of this Contract. No changes to this Contract will be valid unless they are prepared pursuant to Paragraph 9.0 (Amendments and Change Notices) below and duly signed by authorized representatives from both parties.

## **2.0 DEFINITIONS**

The terms and phrases in this Paragraph 2.0 (Definitions), whether singular or plural, are listed for convenience and reference only; they are not intended to define the scope of any provision thereof. The following words as used herein and throughout will be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

- 2.1 Acceptance: The District’s written approval of any Tasks, subtasks, Deliverables, goods, Services or other Work, including acceptance tests and any work orders, provided by Contractor to the District pursuant to this Contract.
- 2.2 Acceptance Criteria: Criteria for the District’s Acceptance of Contractor’s Work under this Contract, including any work orders executed hereunder.
- 2.3 Additional Products: Additional components of System Software, System Hardware, and related Documentation that Contractor may provide upon the District’s request therefor in accordance with Paragraph 3.3.3 (Optional Work) of this Contract, for the System to meet existing or future Solution Requirements specified by the District, which will update Attachment B.2 (Optional Work Schedule) to Exhibit B (Equipment List and Locations). Once accepted and approved by the District, Additional Products will become part of, and be deemed, the Solution (as defined herein below) for the purpose of this Contract.
- 2.4 Amendment: A written instrument prepared and executed by the authorized representatives of the parties, which revises and/or adds terms and conditions to this Contract affecting the scope of Work, Term, payments or any term or condition. All Amendments must be approved and executed by the parties in accordance with Paragraph 9.0 (Amendments and Change Notices) of this Contract.
- 2.5 Application Modifications: Programming, Programming Modifications, Replacement Products, Software Updates, and any Additional Products that may be provided by Contractor to the District under this Contract. Once accepted and approved by the

District, Application Modifications will become part of, and be deemed, Application Software for the purpose of this Contract.

- 2.6 Baseline Software: The commercially available version(s) of Contractor's proprietary software, related Documentation, and any updates, enhancements, or new versions commercially released during this maintenance Contract, which Contractor must modify and implement as part of this Contract.
- 2.7 Business Day: Any day of eight working hours from 8:00 a.m. to 5:00 p.m. Pacific Time (PT), Monday through Friday, excluding County-observed holidays.
- 2.8 Change Notice: A written instrument prepared and executed by District Project Manager identifying any change requested by the District and or Contractor, including for acquisition of Optional Work using Pool Dollars, which does not affect the scope of work, Term, payments or any term or condition of this Contract. Any Change Notice must be executed and delivered in accordance with Paragraph 9.0 (Amendments and Change Notices) of this Contract.
- 2.9 Client Environment: The computers, including all workstations, equipment, devices and peripherals together with all associated Operating Software and Application Software connected to the Production Environment for accessing and using the Solution, including all associated System Hardware and System Software.
- 2.10 Configurations: The modifications to, or functional arrangement of, data within the Application Software and related Documentation that may be provided by Contractor to the County during this Contract or as part of Optional Work for the Solution to meet existing or future Solution Requirements specified by the County.
- 2.11 Contract Sum: The total monetary amount authorized to be payable by the District to Contractor under this Contract, as set forth in Paragraph 5.0 (Contract Sum) of this Contract. The Contract Sum cannot be adjusted for any costs or expenses whatsoever by Contractor.
- 2.12 Contract: This agreement executed between the District and Contractor. Included are all supplemental agreements amending or extending the Service to be performed. The Contract sets forth the terms and conditions for the issuance and performance of all Tasks, Deliverables, Services and other Work.
- 2.13 Contractor: The legal entity that has entered into an agreement with the District to perform or execute the Work covered by this Contract.
- 2.14 Contractor Project Manager: The person designated by Contractor to administer the Contract operations under this Contract.
- 2.15 District Materials: Has the meaning set forth in Paragraph 88.1 (District Materials) of this Contract.
- 2.16 District Project Director: The person designated by the District with authority for the District on contractual or administrative matters relating to this Contract that cannot be resolved by District Project Manager. All references here forward to District Project Director will mean, "District Project Director or their authorized designee."

- 2.17 District Project Manager: The person designated by District Project Director to manage the operations under this Contract. All references here forward to District Project Manager will mean, "District Project Manager or their authorized designee."
- 2.18 Customizations: Same as Programming or Programming Modifications made to the Baseline Software, including related Documentation, and which are provided by Contractor upon the District's request as part of this Contract or Optional Work for the Solution to meet existing or future Solution Requirements specified by the District. Customizations will become part of, and be deemed, Application Software for the purpose of this Contract.
- 2.19 Day(s): Calendar day(s) unless otherwise specified.
- 2.20 Deficiency; Deficiencies; Defect(s): Any material malfunction, error or defect in the design, development, implementation, materials, and/or workmanship; any failure to meet or comply with or deviation from Solution Requirements, Specifications, District approved Deliverables, any published and/or mutually agreed upon standards or any other representations or warranties by Contractor under this Contract regarding the Solution; and/or any other problem which results in the Solution, or any component thereof, not performing in compliance with the provisions of this Contract, including, but not limited to, the Specifications and Solution Requirements.
- 2.21 Deficiency Credits: Credits or any other form of discount to be applied to the applicable Service Fees for Contractor's failure to correct a Solution Deficiency within a prescribed period, including, but not limited to, Unscheduled Downtime or any Solution Performance Deficiency, as further specified in Exhibit C (Service Level Agreement) to this Contract.
- 2.22 Deliverable: Items and/or Services provided or to be provided by Contractor under this Contract.
- 2.23 Disaster: A catastrophic event that results in significant or potentially significant Unscheduled Downtime or disruption of the Production Environment and requires Contractor to provide Disaster Recovery as specified in Exhibit C (Service Level Agreement) to this Contract.
- 2.24 Disabling Device: Any device, method or means including, without limitation, the use of any "virus", "lockup", "time bomb", "key lock", "worm", "back door" or "Trojan Horse" device or program, or any disabling code, which has the potential or capability of compromising the security of the District's confidential or proprietary information; or of causing any unplanned interruption of; or accessibility of the Solution or any component to the District or any User, or which could alter, destroy or inhibit the use of the Solution or any component, or the data as further specified in Paragraph 11.1 (General Warranties) of this Contract.
- 2.25 Documentation: Any and all written and electronic materials provided or made available by Contractor under this Contract, including, but not limited to, documentation relating to software and hardware specifications and functions, training course materials, specifications including Solution Requirements, technical manuals, handbooks, flow charts, technical information, reference materials, user manuals, operating manuals, quick reference guides, FAQs, and all other

instructions and reference materials relating to the capabilities, operation, installation and use of the Solution and/or applicable components. Documentation in electronic form must be in Software formats acceptable to the District.

- 2.26 Fiscal Year: The 12-month period beginning July 1<sup>st</sup> and ending the following June 30<sup>th</sup>.
- 2.27 Hardware Upgrade: Any addition to, or replacement of, any component of the Solution Hardware available or made available, in order to comply with the Solution Performance Requirements, Exhibit C (Service Level Agreement), Exhibit A (Statement of Work), and/or any of the specifications set forth in this Contract.
- 2.28 Interface: The set of software mechanisms used for the transfer of electronic data and/or software commands among and between computer systems including the Solution and any interfaced system, networks, applications, modules and Users, and related Documentation, previously provided or to be provided by Contractor to the District during the entire Term of this Contract as part of Solution or Optional Work.
- 2.29 License: The terms and conditions granting the District and its Users rights to use the Application Software licensed by Contractor under this Contract as specified in Paragraph 10.2 (License) of this Contract.
- 2.30 Licensed Software: The Application Software licensed by Contractor to the District under this Contract, and related Documentation, including any pre-developed or newly developed software and other tools, Replacements Products, and any additional software.
- 2.31 Maximum Fixed Price: The maximum amount to be paid by the District to Contractor for any Optional Work approved by the District to be provided by Contractor in accordance Paragraph 3.3.3 (Optional Work) of this Contract.
- 2.32 Operating Software: Includes the operating and database software and other products which are necessary and must be provided by Contractor or the District as part of the Solution Environment.
- 2.33 Maintenance & Support (M&S): Maintenance Services and Support Services provided by Contractor in accordance with this District, as further specified in Exhibit A (Statement of Work) and Exhibit C (Service Level Agreement).
- 2.34 Optional Work: Programming Modifications, Professional Services and/or Additional Products that may be provided by Contractor to the District throughout the entire Term of this Contract upon the County's request and approval in accordance with Paragraph 3.3.3 (Optional Work) and identified appropriately in Attachment B.2 (Optional Work Schedule) to Exhibit B (Equipment List and Locations).
- 2.35 Performance Deficiency: The Solution not meeting any one of the Solution Performance Requirements set forth in Exhibit C (Service Level Agreement) to this Contract.
- 2.36 Pool Dollars: The amount allocated under this Contract for the provision by Contractor of Optional Work throughout the entire Term of this Contract.



- 2.37 Professional Services: Includes training, consulting Services, programming and/or other Services requiring professional expertise that Contractor may provide upon the District's request in the form of Optional Work in accordance with Paragraph 3.3.3 (Optional Work) of this Contract.
- 2.38 Programming Modifications: Modifications to Application Software, including Configurations, Customizations and Interfaces, and related Documentation that Contractor will provide throughout the entire Term of this Contract, upon the District's election, for the Solution to meet existing or future Requirements specified by the District or other governing bodies. Once accepted and approved by the District, all Programming Modifications will become part of, and be deemed, Application Software for the purpose of this Contract.
- 2.39 Project: The maintenance and support for the Solution, and any other related Work provided by Contractor in accordance with the terms of this Contract.
- 2.40 Replacement Product: Any software or maintained hardware product for which Contractor may replace any or all components of the Licensed Software or hardware during the Term of this Contract, as further specified in Paragraph 11.4 (Continuous Product Support) of this Contract.
- 2.41 Service Fees: Includes the fees to be paid by the District to Contractor for the provision of M&S Services under this Contract in accordance with the terms of this Contract, including Exhibit C (Service Level Agreement) to this Contract.
- 2.42 Service Levels: Contractor's Service obligations to the District during Production Use of the Solution as specified in Exhibit C (Service Level Agreement) to this Contract.
- 2.43 Services: Work related to M&S, any Work that is part of Optional Work, and any other Work that may be provided by Contractor under this Contract.
- 2.44 Software Updates: Includes any additions to and/or replacements to the Solution Software, available or made available, and will include all Application Software and firmware performance and functionality enhancement releases, new Version Releases, Solution Software upgrades, improvements, interim updates, including fixes and patches, Deficiency corrections, and any other modifications to the Application Software, including, but not limited to, those required for the Solution to remain in compliance with applicable federal and state laws and regulations and the terms of this Contract, provided by Contractor in accordance with Exhibit A (Statement of Work) and Exhibit C (Service Level Agreement) to this Contract, with all respective Attachments and Schedules thereto.
- 2.45 Solution: The combination of the software, hardware, and tools which comprise the Solution Environment, provided by Contractor to the District to meet the Solution Requirements.
- 2.46 Solution Availability: During any calendar month wherein, the Solution is not experiencing Scheduled or Unscheduled Downtime, as described in Exhibit C (Service Level Agreement).

- 2.47 Solution Environment: The architectural and operational environments, whether cloud-based or utilizing hardware owned by the District and installed by the Contractor, for the Solution provided to the County as part of this agreement. This includes, but is not limited to, the Production Environment, Test Environment, and Client Environment, along with any related documentation.
- 2.48 Solution Hardware: All hardware that is part of the Solution and provided by Contractor to the District pursuant to this Contract, and related Documentation, all of which is provided, maintained, and supported by Contractor under this Contract.
- 2.49 Solution Software: All System Software and firmware that is part of the Solution provided by Contractor pursuant to this Contract, and related Documentation, including Application Software and Operating Software.
- 2.50 Statement of Work: The directions, provisions, and requirements provided herein as Exhibit A (Statement of Work), and special provisions herein and therein pertaining to the method, frequency, manner, and place of performing the Services described in the Contract.
- 2.51 System: The hardware, software and data comprising the Solution (whether cloud-based and/or Contractor-installed County-owned hardware), including, but not limited to, the System Hardware, System Software and System data, provided by Contractor or the District in accordance with the applicable system design Documentation or as detailed in Exhibit A (Statement of Work), and the terms of this Contract.
- 2.52 System Hardware: All computer servers, networking equipment, connectivity hardware, and storage racks as applicable, and any related Documentation, provided by Contractor or the District for the Solution.
- 2.53 System Software: All Application Software and Operating Software, and related Documentation, provided by Contractor to the District as part of the Solution, this Contract, and residing in the Solution Environment, and does not include the firmware.
- 2.54 Task; Subtask: One of the areas of Work to be performed under this Contract.
- 2.55 Technology Refresh: Has the meaning set forth in Paragraph 3.5 (Technology Refresh) to this Contract.
- 2.56 Term: Has the meaning set forth in Paragraph 4.0 (Term of Contract) of this Contract.
- 2.57 Third-Party Software: Any software of third parties that may be provided, maintained and/or supported by Contractor under this Contract as part of the Solution, including Application Software and Operating Software provided by third parties.
- 2.58 Unscheduled Downtime: The period during which a Solution component cannot be accessed due to a Deficiency, as further specified in Exhibit A (Statement of Work) and/or Exhibit C (Service Level Agreement) to this Contract.

- 2.59 User: Any person authorized by the District to access or use the Solution in accordance with this Contract.
- 2.60 Version Release: Contractor's Application Software major version upgrade which may contain new software functionalities and features and/or System compatibilities.
- 2.61 Work: All Tasks, Subtasks, Deliverables, goods, Services, and other Work provided, or to be provided, by or on behalf of Contractor pursuant to this Contract, including Solution components, M&S Services, and Optional Work.
- 2.62 Work Product: Any intellectual property, including concepts, ideas, methods, methodologies, procedures, processes, know-hows, techniques, inventions, analysis frameworks, software, models, Documentation, templates, User Interfaces and screen designs, utilities, routines, and tools, that was developed by Contractor prior to performance or independent of this Contract, as further specified in Paragraph 10.1.4 (Work Product) of this Contract.
- 2.63 County: Los Angeles County
- 2.64 District: The Consolidated Fire Protection District of Los Angeles County; a Special District of and within Los Angeles County

### **3.0 WORK**

- 3.1 Pursuant to the provisions of this Contract, Contractor must fully perform, complete, and deliver on time, all Tasks, Deliverables, Services and other Work as set forth in herein.
- 3.2 If Contractor provides any Tasks, Deliverables, goods, Services, or other Work, other than as specified in this Contract, the same will be deemed to be a gratuitous effort on the part of Contractor, and Contractor will make no claim whatsoever against the District.

### **3.1 Scope of Work**

#### **3.1.1 Solution Components**

Contractor must provide to the District: (i) Licenses to all Solution Software provided hereunder, Third-Party Software, Application Software, and Operating Software, and (ii) ownership of, and other proprietary rights to, all Solution Hardware, including, but not limited to, System Hardware and Hardware Upgrades, all as necessary for the Solution to meet all Solution Requirements and the Specifications under this Contract as such may be revised during the Term of this Contract, and in accordance with the provisions of Paragraph 10.0 (Ownership and License) of this Contract.

#### **3.1.2 Maintenance and Support (M&S)**

Contractor must provide to the District M&S in accordance with this Contract, Exhibit A (Statement of Work), Exhibit C (Service Level Agreement) and all Attachments thereto. M&S Support obligations will survive until the termination or expiration of this Contract.

#### **3.1.3 Optional Work**

Upon the District written request, but contingent upon the mutual execution of a Change Notice pursuant to the terms of this Contract under Paragraph 9.0 (Amendments and Change Notices), Contractor must provide Optional Work, including Programming Modifications, Additional Products, Training, and/or hardware installation and configurations Services, in accordance with this Paragraph 3.3.3 (Optional Work) and Exhibit A (Statement of Work) to this Contract. Programming Modifications and Additional Products, and training will only include those products and services relating to the requirements which were not reflected in the Specifications and/or Solution Requirements on the Effective Date, as determined by District Project Director or authorized designee. Future hardware purchases, installation, and configuration services for the two-year anniversary Technology Refresh (see Paragraph 3.5 below) must be delivered by Contractor as Optional Work pursuant to an executed Change Notice or Amendment.

Upon the District's request and Contractor's concurrence to provide the Optional Work, Contractor must provide to the District within ten (10) Business Days of such request, or such longer period as agreed to by the parties, a proposed work order including, if necessary, any supporting documentation, and a quote for a Maximum Fixed Price calculated in accordance with the applicable fixed hourly rate set forth in Attachment B.1 (Price Sheet) to Exhibit B (Equipment List and Locations) to this Contract. Contractor's quotation will be valid for a minimum ninety (90) Days from submission. Contractor must commence the Optional Work following agreement by the parties with respect to such scope of Optional Work and the Maximum Fixed Price, utilizing a Change Notice pursuant to Paragraph 9.0 (Amendments and Change Notices) of this Contract. Upon completion of Optional Work by Contractor, and approval by the District in accordance with the terms of this Contract, Attachment B.2 (Optional Work Schedule) to Exhibit B (Equipment List and Locations) will be updated accordingly to add the items of such completed and approved Optional Work.

Upon completion by Contractor and approval by the District of Optional Work: (i) any Programming Modifications and/or Additional Products provided by Contractor in the form of Optional Work will become part of and be incorporated into the Solution; (ii) additional/new Solution Hardware will become part of and be incorporated into the Solution Environment; and (iii) the Solution Requirements and specifications will be updated to include the new and/or updated requirements, specifications, and/or Additional Products, as applicable, as a result of such Optional Work.

Optional Work may be performed by Contractor: 1) at no additional cost to the District as part of M&S, or 2) at the applicable pricing terms set forth in Attachment B.1 (Price Sheet) to Exhibit B (Equipment List and Locations) to this Contract, payable by the District utilizing Pool Dollars. Absent an Amendment in accordance with Paragraph 9.0 (Amendments

and Change Notices), the Pool Dollars are the aggregate amount available during the Term of this Contract for Optional Work.

Delivered products resulting from Optional Work provided by Contractor may increase M&S fees under this Contract if the Optional Work results in more required maintenance from Contractor based on the increased number of ACOM sites.

Any Change Notice and resultant work order executed pursuant to this Paragraph 3.3.3 (Optional Work) prior to the expiration of this Contract, will survive this Contract as though this Contract remained in full force and effect. The expiration of this Contract will not relieve Contractor of its obligation to perform Optional Work resulting from such work order.

### **3.2 Addition And Deletion of Hardware**

**3.2.1** Contractor agrees that any addition or deletion of hardware in Exhibit B (Equipment List and Locations) to this Contract, as solely determined by District Project Manager, requires a Change Notice.

**3.2.2** Any added hardware must be invoiced at the equipment unit prices stated in Attachment B.1 (Price Sheet) to Exhibit B (Equipment List and Locations) to this Contract.

### **3.3 Technology Refresh**

**3.3.1** The parties will agree to a Technology Refresh which will, among other things, be devised to minimize disruption to District operations. The Technology Refresh is intended to update key solution components (Hardware/Software) with the most contemporaneous and advanced technologies currently available.

**3.3.2** Upon completion of the second year of this Contract, following the Effective Date of this Contract, the District will have the option to initiate a Hardware refresh (Technology Refresh) of the ACOM System, provided by Contractor, subject to the availability and approval of the necessary funding. The District must notify Contractor in writing at least ninety (90) Days prior to the desired Technology Refresh date, confirming the availability and approval of the required funding for the Technology Refresh. Should the District elect not to proceed with the Technology Refresh, Contractor will not be liable for any System failures or performance issues arising from the continued use of the existing Hardware beyond the second-year anniversary period. Additionally, should the District elect not to proceed with the Technology Refresh, the parties agree to meet in good faith to discuss and negotiate suitable adjustments to the metric specified in Exhibit C (Service Level Agreement) to this Contract, to reflect the extended use of the Hardware. Presuming this Contract has been extended beyond the current Term by the District, a Technology Refresh will be implemented every five years thereafter. Notwithstanding, the District makes no guarantee that the Technology Refresh(es) will occur, nor

does the District guarantee that the Technology Refresh will be conducted in one single deployment during the Term of this Contract.

- 3.3.3** The cost for the Technology Refresh will be borne by the District by means of an approved and executed Change Notice or Amendment. Contractor must secure the most cost-effective pricing for the Technology Refresh, minus any bulk purchase discounts as applicable, plus a not-to-exceed 15% markup for handling (e.g., purchasing and administration, setup/configuration, and removal of old replacement hardware). The not-to-exceed 15% markup is calculated based on actual equipment/software costs prior to the inclusion of sales/use tax.
- 3.3.4** Contractor must ensure that all key Solution components (hardware/software) for both the primary and secondary data centers remain under manufacturer and/or extended warranty throughout the entire Term of the Contract. Any Work performed as a result of Contractor's failure to procure and maintain warranties for all key Solution components, will not be billable to the District.
- 3.3.5** The District and Contractor agree that Contractor will not be subject to credits (refer to Paragraph 4.0 (Resolution of Deficiencies) of Exhibit C (Service Level Agreement) for any Downtime resulting from any Technology Refresh, provided Contractor is fully compliant with the agreed-upon processes.

### **3.4 Testing of Work**

Contractor must conduct all appropriate testing of the Solution before providing any Work hereunder, including Optional Work, to ensure the Solution's continued compliance with all Solution Requirements set forth in this Contract. The Solution must be free of any material Deficiencies and Optional Work meets the requirements of the applicable work order. Solution tests must test, among others, the Solution's functionality, integration and interfacing, volume endurance, and System performance.

### **3.5 Integration/Interfacing**

From time to time, Contractor may be responsible for developing and incorporating into the Solution, Application Modifications in the form of Optional Work. If such Application Modifications are to be integrated and/or interfaced with other software and/or systems by Contractor or at the direction of Contractor, the Application Modifications will not be deemed accepted by the District until the Application Modifications and such other systems have been successfully integrated and interfaced, as applicable, in accordance with the terms of this Contract. Contractor will neither assert or obtain any ownership interest in any other systems merely because they were interfaced, integrated or used with the Solution.

### **3.6 Approval of Work**

All Tasks, Subtasks, Deliverables, and other Work provided by Contractor under this Contract must have the District's prior written approval from District Project Director. In no event will the District be liable or responsible for any payment prior to such

written approval. Furthermore, the District reserves the right to reject any Work not approved by the District.

If Contractor provides any Tasks, Subtasks, Deliverables, goods, Services, or other Work to the District other than those specified in this Contract, or if Contractor provides such items requiring the District's prior written approval without first having obtained such written approval, the same will be deemed to be a gratuitous effort on the part of Contractor, and Contractor will not assert any claim whatsoever against the District.

### **3.7 No Offshore Work**

Contractor warrants: (i) that all Services will be performed and rendered within and from within the United States, and (ii) that Contractor must not transmit or make available any of the District's Confidential Information, the District's intellectual property or any District property, including District Materials, to any entity or individual outside the continental United States.

Specifically, no Programming Modifications for the District, including Customizations, Configurations, and Interfaces, may be developed, or provided by personnel on behalf of Contractor outside or from outside the United States. Contractor may perform Services relating to standard product development or revisions, if such Services are provided without, or do not require access to, County's Confidential Information, District's intellectual property, or any District property including District Materials, outside or from outside the United States.

## **4.0 TERM OF CONTRACT**

- 4.1 The Term of this Contract will be for five (5) years commencing after execution by the Board, unless sooner terminated or extended, in whole or in part, as provided in this Contract (Initial Term). At the end of the Initial Term, the District may, at its sole option, extend the Term of this Contract for two (2) one-year periods (Option Terms), subject to, among others, the District's right to terminate earlier for convenience, non-appropriation of funds, default of Contractor, substandard performance of Contractor, non-responsibility of Contractor and any other term or condition of this Contract providing for early termination of this Contract by the District. The District will be deemed to have exercised each option automatically, without further act, unless no later than thirty (30) Days prior to the expiration of each Option Term, the District notifies Contractor in writing that it elects not to extend this Contract pursuant to this Paragraph 4.0 (Term of Contract). If the District elects not to exercise its option to extend at the end of the Initial Term, this Contract will expire.

The District maintains a database that tracks/monitors Contractor performance history. Information entered into the database may be used for a variety of purposes, including determining whether the District will exercise any Contract term extension options.

### **4.2 Notice of Expiration**

Contractor must notify the District when this Contract is within six months from the expiration of the Term. Upon occurrence of this event, Contractor must send written

notification to District Project Director at the address set forth in Exhibit D (District's Administration) to this Contract.

## **5.0 CONTRACT SUM**

### **5.1 Maximum Contract Sum**

The Maximum Contract Sum under this Contract will be the total monetary amount payable by the District to Contractor for supplying all the Tasks, Subtasks, Deliverables, goods, Services, and other Work required or requested by the District under this Contract.

The Maximum Contract Sum, including all applicable taxes, authorized by District hereunder, will not exceed \$5,582,559.50, as described in the table below:

<b>Description of Work</b>	<b>Cost</b>
Maintenance and Support – Year 1	\$ 453,297.76
Maintenance and Support – Year 2	\$ 475,962.65
Maintenance and Support – Year 3	\$ 499,760.78
Maintenance and Support – Year 4	\$ 524,748.82
Maintenance and Support – Year 5	\$ 550,986.26
Maintenance and Support – Option Year 1	\$ 578,535.57
Maintenance and Support – Option Year 2	\$ 607,462.35
Contract Sum:	\$3,690,754,.19
Pool Dollars @ 10% of Contract Sum:	\$ 369,075.42
Hardware Refresh	\$1,522,729.89
Maximum Contract Sum:	\$5,582,559.50

The Contract Sum will remain firm and fixed for the Term of this Contract, unless modified pursuant to a duly approved Amendment to this Contract by the District's and Contractor's authorized representatives pursuant to Paragraph 9.0 (Amendments and Change Notices) of this Contract.

The Maximum Contract Sum under this Contract will provide for all authorized payments the District may make to Contractor for all Work provided by Contractor.

#### **5.1.1 Written Approval for Reimbursement**

Contractor is not entitled to payment or reimbursement for any Tasks or Services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as explicitly specified herein. Assumption or takeover of any of Contractor's duties, responsibilities, or obligations, or performance of same by any person or entity other than Contractor, whether through assignment, Subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever, must not occur without the District's express prior written approval.

#### **5.1.2 Notification of 75% of Total Contract Sum**



Contractor must maintain a system of record keeping that will allow Contractor to determine when it has incurred 75% of the total Contract Sum, including Pool Dollar expenditures, authorized under this Contract. Upon occurrence of this event, Contractor must send written notification to the Department at the address herein provided in Exhibit D (District's Administration) to this Contract.

#### **5.1.3 No Payment for Services Provided Following Expiration/Termination of Contract**

Contractor may not assert any claims against the District for payment of any money or reimbursement, of any kind whatsoever, for any Service provided by Contractor after the expiration or other termination of this Contract. Should Contractor receive any such payment it must immediately notify District and must immediately repay all such funds to the District. Payment by the District for Services rendered after expiration-termination of this Contract will not constitute a waiver of the District's right to recover such payment from Contractor. This provision will survive the expiration or other termination of this Contract.

### **6.0 INVOICES AND PAYMENTS**

#### **6.1 Invoices**

Contractor must invoice the District in accordance with Attachment B.1 (Price Sheet) to Exhibit B (Equipment List and Locations) to this Contract: (i) for M&S, the annual fee to be paid in advance for Service fees; and (ii) for Optional Work, the actual price expended by Contractor for such Optional Work using Pool Dollars, which must not exceed the Maximum Fixed Price quoted for such Optional Work, following Contractor's completion and the District's written approval of the Optional Work.

##### **6.1.1 Submission of Invoices**

Contractor's invoice must include the charges owed to Contractor by the District under the terms of this Contract as provided in Attachment B.1 (Price Sheet) to Exhibit B (Equipment List and Locations) to this Contract. All invoices and supporting documents under this Contract must be submitted to the following:

1. Bryan Webb, District Project Manager  
Email: [Bryan.Webb@fire.lacounty.gov](mailto:Bryan.Webb@fire.lacounty.gov)  
  
Nicholas Berkuta, District Project Director  
Email: [Nicholas.Berkuta@fire.lacounty.gov](mailto:Nicholas.Berkuta@fire.lacounty.gov)

for review and approval of all invoices; and

2. [Fire-InvoiceSubmission@fire.lacounty.gov](mailto:Fire-InvoiceSubmission@fire.lacounty.gov) for payment of all invoices.

##### **6.1.1.1 Invoice Details**

6.1.1.2 Each invoice submitted by Contractor must indicate, at a minimum:

- a. Contract Name and Number;
- b. The Tasks, SubTasks, Deliverables, goods, Services or other Work for which payment is claimed, including M&S Services and any Optional Work;
- c. The price of such Tasks, SubTasks, Deliverables, goods, Services or other Work calculated based on the pricing terms set forth in Attachment B.1 (Price Sheet) to Exhibit B (Equipment List and Locations) to this Contract, or the work order including the Maximum Fixed Price, as applicable;
- d. If applicable, the date of written approval of the Tasks, SubTasks, Deliverables, goods, Services or other Work by District Project Director;
- e. Indication of any applicable withhold or Holdback amounts for payments claimed or reversals thereof;
- f. Indication of any applicable credits due to the District under the terms of this Contract or reversals thereof;
- g. If applicable, a copy of any required Acceptance Certificates signed by District Project Director; and
- h. Any other information required by District Project Director.

6.1.1.3 Approval of Invoices

All invoices submitted by Contractor to the District for payment must have the District's written approval as provided in this Paragraph 6.1.1.2, which approval will not be unreasonably withheld. In no event will the District be liable or responsible for any payment prior to such written approval.

6.1.1.4 Invoice Discrepancies

District Project Director will review each invoice for any discrepancies and will, within thirty (30) Days of receipt thereof, notify Contractor in writing of any discrepancies found upon such review and submit a list of disputed charges. Contractor must review the disputed charges and send a written explanation detailing the basis for the charges within thirty (30) Days of receipt of the District's notice of discrepancies and disputed charges. If District Project Director does not receive a written explanation for the charges within such 30-Day period, Contractor will have waived its right to justify the original invoice amount, and the District, in its sole discretion, will determine the amount due, if any, to Contractor and pay such amount in satisfaction of the disputed invoice, subject to the Dispute Resolution Procedure set forth in this Contract.

All District correspondence relating to invoice discrepancies will be sent by email, followed by hard copy, directly to District Project Manager with a copy to District Project Director at the addresses specified in Exhibit D (District's Administration) to this Contract.

#### **6.1.2 Delivery of System Software**

It is the intent of the parties that if any System Software or Documentation provided by Contractor under this Contract, including any product of M&S Services and any Optional Work, is delivered to the District, such System Software and Documentation will be delivered: (i) in an electronic format (i.e., via electronic mail or internet download) or (ii) personally by Contractor staff who must load such System Software and Documentation onto the District's hardware, but who will retain possession of all originals and copies of such tangible media (e.g., USB, printed manuals, external hard drive) used to deliver the System Software and Documentation to the District.

Any System Software and Documentation that is provided or delivered by Contractor to the District in a tangible format will be F.O.B. Destination. The Contract Sum shown in Paragraph 5.1 (Maximum Contract Sum) above, includes all amounts necessary for the District to reimburse Contractor for all transportation and related insurance charges, if any, on System Software Components and Documentation procured by the District from Contractor pursuant to this Contract. All transportation and related insurance charges, if any, will be paid directly by Contractor to the applicable carrier. Contractor is solely liable and responsible for, and must indemnify, defend, and hold harmless the District from, any and all such transportation and related insurance charges.

#### **6.1.3 Delivery of System Hardware**

It is the intent of the parties that all System Hardware or Documentation provided by Contractor under this Contract is provided or delivered by Contractor to the District F.O.B. Destination. Hardware delivery, set-up, installation, configuration, and optimization services are provided by Contractor to the District as specified in Exhibit A (Statement of Work).

The Contract Sum shown in Paragraph 5.1 (Maximum Contract Sum) above includes all amounts necessary for the District to reimburse Contractor for all transportation and related insurance charges, if any, for all System Hardware Components and Documentation procured by the District from Contractor pursuant to this Contract. All transportation and related insurance charges, if any, must be paid directly by Contractor to the applicable carrier. Contractor is solely liable and responsible for, and must indemnify, defend, and hold harmless the District from, any and all such transportation and related insurance charges.

#### **6.1.4 Sales/Use Tax**

The Contract Sum shown in Paragraph 5.0 (Contract Sum) above, will be deemed to include all amounts necessary for the District to reimburse

Contractor for all applicable California and any other applicable state and local sales/use taxes on all Solution components and other Work provided by Contractor to the District pursuant to or otherwise due as a result of this Contract, including, but not limited to, any product of the Solution, M&S Services and any Optional Work, to the extent applicable. All California sales/use taxes must be paid directly by Contractor to the State or other taxing authority.

Contractor is solely liable and responsible for, and must indemnify, defend, and hold harmless the District from, any and all such California and other state and local sales/use taxes. Further, Contractor is solely liable and responsible for, and must indemnify, defend, and hold harmless the District from, all applicable California and other state and local sales/use tax on all other items provided by Contractor pursuant to this Contract and must pay such tax directly to the State or other taxing authority. In addition, Contractor is solely responsible for all taxes based on Contractor's income or gross revenue, or personal property taxes levied or assessed on Contractor's personal property to which the District does not hold title.

#### **6.1.5 Payments**

Provided that Contractor is not in default under any provision of this Contract, the District will pay all invoice amounts to Contractor within 30 Days of receipt of invoices that have not been disputed in accordance with Paragraph 6.1.1.3 (Invoice Discrepancies) above. The District's failure to pay within the 30-Day period, however, will not be deemed as automatic invoice approval or Acceptance by the District of any deliverable for which payment is sought, nor will it entitle Contractor to impose an interest or other penalty on any late payment.

#### **6.1.6 District's Right to Withhold Payment**

Notwithstanding any other provision of this Contract, and in addition to any rights of the District given by law or provided in this Contract, the District may upon written notice to Contractor withhold payment for any deliverable while Contractor, with no fault of the District, is in default hereunder or default related to Work.

#### **6.1.7** Contractor must invoice the District only for the Tasks, Deliverables, goods, Services, and other Work specified in Exhibit A (Statement of Work), and elsewhere hereunder. Contractor will prepare invoices, which must include the charges owed to Contractor by the District under the terms of this Contract. Contractor's payments will be as provided in Attachment B.1 (Price Sheet) to Exhibit B (Equipment List and Locations) to this Contract, and Contractor must be paid only for the Tasks, Deliverables, goods, Services, and other Work approved in writing by the District. If the District does not approve Work in writing no payment will be due to Contractor for that Work.

- 6.1.8** Contractor's invoices must be priced in accordance with Attachment B.1 (Price Sheet) to Exhibit B (Equipment List and Locations) to this Contract.
- 6.1.9** Contractor's invoices must contain the information set forth in Exhibit A (Statement of Work), describing the Tasks, Deliverables, goods, Services, Work hours, facility and/or other Work for which payment is claimed.
- 6.1.10** Local Small Business Enterprises – Prompt Payment Program (if applicable)

Certified Local Small Business Enterprises (LSBEs) will receive prompt payment for Services they provide to County departments. Prompt payment is defined as 15 Days after receipt of an undisputed invoice.

## **6.2 Default Method of Payment: Direct Deposit or Electronic Funds Transfer**

- 6.2.1** The County has determined that the most efficient and secure default form of payment for goods and/or services provided under an agreement/contract with the County will be Electronic Funds Transfer (EFT) or direct deposit unless an alternative method of payment is deemed appropriate by the County Auditor-Controller (A-C).
- 6.2.2** Contractor must submit a direct deposit authorization request via the website <https://directdeposit.lacounty.gov> with banking and vendor information, and any other information that the A-C determines is reasonably necessary to process the payment and comply with all accounting, record keeping, and tax reporting requirements.
- 6.2.3** Any provision of law, grant, or funding agreement requiring a specific form or method of payment other than EFT or direct deposit will supersede this requirement with respect to those payments.
- 6.2.4** At any time during the duration of this Contract, Contractor may submit a written request for an exemption to this requirement. Such request must be based on specific legal, business, or operational needs and explain why the payment method designated by the A-C is not feasible and an alternative is necessary. The A-C, in consultation with the contracting department(s), will decide whether to approve any exemption requests.

## **7.0 ADMINISTRATION OF CONTRACT – DISTRICT**

### **7.1 District's Administration**

All persons administering this Contract on behalf of the District are identified in Exhibit D (District's Administration) to this Contract. Unless otherwise specified, reference to each of the persons listed in Exhibit D (District's Administration) to this Contract, will also include any authorized designee. The District will notify Contractor in writing of any change in the names and/or addresses of the persons listed in Exhibit D (District's Administration) to this Contract.

No member of the District is authorized to make any changes in any of the terms and conditions of this Contract other than those specifically authorized under Paragraph 9.0 (Amendments and Change Notices) below.

## **7.2 District's Personnel**

### **7.2.1 District Project Director**

District Project Director will be responsible for ensuring that the objectives of this Contract are met and for overseeing the Contract in general. District Project Director will have the right at all times to inspect any and all Work provided by or on behalf of Contractor.

### **7.2.2 District Project Manager**

District Project Manager will be responsible for ensuring that the technical, business, and operational standards and requirements of this Contract are met. District Project Manager will interface with Contractor's Project Manager on a regular basis. District Project Manager will report to District Project Director regarding Contractor's performance with respect to business and operational standards and requirements of the Contract. Unless specified otherwise, District Project Manager will be the presumptive designee of District Project Director.

## **7.3 District Personnel, Other**

All District personnel assigned to this Contract will be under the exclusive supervision of the District. Contractor understands and agrees that all such District personnel are assigned only for the convenience of the District. Contractor hereby represents that its price and performance hereunder are based solely on the Work of Contractor's personnel, except as otherwise expressly provided in this Contract.

## **8.0 ADMINISTRATION OF CONTRACT – CONTRACTOR**

### **8.1 Contractor's Administration**

All persons administering this Contract on behalf of Contractor and described in this Paragraph 8.0 (Administration of Contract – Contractor) are identified in Exhibit E (Contractor's Administration) to this Contract. All staff employed by and/or on behalf of Contractor, including the persons listed in such Exhibit E (Contractor's Administration) to this Contract, must be adults who are 18 years of age or older, authorized to work in the United States, and fully fluent in both spoken and written English. Contractor must notify the District in writing of any change in the names and/or addresses of Contractor Personnel.

### **8.2 Contractor's Personnel**

#### **8.2.1 Contractor's Project Director**

Contractor's Project Director is responsible for Contractor's performance of all Work and ensuring Contractor's compliance with this Contract. Contractor's Project Director must meet and confer with District Project Director on a regular basis as required by the District and specified in Exhibit A (Statement of Work) to this Contract, regarding the overall maintenance of the System. Such meetings will be conducted via teleconference or in person at a time and place agreed to by District Project Director and Contractor's Project Director.

### **8.2.2 Contractor's Project Manager**

Contractor's Project Manager must be responsible for Contractor's day-to-day activities as related to this Contract and for reporting to the District. Contractor's Project Manager must communicate with District Project Manager on a regular basis and must be available during Business Days, or as otherwise required by the District and this Contract, to teleconference and/or to meet with District personnel regarding the operation of this Contract, as required by District Project Director. Contractor's Project Director must meet and confer with District Project Director on a regular basis, at least weekly or as otherwise required by the District. Such meetings will be conducted via teleconference or in person at a time and place agreed to by the parties.

## **8.3 Approval of Contractor's Staff**

**8.3.1** In fulfillment of its responsibilities under this Contract, Contractor must only utilize, or permit the utilization of, staff who are fully trained and experienced, and as appropriate, licensed or certified in the Tasks required by this Contract. Contractor must provide sufficient personnel to fulfill its responsibilities in a timely and efficient manner as out.

**8.3.2** The District will have the right to approve or disapprove each member or proposed member of Contractor's key staff providing Services or on-site Work to the District under this Contract or with access to any District data or information, including District's Confidential Information, System Data and other District Materials, prior to and during their performance of any Work hereunder, as well as to approving or disapproving any proposed deletions from or other changes in such Contractor key staff. District Project Manager, exercising reasonable discretion may require replacement of any member of Contractor key staff performing or offering to perform Work hereunder. Contractor must provide the District with a resume of each proposed initial key staff member as well as a proposed substitute, and an opportunity to vet any such person prior to performance of any Work hereunder. Contractor has 30 Days from the date of the District's written request to replace such key staff.

**8.3.3** In addition, Contractor must provide to District Project Director an executed Confidentiality and Assignment Agreement [refer to Exhibit F2 (Contractor Employee Acknowledgement, Confidentiality, and Copyright Assignment Agreement) to this Contract], for each member of Contractor's key staff performing Work under this Contract on or immediately after the effective date, but in no event later than the date such member of Contractor key staff first performs Work under this Contract.

**8.3.4** Contractor must, to the maximum extent possible, take all necessary steps to ensure continuity over time of the membership of the group constituting Contractor key staff. Contractor must promptly fill any Contractor key staff vacancy with personnel having qualifications (i.e.,

relevant experience) at least equivalent to those of Contractor key staff member(s) being replaced.

- 8.3.5** In the event Contractor should ever need to remove any member of Contractor key staff from performing Work under this Contract, Contractor must provide the District with notice at least 15 Days in advance, except in circumstances when such notice is not possible, and must work with District on a mutually agreeable transition plan to provide an acceptable replacement and ensure project continuity. Should the District be dissatisfied with any member of Contractor staff during the Term of this Contract, Contractor must replace such person with another whose qualifications satisfy the District.

#### **8.4 Contractor's Staff Identification**

- 8.4.1** All Contractor staff, including Subcontractors and agents, who successfully complete a background investigation, as set forth in Paragraph 8.5 (Background and Security Investigations) below, will be issued a photo identification badge by the Department. Contractor staff will prominently display this identification badge on the upper part of the body when entering any County facility or grounds.
- 8.4.2** Contractor must notify the District within one Business Day when staff is terminated from Work under this Contract. Contractor is responsible for retrieving and immediately destroying the staff's District-specified photo identification badge at the time of removal from Work under this Contract, if applicable.
- 8.4.3** If the District requests the removal of Contractor's staff, Contractor must retrieve and immediately destroy Contractor staff's District photo identification badge at the time of removal from Work under this Contract.
- 8.4.4** Contractor will be responsible for costs associated with any lost or stolen identification badge(s).

#### **8.5 Background and Security Investigations**

- 8.5.1** Key staff, and any Contractor staff, with access to the County network or data under this Contract must undergo and pass, to the satisfaction of the District, a background investigation as a condition of beginning and continuing Work under this Contract.

Such background investigation will be administered by the Department. The background investigation will be obtained through fingerprints submitted to the California Department of Justice to include state, local and federal-level review, which may include but not be limited to, criminal conviction information.

- 8.5.2** District Project Director will schedule background investigations with the Department's Civilian Backgrounds Unit. All fees associated with obtaining the background information are borne by Contractor regardless of whether Contractor's staff passes or fails the background clearance investigation.



- 8.5.3** The District may immediately, in its sole discretion, deny or terminate all access to both physical facilities and County systems and/or data, to any Contractor's staff, including Subcontractor staff, who do not pass such background investigation(s) to the satisfaction of the District and/or whose background or conduct is incompatible with District's facility access.
- 8.5.4** Disqualification, if any, of Contractor's staff, including Subcontractors' staff, pursuant to this Paragraph 8.5 (Background and Security Investigations) will not relieve Contractor of its obligation to complete all Work in accordance with the terms and conditions of this Contract.

## **8.6 Rules and Regulations**

During the time when Contractor's employees, Subcontractors or agents are at County facilities, such persons will be subject to the applicable rules and regulations of County facilities. It is the responsibility of Contractor to acquaint such persons, who are to provide Work, with such rules and regulations. In the event that the District determines that an employee, Subcontractor or agent of Contractor has violated any applicable rule or regulation, the District will notify Contractor, and Contractor must undertake such remedial or disciplinary measures as Contractor determines appropriate. If the problem is not thereby corrected, then Contractor must permanently withdraw its employee, Subcontractor or agent from the provision of Work upon receipt of written notice from the District that: (i) such employee, Subcontractor or agent has violated such rules or regulations; or (ii) such employee's, Subcontractor's or agent's actions, while on County premises, indicate that the employee, Subcontractor or agent may adversely affect the provision of Work. Upon removal of any employee, Subcontractor or agent, Contractor must immediately replace the employee, Subcontractor or agent and must continue uninterrupted Work hereunder.

## **9.0 AMENDMENTS AND CHANGE NOTICES**

### **9.1 General**

No representative of either the District or Contractor, including those named in this Contract, is authorized to make any changes to any of the terms, obligations, or conditions of this Contract, except through the procedures set forth in this Paragraph 9.0 (Amendments and Change Notices). Any changes to this Contract, including any portion of the Work provided under this Contract, will be accomplished only as provided in this Paragraph 9.0 (Amendments and Change Notices).

### **9.2 Amendments**

Except as otherwise provided in this Contract, for any change requested by the District which materially affects the scope of Work, Term, payments or any other material term or condition included in this Contract, an Amendment to this Contract must be executed by the County Board of Supervisors and Contractor's authorized representative(s).

Notwithstanding the foregoing, the Fire Chief or his authorized designee, is specifically authorized to issue Contract non-renewal notices for the option terms.

Furthermore, the Fire Chief is specifically authorized to prepare and execute Amendments on behalf of the District to: (i) effectuate modifications, which do not materially affect any term of the Contract, (ii) exercise option terms, (iii) add new or revised standard County contract provisions adopted by the Board, as periodically required, (iv) effectuate the assignment and delegation/mergers or acquisitions provision, (v) engage Contractor to provide Optional Work (e.g., programming modifications, professional services, and acquire relevant additional hardware and software), as required by the District, using available Pool Dollars, with concurrence of the County's Office of the Chief Information Officer (OCIO), and approval as to form by County Counsel, and (vi) terminate the Contract, either in whole or in part, by the provision of a ten-day written notice.

### **9.3 Change Notices**

For any change requested by the District which does not materially affect the scope of Work, Term, payments or any material term or condition of this Contract, or for any change requiring expenditure of Pool Dollars, a written notice of such change (hereinafter "Change Notice") will be prepared by the Department and provided by District Project Director to Contractor for acknowledgement or execution, as applicable.

Change Notices requiring the expenditure of Pool Dollars will require Contractor to prepare a written scope of Work statement and quotation as the basis of the Change Notice and seek written approval of District Project Director with concurrence of County Counsel prior to commencement of any Work relating to such Change Notice, including any Optional Work. District Project Director will be authorized on behalf of the District to approve all Change Notices.

## **10.0 OWNERSHIP AND LICENSE**

### **10.1 Solution Ownership**

#### **10.1.1 Solution Environment**

Contractor acknowledges that the District or the rightful owner owns all Solution Environment components, including Solution Hardware, and all software provided by the District; while Contractor or the rightful owner will retain ownership of all Solution Environment components provided by Contractor.

#### **10.1.2 Application Software**

All Application Software provided by Contractor to the District pursuant to this Contract, including Licensed Software and Application Modifications, and related Documentation, is and will remain the property of Contractor or any rightful third-party owner with which all proprietary rights will reside, and which will be subject to the terms of the License granted pursuant to Paragraph 10.2 (License) below.

#### **10.1.3 Solution Data**

All Solution data that is provided or made accessible by the District to Contractor or is generated by the Solution or is the product of the Solution

provided by Contractor hereunder, is and will remain the property of the District.

#### **10.1.4 Work Product**

Contractor or the rightful owner will remain the sole owner of Contractor's Application Software and all derivative works therein (hereinafter collectively "Work Product"). Work Product does not include any District Materials whether previously owned by the District or designed or developed by Contractor for the District.

### **10.2 License**

#### **10.2.1 License Grant**

Subject to the provisions of Paragraph 10.1 (Solution Ownership) above, Contractor hereby grants to the District a perpetual, irrevocable, non-exclusive License to use the Solution Software or any component thereof, as applicable, and Work Product, including any related Documentation (hereinafter "License"), by all Users in accordance with the scope set forth in Paragraph 10.2.3 (Scope of License) below and subject to the restrictions set forth in Paragraph 10.2.4 (License Restrictions) below for the period specified in Paragraph 10.2.2 (License Term) below. Notwithstanding the foregoing, upon mutual agreement of the parties, the District may obtain its own license for any third-party Software that may be provided by Contractor as part of the System Environment, the term and scope of which will be subject to the terms of the District's agreement with the provider of such Third-Party Software.

#### **10.2.2 License Term**

The License granted under this Contract will commence upon the earlier of District's access of any Solution Software component or the Effective Date and will continue in perpetuity and without regard to the end of the Term of this Contract.

#### **10.2.3 Scope of License**

The License granted by Contractor under this Contract provides the District with the following rights:

- a. To use, access, install, integrate with other software, operate and execute the Solution Software in the System Environment on an unlimited number of computers, servers, mobile devices, workstations, local-area networks and wide-area networks, and web connections not to exceed the total number of Acom sites set forth in Exhibit B (Equipment List and Locations) to this Contract, by an unlimited number of Users in the conduct of the business of the District as provided in this Contract,
- b. To use, modify, copy and display the Documentation, including, but not limited to the Solution and User manuals and any other specifications or Documentation provided or made accessible by

Contractor to the District as necessary or appropriate for the District to fully enjoy and exercise the rights granted under this Contract and the License granted hereunder,

- c. Subject to the limitations set forth in Paragraph 16.0 (Confidentiality), to permit third-party access to any Solution components and Documentation, including Solution Software, or any part thereof, as necessary or appropriate for the District to fully enjoy and exercise the rights granted under this Contract and the License, including for the provision of M&S Services, Software Updates, Application Modifications, Professional Services, and other business use or support of the Solution Software as contemplated by this Contract; provided, however, without limiting the District's rights under this Paragraph 10.2.3(c) the District covenants and agrees that it will not exercise any of the rights contained in this Paragraph 10.2.3(c) unless and until any one of the following release conditions occurs:
  - i. The insolvency of Contractor, including as set forth in Paragraph 22 (Termination for Insolvency) of this Contract, or
  - ii. Contractor is unwilling or unable to provide all System Maintenance Services in accordance with the terms of this Contract, including Exhibit A (Statement of Work), or
  - iii. Contractor ceasing to maintain or support the current version or the last two prior Version Releases of the Application Software for reasons other than the District's failure to pay for, or election not to receive, Contractor's System Maintenance Services, and no other qualified entity will assume the obligation to provide such M&S Services, which may result in the District's termination of this Contract for default in accordance with Paragraph 20.0 (Termination for Default) below, or
  - iv. Successor ceasing to do business with the District with respect to this Contract,
- d. Pursuant to Paragraph 56.0 (Assignment by District) below, to reproduce and use a reasonable number of copies of the Solution Software provided by Contractor: (i) by the District and permitted assignees for archive and backup purposes; and (ii) by the District for use by permitted assignees so long as all copies of the Solution Software contain the proprietary notices appearing on the copies initially furnished to the District by Contractor.

#### **10.2.4 License Restrictions**

The District acknowledges and agrees: (i) that the System Software provided by Contractor to the District under this Contract, including related Documentation, is the confidential and copyrighted property of Contractor, or its licensors, and all rights therein not expressly granted to the District are reserved to Contractor, or its licensors, as applicable; and (ii) that

Contractor, or its licensors, will retain all proprietary rights in and to the foregoing. Subsequently, the License to the System Software provided by Contractor hereunder is limited by the restrictions set forth in this Paragraph 10.2.4. Accordingly, the District will not:

- a. Reverse engineer, disassemble or decompile the Application Software provided by Contractor,
- b. Transfer, sublicense, rent, lease, convey or assign [unless resulting from an agreement assignment under Paragraph 56.0 (Assignment by District)] below, the System Software provided by Contractor,
- c. Copy or reproduce the System Software provided by Contractor in any way except as reasonably necessary for backup, archival or business continuity purposes, and as specified in Paragraph 10.2.3(c) (Scope of License) above,
- d. Use the System Software provided by Contractor on a timesharing, service bureau, subscription service or rental basis for any third party, or
- e. Remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on, or during the use of, the System Software provided by Contractor.

## **11.0 REPRESENTATIONS AND WARRANTIES**

### **11.1 General Warranties**

Contractor represents, warrants, covenants, and agrees that throughout the entire Term of this Contract:

- a. Contractor must comply with the description and representations (including, but not limited to, Deliverable documentation, performance capabilities, accuracy, completeness, characteristics, specifications, Configurations, standards, functions and requirements applicable to professional software design meeting industry standards) set forth in this Contract, Exhibit A (Statement of Work) to this Contract, and all Exhibits, Attachments and Schedules thereto.
- b. Unless specified otherwise herein, the Solution must be free from material Deficiencies.
- c. So long as District maintains a fully paid-up M&S plan, which will not include the District exercising any rights under the Contract or applicable law, the M&S Service Levels must not degrade during the entire Term of this Contract.
- d. Contractor must not intentionally cause any unplanned interruption of or accessibility to the Solution or any component through any device, method or means including, without limitation, the use of any "virus", "lockup", "time bomb", or "key lock", "worm", "back door" or "Trojan Horse" device or program, or any disabling code, which has the potential or capability of compromising the security of District's confidential or proprietary information or of causing any unplanned interruption of the operations of, or accessibility of the Solution or

any component to the District or User or which could alter, destroy, or inhibit the use of the System or any component, or the data contained therein (collectively referred to as “Disabling Device(s)”), which could block access to or prevent the use of the Solution or any component by the District or Users. Contractor represents, warrants, and agrees that it has not purposely placed, nor is it aware of, any Disabling Device in any Solution component provided to the District under this Contract, nor must Contractor knowingly permit any subsequently delivered or provided Solution component to contain any Disabling Device.

- e. In addition, Contractor must prevent viruses from being incorporated or introduced into the Solution or updates or enhancements thereto prior to the installation onto the Solution and must prevent any viruses from being incorporated or introduced in the process of Contractor’s performance of on-line support.

## **11.2 Standard of Services**

Contractor’s Services and other Work required by this Contract must, during the Term of this Contract, conform to reasonable commercial standards as they exist in Contractor’s profession or field of practice. If Contractor’s Services or other Work provided under this Contract fail to conform to such standards, upon notice from the District specifying the failure of performance, Contractor must also, at Contractor’s sole expense, provide the applicable remedy as specified in this Contract, including Exhibit A (Statement of Work) and Exhibit C (Service Level Agreement) to this Contract. Contractor must, at its own expense, correct any data in which (and to the extent that) errors have been caused by Contractor or malfunctions of the Solution or by any other tools introduced by Contractor into the Solution for the purpose of performing Services or other Work under this Contract or otherwise.

## **11.3 System Warranties and Problem Resolution**

Contractor hereby warrants to the District that the Solution must be free from any and all Deficiencies commencing from Production Use of the System through the Term of the Contract. All Deficiencies reported or discovered must be corrected in accordance with Exhibit A (Statement of Work) and Exhibit C (Service Level Agreement) to this Contract and will be at no cost to the District beyond the payment of the applicable Maintenance Fees under this Contract.

Contractor also represents, warrants, covenants and agrees that throughout the entire Term of this Contract:

- a. All Solution components must be compatible with each other and, to the extent applicable or required, must interface with each other; and the Solution components, when taken together, must be capable of delivering all the functionality as set forth in this Contract.
- b. Any Solution enhancements or upgrades must be backward compatible with the District’s standard browser(s) and operating system version(s) operated on District workstations.

- c. The Solution, including the System, must be capable of delivering all the functionality and meeting all requirements as set forth in this Contract, including the Solution Requirements, security requirements and the specifications.
- d. The Solution must meet the Solution Performance Requirements within Contractor's control, including, but not limited to, those relating to response time and Solution Availability, as further specified in Exhibit A (Statement of Work) and Exhibit C (Service Level Agreement) to this Contract. All Solution Performance Deficiencies, for the purpose of determining the applicable Deficiency Resolution Time and District remedies, including Service Credits, will be deemed Severity Level 1 or Severity Level 2, as determined by District Project Director.

#### **11.4 Continuous Product Support**

- 11.4.1** In the event that Contractor replaces any or all components of the Application Software with other software modules or components (hereinafter "Replacement Product") during the entire Term of the Contract in order to fulfill its obligations under this Contract and to meet the Solution Requirements, then the License will be deemed to automatically include such Replacement Product without cost or penalty to the District even if such Replacement Product contains greater functionality than the Application Software it replaced. If required by the District, Contractor must provide the necessary training to District personnel to utilize the Replacement Product at no cost to the District.
- 11.4.2** In the event any or all components of the Application Software are migrated to the Replacement Product as a result of an acquisition, sale, assignment, transfer or other change in control of Contractor, then any assignee or successor, by taking benefit (including, without limitation, Acceptance of any payment under this Contract), will be deemed to have ratified this Contract, subject to the requirements of Paragraph 18.0 (Assignment and Delegation/Mergers or Acquisitions) below. All terms and conditions of this Contract will continue in full force and effect for the Replacement Product.
- 11.4.3** The following terms and conditions will apply if the District elects to transfer the License to a Replacement Product:
  - a. Contractor, or its assignee or successor, must at no cost to the District, implement the Replacement Product in the Solution Environment, convert and migrate all of the Solution data from the Application Software format to the Replacement Product format to ensure Production Use of such Replacement Product,
  - b. Any prepaid Service Fees for the Solution must transfer in full force and effect for the balance of the Replacement Product's maintenance and support term (or equivalent service) at no additional cost. If the prepaid amount is greater than the Replacement Product's maintenance and support fees for the same Term, the credit balance

must be applied to future Maintenance Fees or returned to the District, at the District's option,

- c. All modules offered separately must match the original Application Software's level of functionality, must be supplied by Contractor, or its assignee or successor, without additional cost or penalty to the District, and must not affect the calculation of any annual fees,
- d. Contractor must provide to the District the necessary training for purposes of learning the Replacement Product. Such training must be provided at no cost to the District,
- e. All License terms and conditions, at a minimum, must remain as granted herein with no additional fees imposed on the District, and
- f. The definition of Application Software must include the Replacement Product.

#### **11.4.4 Warranty Pass-Through**

Contractor must assign to the District to the fullest extent permitted by law or by this Contract and must otherwise ensure that the benefits of any applicable warranty or indemnity offered by any manufacturer of any Solution component or any other Solution product or service provided hereunder must fully extend to and be enjoyed by the District.

#### **11.4.5 Remedies**

The District's remedies under this Contract for the breach of the warranties set forth in this Contract, including Exhibit A (Statement of Work) and/or Exhibit C (Service Level Agreement) to this Contract, will include the repair or replacement by Contractor, at its own expense, of the non-conforming Solution components, any other remedies set forth in Exhibit A (Statement of Work) and/or Exhibit C (Service Level Agreement) to this Contract, including assessment of Service Credits and any other corrective measures specified in such Exhibit A (Statement of Work) and/or Exhibit C (Service Level Agreement) to this Contract.

#### **11.4.6 Breach of Warranty Obligations**

Failure by Contractor to timely perform its obligations set forth in this Paragraph 11.4 (Continuous Product Support) will constitute a material breach, upon which, in addition to the District's other rights and remedies set forth herein, the District may, after written notice to Contractor and provision of a reasonable cure period, terminate this Contract in accordance with Paragraph 20.0 (Termination for Default) below.

## **12.0 GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE**

### **12.1 General Insurance Requirements**

Without limiting Contractor's indemnification of the District, and in the performance of this Contract and until all its obligations pursuant to this Contract have been met, Contractor must provide and maintain at its own expense insurance coverage



satisfying the requirements specified in this Paragraph 12.0 (General Provisions for all Insurance Requirements). These minimum insurance coverage terms, types, and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Contract. The District in no way warrants that the Required Insurance is sufficient to protect Contractor for liabilities which may arise from or relate to this Contract.

## **12.2 Evidence of Coverage and Notice to District**

- 12.2.1** Certificate(s) of insurance coverage (Certificate) satisfactory to the District, and a copy of an Additional Insured endorsement confirming the County and its Agents (defined below) has been given Insured status under Contractor's General Liability policy, will be delivered to the District and provided prior to commencing Services under this Contract.
- 12.2.2** Renewal Certificates must be provided to the District not less than ten Days prior to Contractor's policy expiration dates. The District reserves the right to obtain complete, certified copies of any required Contractor and/or Subcontractor insurance policies at any time.
- 12.2.3** Certificates must identify all required insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an authorized representative of the insurer(s). The insured party named on the Certificate must match the name of Contractor identified as the contracting party in this Contract. Certificates must provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding \$50,000, and list any County required endorsement forms.
- 12.2.4** Neither the District's failure to obtain, nor the District's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by Contractor, its insurance broker(s) and/or insurer(s), will be construed as a waiver of any of the required insurance provisions.
- 12.2.5** Certificates and copies of any required endorsements must be sent to District Project Director at the address specified in Exhibit D (District's Administration) to this Contract.
- 12.2.6** Contractor also must promptly report to the District any injury or property damage accident or incident, including any injury to a Contractor employee occurring on District property, and any loss, disappearance, destruction, misuse, or theft of District property, monies or securities entrusted to contractor. Contractor also must promptly notify the District of any third-party claim or suit filed against Contractor or any of its Subcontractors which arises from or relates to this Contract and could result in the filing of a claim or lawsuit against Contractor and/or the District.

### **12.3 Additional Insured Status and Scope of Coverage**

The County, its Special Districts, Elected Officials, Officers, Agents, employees, and volunteers (collectively the County and its Agents) must be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. The County and its Agents additional insured status must apply with respect to liability and defense of suits arising out of Contractor's acts or omissions, whether such liability is attributable to Contractor or to the County. The full policy limits and scope of protection also must apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

### **12.4 Cancellation of or Changes in Insurance**

Contractor must provide the District with, or Contractor's insurance policies must contain a provision that the District will receive, written notice of cancellation or any material change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice must be provided to the District at least ten (10) Days in advance of cancellation for non-payment of premium and thirty (30) Days in advance for any other cancellation or material policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Contract, in the sole discretion of the District, upon which the District may suspend or terminate this Contract.

### **12.5 Failure to Maintain Insurance**

Contractor's failure to maintain or provide acceptable evidence that it maintains the required insurance will constitute a material breach of this Contract, upon which the District immediately may withhold payments due to Contractor, and/or suspend or terminate this Contract. The District, at its sole discretion, may obtain damages from Contractor resulting from said breach. Alternatively, the District may purchase the Required Insurance, and without further notice to Contractor, deduct the premium cost from sums due to Contractor or pursue contractor reimbursement.

### **12.6 Insurer Financial Ratings**

Coverage will be placed with insurers acceptable to the District with A.M. Best ratings of not less than A: VII unless otherwise approved by the District.

### **12.7 Contractor's Insurance Must Be Primary**

Contractor's insurance policies, with respect to any claims related to this Contract, will be primary with respect to all other sources of coverage available to Contractor. Any District maintained insurance or self-insurance coverage will be in excess of and not contribute to any Contractor coverage.

### **12.8 Waivers of Subrogation**

To the fullest extent permitted by law, Contractor hereby waives its rights and its insurer(s)' rights of recovery against the District under all the Required Insurance for any loss arising from or relating to this Contract. Contractor must require its

insurers to execute any waiver of subrogation endorsements as defined in Exhibit A (Statement of Work), which may be necessary to affect such waiver.

#### **12.9 Subcontractor Insurance Coverage Requirements**

Contractor must include all Subcontractors as insureds under Contractor's own policies or must provide the District with each Subcontractor's separate evidence of insurance coverage. Contractor will be responsible for verifying each Subcontractor complies with the Required Insurance provisions herein and must require that each Subcontractor name the District and Contractor as additional insureds on the Subcontractor's General Liability policy. Contractor must obtain the District's prior review and approval of any Subcontractor request for modification of the Required Insurance.

#### **12.10 Deductibles and Self-Insured Retentions (SIRs)**

Contractor's policies must not obligate the District to pay any portion of any Contractor deductible or SIR. The District retains the right to require Contractor to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration, and defense expenses. Such bond must be executed by a corporate surety licensed to transact business in the State of California.

#### **12.11 Claims Made Coverage**

If any part of the required insurance is written on a claims made basis, any policy retroactive date will precede the effective date of this Contract. Contractor understands and agrees it must maintain such coverage for a period of not less than one year following Contract expiration, termination, or cancellation.

#### **12.12 Application of Excess Liability Coverage**

Contractors may use a combination of primary and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies to satisfy the Required Insurance provisions.

#### **12.13 Separation of Insureds**

All liability policies must provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

#### **12.14 Alternative Risk Financing Programs**

The District reserves the right to review and then approve Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents must be designated as an Additional Covered Party under any approved program.

## **12.15 District Review and Approval of Insurance Requirements**

The District reserves the right to review and adjust the Required Insurance provisions, conditioned upon the District's determination of changes in risk exposures.

## **13.0 INSURANCE COVERAGE**

### **13.1 Commercial General Liability Insurance**

Commercial General Liability insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming the County and its Agents as an additional insured, with limits of not less than:

General Aggregate: \$2 million

Products/Completed Operations Aggregate: \$1 million

Personal and Advertising Injury: \$1 million

Each Occurrence: \$1 million

**13.2 Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance must cover liability arising out of Contractor's use of autos pursuant to this Contract, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

**13.3 Workers Compensation and Employers' Liability** insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also must include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer. The written notice must be provided to the County at least ten Days in advance of cancellation for non-payment of premium and 30 Days in advance for any other cancellation or policy change. If applicable to Contractor's operations, coverage also must be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

### **13.4 Technology Errors & Omissions Insurance**

Technology Errors & Omissions Insurance includes coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products. Coverage for violation of software copyright should be included. Technology services should at a minimum include: (i) systems analysis, (ii) systems programming, (iii) data processing, (iv) systems integration, (v) outsourcing including outsourcing development and design, (vi) systems design, consulting, development and modification, (vii) training services relating to computer software or hardware, (viii) management, repair and maintenance of computer products, networks and

systems, (ix) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software, (x) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, and (xi) any other Services provided by Contractor, with limits of not less than ten million dollars.

### **13.5 Privacy/Network Security (Cyber) Insurance**

Privacy/Network Security (“Cyber”) liability coverage providing protection against liability for: (i) privacy breaches (liability arising from the loss or disclosure of confidential information no matter how it occurs), (ii) System breach, (iii) denial or loss of service, (iv) introduction, implantation or spread of malicious software code, and (v) unauthorized access to or use of computer systems, with limits of not less than five million dollars. No exclusions/restrictions for unencrypted portable devices/media may be on the policy. The County of Los Angeles, its Special Districts, and their Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) must be provided additional insured status.

### **13.6 Intellectual Property Warranty and Indemnification**

#### **13.6.1 Indemnification – General**

Notwithstanding any provision to the contrary, whether expressly or by implication, Contractor must indemnify, defend, and hold harmless the County, its Special Districts, and their elected and appointed officers, employees, Agents and volunteers (collectively referred to for purposes of this Paragraph 13.7.1 as County and its Agents) from and against any and all liability, including, but not limited to, demands, claims, actions, fees, damages, costs, and expenses (including attorneys and expert witness fees) arising from any actual infringement of any third party’s patent or copyright, or any actual unauthorized trade secret disclosure, arising from or related to this Contract and/or the operation and use of the System (collectively referred to for purposes of this Paragraph 13.7.1 as “Infringement Claim(s)”).

Any legal defense pursuant to Contractor’s indemnification obligations under this Paragraph 13.7.1 must be conducted by Contractor and performed by counsel selected by Contractor. The District will provide Contractor with information, reasonable assistance, and authority to defend or settle the claim. Notwithstanding the foregoing, the County will retain the right to participate in any such defense at its sole cost and expense.

#### **13.6.2 Indemnification – Intellectual Property**

13.6.2.1 Notwithstanding any provision to the contrary, whether expressly or by implication, from and against any and all third-party liability, including, but not limited to, demands, claims, actions, fees, direct damages, costs, and expenses (including attorneys and expert witness fees) arising from any actual infringement of any third party’s patent or copyright, or any actual unauthorized trade secret disclosure, arising from or

related to this Contract and/or the operation and use of the System (collectively referred to for purposes of this Paragraph 13.7.2 as “Infringement Claim(s)”).

- 13.6.2.2 Any legal defense pursuant to Contractor’s indemnification obligations under this Paragraph 13.7.2 (Indemnification – Intellectual Property) must be conducted by Contractor and performed by counsel approved by both parties. The District will provide Contractor with information, reasonable assistance, and authority to defend or settle the claim. Notwithstanding the foregoing, the District will retain the right to participate in any such defense at its sole cost and expense.
- 13.6.2.3 Contractor must pay and is solely responsible for the amount of any resulting adverse final judgement issued by a court of competent jurisdiction, or of any settlement made by Contractor in writing.
- 13.6.2.4 Contractor will have no liability hereunder if the claim of infringement or an adverse final judgment rendered by a court of competent jurisdiction results from: (i) the District’s use of a previous version of the Solution, and the claim would have been avoided had the District used the current version of the software, (ii) the District’s combining the Solution with devices or products not intended or approved by Contractor, (iii) use of the Solution in applications, business environments or processes for which the Solution was not designed or contemplated, and where use of the Solution outside of such application, environment or business process would not have given rise to the claim, (iv) corrections, modifications, alterations or enhancements that the District made to the Solution and such correction, modifications, alterations or enhancements is determined by a court of competent jurisdiction to be a contributing (e.g., material and/or substantive) cause of the infringement, (v) use of the Solution by any person or entity other than Users, or (vi) subject to Contractor’s remedial measures, the District’s willful infringement, including continued use of Contractor’s infringing Solution after being notified by Contractor that such infringing Solution is, or is likely to become, the subject of a third-party claim.
- 13.6.2.5 Contractor must, at its option and at no cost to the District, engage in remedial measures by, either: (i) disabling without delay, the affected Software component, as applicable, and either (ii) procuring the right, by license or otherwise, for the District to continue to use the Solution or affected component(s) thereof, or part(s) thereof, to the same extent of District’s License, or (iii) replacing or modifying the Solution or any

component(s) thereof with another software or component(s) thereof of at least equivalent quality and performance capabilities, as mutually determined and agreed to by the District and Contractor, until the Solution and all components thereof become non-infringing, non-misappropriating and non-disclosing. The foregoing states Contractor's entire liability and District's sole and exclusive remedy with respect to this Paragraph 13.7 (Indemnification - Intellectual Property).

- 13.6.2.6 Failure by Contractor to provide and complete the Remedial Acts described in Paragraph 13.7.2.5 above will constitute a material breach of this Contract, upon which the District will be entitled to terminate this Contract for default pursuant to Paragraph 20.0 (Termination for Default) below.

#### **14.0 INTENTIONALLY OMITTED**

#### **15.0 INTENTIONALLY OMITTED**

#### **16.0 CONFIDENTIALITY**

##### **16.1 Confidential Information**

Each party will protect, secure and keep confidential all records, materials, documents, data and/or other information, including, but not limited to, billing and sensitive financial information, County records, data and information, County materials, Solution data, Work Product, Application Software, personally identifiable and health information, and any other data, records and information, received, obtained and/or produced under the provisions of this Contract (hereinafter "Confidential Information"), in accordance with the terms of this Contract and all applicable federal, state or local laws, regulations, ordinances and publicly available guidelines and directives relating to confidentiality. As used in this Contract, the term "Confidential Information" will also include records, materials, data and information deemed confidential by the District or the applicable law under Paragraph 8.6 (Rules and Regulations) of this Contract. Each party will use whatever appropriate security measures are necessary to protect such Confidential Information from loss, damage and/or unauthorized dissemination by any cause, including, but not limited to, fire and theft.

Contractor must inform all its officers, employees, agents and Subcontractors providing Work hereunder of the confidentiality provisions of this Contract. Contractor must ensure that all its officers, employees, agents and Subcontractors performing Work hereunder have entered into confidentiality agreements no less protective of the District than the terms of this Contract, including this Paragraph 16.1 and Exhibit F2 (Contractor Employee Acknowledgement, Confidentiality, and Copyright Assignment Agreement) to this Contract. Notwithstanding anything herein to the contrary, Contractor acknowledges and agrees that it is solely responsible for any breach of the obligations of confidentiality set forth herein by any person or entity to which Contractor discloses any of District's Confidential Information.

Contractor's violation of this Paragraph 16.1 may constitute a material breach of this Contract. In the event of such material breach, the District may, in its sole discretion, terminate this Contract and/or pursue debarment of Contractor from participation in future District solicitations or from being awarded a contract pursuant to a District solicitation.

## **16.2 Disclosure of Information**

With respect to any of the District's Confidential Information or any other records, materials, data or information that is obtained by Contractor (hereinafter collectively for the purpose of this Paragraph 16.2 "information"), Contractor must: (i) not use any such information for any purpose whatsoever other than carrying out the express terms of this Contract, (ii) promptly transmit to the District all requests for disclosure of any such information, (iii) not disclose, except as otherwise specifically permitted by this Contract, any such information to any person or organization other than the District without prior written approval of District's contract administrator in consultation with County's Chief Information Security Officer and/or Chief Privacy Officer, and (iv) at the expiration or termination of this Contract, return all such information to the District or maintain such information according to the written procedures provided or made available to Contractor by the District for this purpose. If required by a court of competent jurisdiction or an administrative body to disclose District Information, Contractor must notify District Project Director immediately and prior to any such disclosure, to provide the District an opportunity to oppose or otherwise respond to such disclosure, unless prohibited by law from doing so.

## **16.3 Disclosure Restrictions of Non-Public Information**

While performing Work under this Contract, Contractor may encounter County Non-public Information ("NPI") in the course of performing this Contract, including, but not limited to, licensed technology, drawings, schematics, manuals, sealed court records, and other materials described and/or identified as "Internal Use", "Confidential" or "Restricted" as defined in Board of Supervisors Policy 6.104 – Information Classification Policy as NPI. Contractor must not disclose or publish any County NPI and material received or used in performance of this Contract. This disclosure obligation is perpetual for Contractor, its officers, employees, agents and Subcontractors.

## **16.4 Indemnification & Limitation of Liability**

Notwithstanding any provision of this Contract to the contrary, whether expressly or by implication, Contractor must indemnify, defend and hold harmless the County and its Agents from and against any and all direct loss, direct damage, liability and expense, including, but not limited to, defense costs and reasonable legal, accounting and other expert, consulting or professional fees, arising from, connected with or related to any failure by Contractor, its officers, employees, agents or Subcontractors to comply with this Paragraph 16.4, as determined by the District in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 16.4 must be conducted by Contractor and performed by counsel selected by Contractor and approved by the



District. Contractor does not have the right to enter into any settlement, agree to any injunction or make any admission, in any such case, on behalf of the District without the District's prior written approval.

Contractor must sign and adhere to the provisions of Exhibit F1 (Contractor Acknowledgement, Confidentiality, and Copyright Assignment Agreement) to this Contract.

(Subject to the terms of this Contract, the District must indemnify and hold harmless Zetron, its officers, employees, affiliates, owners, and agents from all liability that may result from all claims, actions, suits, or damages finally awarded including without limitation reasonable attorneys' fees, related to injury or death of any person or damage to or loss of any property caused by the District's gross negligence or willful misconduct in the course of performance of this Contract.

EXCEPT FOR ANY AMOUNTS DUE TO ZETRON UNDER THIS CONTRACT, IN NO EVENT WILL EITHER PARTY'S LIABILITY INCLUDE CONSEQUENTIAL, INDIRECT, SPECIAL, OR INCIDENTAL DAMAGES OR LOSSES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE LIMITED REMEDIES IN THIS CONTRACT FAIL OF THEIR ESSENTIAL PURPOSE. NEITHER PARTY'S LIABILITY WILL IN ANY EVENT EXCEED THE CONTRACT PRICE.

#### **16.5 Individual Requests**

Contractor must acknowledge any request or instructions from the District regarding the exercise of any individual's privacy rights provided under applicable federal or state laws. Contractor must have in place appropriate policies and procedures to promptly respond to such requests and comply with any request or instructions from District within seven Days. If an individual makes a request directly to Contractor involving District Information, Contractor must notify District within five Days and the District will coordinate an appropriate response, which may include instructing Contractor to assist in fulfilling the request. Similarly, if Contractor receives a privacy or security complaint from an individual regarding District Information, Contractor must notify the District as described in Paragraph 17.0 (Security) below, and the District will coordinate an appropriate response.

#### **16.6 Retention of District Information**

Contractor must not retain any District information for any period longer than necessary for Contractor to fulfill its obligations under this Contract and applicable law.

### **17.0 SECURITY**

#### **17.1 System Security**

Notwithstanding anything to the contrary herein, Contractor must provide all Work utilizing security technologies and techniques in accordance with the industry standards, Contractor's best practices and applicable District security policies, procedures and requirements provided by the District to Contractor in writing as part of the RFP (and incorporated by this reference), this Contract or otherwise as

required by law, including those relating to the prevention and detection of fraud or other inappropriate use or access of Systems and networks. Without limiting the generality of the foregoing, Contractor must implement and use network management and maintenance applications and tools and fraud prevention and detection and encryption technologies and prevent the introduction of any Disabling Device into the Solution, as further specified in this Contract and Exhibit H1 (County – Information Security and Privacy Requirements). In no event must Contractor's actions or inaction result in any situation that is less secure than the security that Contractor then provides for its own Systems and data.

## **17.2 Solution Data Security**

Contractor hereby acknowledges the right of privacy of all persons whose information is stored in the Solution data or any other District data. Contractor must protect, secure and keep confidential all Solution data in compliance with all federal, state and local laws, rules, regulations, ordinances, guidelines and directives relating to confidentiality and information security, and Exhibit H1 (County – Information Security and Privacy Requirements), including any breach of the security of the Solution, such as any unauthorized acquisition of Solution data that compromises the security, confidentiality or integrity of personally identifiable information. Further, Contractor must take all reasonable actions necessary or advisable to protect all Solution data in its possession, custody or control from loss or damage by any cause, including fire, theft or other catastrophe. In addition, if requested by District Project Director, Contractor must provide notification to all persons whose unencrypted personal information was, or is reasonably believed to have been, acquired by any unauthorized person, and the content, method and timing of such notification will be subject to the prior approval of District Project Director. Contractor must not use Solution data for any purpose or reason other than to fulfill its obligations under this Contract.

## **17.3 Protection of Electronic District Information – Data Encryption**

Contractor that electronically transmits or stores Personal Information (hereinafter "PI"), Protected Health Information (hereinafter "PHI") and/or Medical Information (hereinafter "MI") must comply with the encryption standards set forth below and incorporated into this Contract and all Amendments thereto (collectively, the "Encryption Standards"), as required by the Board of Supervisors Policy Number 5.200 (hereinafter "Policy"). For purposes of this Paragraph 17.3 (Protection of Electronic District Information – Data Encryption), "PI" is defined in California Civil Code Section 17910.29(g); "PHI" is defined in Health Insurance Portability and Accountability Act of 1996 (HIPAA) and implementing regulations; and "MI" is defined in California Civil Code Section 56.05(j).

### **17.3.1 Encryption Standards – Stored Data**

Contractor's and Subcontractors' workstations and portable devices that are used to access, store, receive and/or transmit County PI, PHI or MI (e.g., mobile, wearables, tablets, thumb drives, external hard drives) require encryption (i.e., software and/or hardware) in accordance with: (a) Federal Information Processing Standard Publication (FIPS) 140-2, (b)

National Institute of Standards and Technology (NIST) Special Publication 800-57 Recommendation for Key Management – Part 1: General (Revision 3), (c) NIST Special Publication 800-57 Recommendation for Key Management – Part 2: Best Practices for Key Management Organization; and (d) NIST Special Publication 800-111 Guide to Storage Encryption Technologies for End User Devices. Advanced Encryption Standard (AES) with cipher strength of 256-bit is minimally required.

Contractors' and Subcontractors' use of remote servers (e.g., cloud storage, Software-as-a-Service or SaaS) for storage of County PI, PHI and/or MI will be subject to written pre-approval by the County's Chief Executive Office.

### **17.3.2 Encryption Standards – Transmitted Data**

All transmitted (e.g., network) County PI, PHI and/or MI require encryption in accordance with: (a) NIST Special Publication 800-52 Guidelines for the Selection and Use of Transport Layer Security Implementations, and (b) NIST Special Publication 800-57 Recommendation for Key Management – Part 3: Application-Specific Key Management Guidance. Secure Sockets Layer (SSL) is minimally required with minimum cipher strength of 128-bit.

### **17.3.3 Definition References**

- a. As used in this Policy, the phrase "Personal Information" will have the same meaning as set forth in subdivision (g) of California Civil Code section 17910.29.
- b. As used in this Policy, the phrase "Protected Health Information" will have the same meaning as set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and implementing regulations.
- c. As used in this Policy, the phrase "Medical Information" will have the same meaning as set forth in subdivision (j) of California Civil Code section 56.05.

### **17.3.4 Compliance**

By executing this Contract, Contractor (on behalf of itself and any and all District-approved Subcontractors) certifies its compliance with the Policy and the data encryption requirements specified in this Paragraph 17.3.4 (Compliance) as of the Effective Date of this Contract, during the Term of this Contract and for as long as Contractor (or any of its Subcontractors) is in possession of County PI, PHI and/or MI. Such certification will be evidenced by submission of a completed and signed form set forth in Exhibit H3 (Compliance with Departmental Encryption Requirements), prior to being awarded this Contract by the Board of Supervisors. In addition to the foregoing, Contractor must maintain any validation or attestation reports that it or its District-approved Subcontractors' data encryption product(s) generate, and such reports will be subject to audit in accordance with this Contract. The District requires that, if non-

compliant, Contractor develop and execute a corrective action plan. Failure on the part of Contractor to comply with any of the provisions of this Paragraph 17.3.4 (Compliance) will constitute a material breach of this Contract, upon which the District may terminate or suspend this Contract, deny Contractor access to the District IT resources and/or take such other actions as deemed necessary or appropriate by the District.

#### **17.3.5 No Policy Exceptions**

There are no exceptions to this Policy, except as expressly approved by the Board of Supervisors in writing.

#### **17.3.6 Remedies**

Contractor acknowledges that a breach of Contract may result in irreparable harm to the County, which may not be adequately compensated by monetary damages. Therefore, in addition to the County's other rights provided by law and equity, the County retains the right to seek injunctive relief to enforce the provisions of this Paragraph 17.3.6 (Remedies). The provision of this Paragraph 17.3.6 (Remedies) will survive the expiration and/or termination of this Contract.

Contractor must take all reasonable actions necessary or advisable to protect the Solution from loss or damage by any cause. Contractor must bear the full risk of loss or damage to the Solution and any Solution data by any cause other than resulting from force majeure or the District's sole fault.

### **18.0 ASSIGNMENT AND DELEGATION/MERGERS OR ACQUISITIONS**

- 18.1 Contractor must notify the District of any pending acquisitions/mergers of its company unless otherwise legally prohibited from doing so. If Contractor is restricted from legally notifying the District of pending acquisitions/mergers, then it should notify the District of the actual acquisitions/mergers as soon as the law practicably allows and provide to the District the legal framework that restricted it from notifying the District prior to the actual acquisitions/mergers.
- 18.2 Contractor cannot assign, exchange, transfer, or delegate its rights or duties under this Contract, whether in whole or in part, without the prior express written consent of the District in its sole discretion and any attempted assignment, delegation, or otherwise transfer of its rights or duties, without such consent will be null and void. For purposes of this Paragraph 18.0 (Assignment and Delegation/Mergers or Acquisitions), the District consent will require a written Amendment to the Contract, which must be formally approved and executed by the parties. Any payments by the District to any approved delegate or assignee on any claim under this Contract will be deductible by the District against the claims Contractor may have against the District.
- 18.3 Any assumption, assignment, delegation, or takeover of any of Contractor's duties, responsibilities, obligations, or performance of same by any person or entity other than Contractor, whether through assignment, Subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason

whatsoever without the District's prior express written approval, will be a material breach of the Contract which may result in the termination of this Contract. In the event of such termination, the District will be entitled to pursue the same remedies against Contractor under this Contract in the event of default by Contractor.

## **19.0 TERMINATION FOR CONVENIENCE**

- 19.1 This Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the District, in its sole discretion, to be in its best interest. Termination of Work hereunder will be effectuated by notice of termination to Contractor specifying the extent to which performance of Work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective will be no less than 30 Days after the notice is sent.
- 19.2 After receipt of a notice of termination and except as otherwise directed by the District, Contractor must:
- a. Stop Work under this Contract on the date and to the extent specified in such notice, and
  - b. Complete performance of such part of the Work, as well as Work not effected by the notice, using the same quality of Work, as if Contractor had not been terminated by such notice.
- 19.3 All materials including books, records, documents, or other evidence bearing on the costs and expenses of Contractor under this Contract must be maintained by Contractor in accordance with Paragraph 31.0 (Record Retention and Inspection-Audit Settlement) below.

## **20.0 TERMINATION FOR DEFAULT**

- 20.1 The District may, by written notice to Contractor, terminate the whole or any part of this Contract if:
- a. Contractor fails to timely provide and/or satisfactorily perform any Task, SubTask, Deliverable, goods, Service, or other Work within the times specified in this Contract, or
  - b. Contractor fails to demonstrate a high probability of timely fulfillment of the performance requirements under this Contract, or
  - c. Contractor fails to make progress as to endanger performance of this Contract in accordance with its terms, or
  - d. Contractor in performance of Work under this Contract fails to comply with the requirements of this Contract, including, but not limited to Exhibit A (Statement of Work) and Exhibit C (Service Level Agreement), or
  - e. Contractor fails to perform or comply with any other provisions of this Contract or materially breaches this Contract; and, unless a shorter cure period is expressly provided in this Contract, does not cure such failure or fails to correct such failure or breach within 30 Days (or such longer period as the District may authorize in writing) of receipt of written notice from the District specifying such

failure or breach, except that Contractor must not be entitled to any cure period, and the District may terminate immediately, in the event that Contractor's failure to perform or comply is not reasonably capable of being cured.

- 20.2 If, after the District has given notice of termination under the provisions of this Paragraph 20.0 (Termination for Default), it is determined by the District that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties will be the same as if the notice of termination had been issued pursuant to Paragraph 19.0 (Termination for Convenience) above.
- 20.3 The rights and remedies of the District provided in this Paragraph 20.0 (Termination for Default) are not exclusive and are in addition to any other rights and remedies provided by law and/or under this Contract.

## **21.0 TERMINATION FOR IMPROPER CONSIDERATION**

- 21.1 The District may, by written notice to Contractor, immediately terminate the right of Contractor to proceed under this Contract if it is found that improper consideration, in any form, was offered or given by Contractor, either directly or through an intermediary, to any County elected official, officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, Amendment, or extension of this Contract or the making of any determinations with respect to Contractor's performance pursuant to this Contract. In the event of such termination, the District will be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.
- 21.2 Contractor must immediately report any attempt by a County elected official, officer, employee, or agent to solicit such improper consideration. The report should be made either to the County manager charged with the supervision of the employee or to County's Auditor-Controller's Employee Fraud Hotline at (800) 544-6861 or <https://fraud.lacounty.gov/>.
- 21.3 Improper consideration may take the form of cash, discounts, services, the provision of travel or entertainment, tangible gifts or other such items and means.

## **22.0 TERMINATION FOR INSOLVENCY**

- 22.1 The District may terminate this Contract immediately and without delay if any of the following occur:
- a. Insolvency of Contractor – Contractor must be deemed to be insolvent if it has ceased to pay its debts for at least 60 Days in the ordinary course of business or cannot pay its debts as they become due, whether a petition has been filed under the Federal Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the Federal Bankruptcy Code,
  - b. The filing of a voluntary or involuntary petition regarding Contractor under the Federal Bankruptcy Code,
  - c. The appointment of a Receiver or Trustee for Contractor, or

- d. The execution by Contractor of a general assignment for the benefit of creditors.
- 22.2 The rights and remedies of the District provided in this Paragraph 22.0 (Termination for Insolvency) are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- 22.3 Contractor agrees that if Contractor as a debtor-in-possession, or if a trustee in bankruptcy, rejects this Contract, the District may elect to retain its rights under this Contract, as provided under Section 365(n) of the United States Bankruptcy Code (11 United States Code, Section 365(n)). Upon written request of the District to Contractor or the trustee in bankruptcy, as applicable, Contractor or such trustee must allow the District to exercise all of its rights and benefits under this Contract including, without limitation, such Section 365(n) (including, without limitation, the right to continued use of all source and object code versions of the Application Software and related Documentation, and must not interfere with the rights and benefits of the District as provided therein). The foregoing will survive the termination or expiration of this Contract for any reason whatsoever.

### **23.0 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE**

Contractor, and each County Lobbyist or County Lobbying firm (as defined in County Code Section 2.160.010) retained by Contractor, must fully comply with this County Lobbyist Ordinance. Failure on the part of Contractor or any County Lobbyist or County Lobbying firm retained by Contractor to fully comply with the County's Lobbyist Ordinance will constitute a material breach of this Contract, upon which the District may in its sole discretion, immediately terminate or suspend this Contract.

### **24.0 TERMINATION FOR NON-APPROPRIATION OF FUNDS**

Notwithstanding any other provision of this Contract, the District will not be obligated for Contractor's performance hereunder or by any provision of this Contract during any of the County's future fiscal years unless and until the Board appropriates funds for this Contract in the District's Budget for each such future Fiscal Year. In the event that funds are not appropriated for this Contract, then this Contract will terminate as of June 30 of the last fiscal year for which funds were appropriated. The District will notify Contractor in writing of any such non-allocation of funds at the earliest possible date.

### **25.0 EFFECT OF TERMINATION**

#### **25.1 Termination by District**

Except for termination of convenience by the District, in the event that the District, upon written notice to Contractor, terminates this Contract in whole or in part as provided herein, then:

- a. Contractor and the District will continue the performance of this Contract to the extent not terminated,
- b. Contractor must stop Work under this Contract on the date and to the extent specified in such notice and provide to the District all completed Work and Work in progress, in a medium reasonably requested by the District,

- c. Contractor must: (i) promptly return to the District any and all District Confidential Information, District Materials and any other County data relating to that portion of this Contract and Work terminated by the District, and (ii) destroy all such Confidential Information, District Materials and other County data as required in and in accordance with the provisions of Exhibit H1 (County – Information Security and Privacy Requirements)
- d. Contractor must transfer ownership of the Cloud Solution Environment to the District,
- e. The District will pay Contractor all monies due, upon receiving Contractor's invoice(s), in accordance with the terms of this Contract for the Work completed up to the time of termination,
- f. Contractor must return to the District all monies paid by District, yet unearned by Contractor, including any prorated prepaid Service Fees calculated depending on the date of termination, if applicable,
- g. Upon termination by the District for default pursuant to Paragraph 20.0 (Termination for Default) above or for insolvency pursuant to Paragraph 22.0 (Termination for Insolvency) above, the District will have the right to procure, upon such terms and in such a manner as the District may deem appropriate, goods, Services and other Work, similar to those so terminated, and Contractor must be liable to the District for, and must promptly pay to the District by cash payment, any and all excess costs incurred by District, as determined by the District, to procure and furnish such similar goods, Services and other Work,
- h. Contractor understands and agrees that the District has obligations that it cannot satisfy without use of the Solution provided to the District hereunder or an equivalent solution, and that a failure to satisfy such obligations could result in irreparable damage to the District and the entities it serves. Therefore, Contractor agrees that in the event of any termination of this Contract, Contractor must fully cooperate with the District in the transition of the District to a new solution, toward the end that there be no interruption of the District's day-to-day operations due to the unavailability of the Solution during such transition. Upon written notice to Contractor, Contractor must allow the District or a District-selected Subcontractor a transition period until expiration of the term of this Contract, or in all other cases, at a date specified by the District, for the orderly turnover of Contractor's Contract activities and responsibilities without any additional cost to the District.

## **25.2 Termination Transition Services**

Contractor must assist the District in transitioning from the Solution by providing Transition Services, as provided below. Upon the expiration or termination of this Contract, the District may require Contractor to provide Services in the form of Optional Work to assist the District to transition System operations from Contractor to the District or the District's designated third party ("Transition Services"). Upon the District's request for Transition Services, the District and Contractor agree to negotiate in good faith the scope of work and the price for such Transition Services.



Contractor agrees that if the District terminates this Contract for any breach by Contractor or for insolvency of Contractor, Contractor must perform all Transition Services as required by the District at no cost to the District. Contractor must provide the District with all the Transition Services as provided in this Paragraph 25.2. The duty of Contractor to provide any Transition Services pursuant to this Paragraph 25.2 will be conditioned on the District continuing to comply with its obligations under this Contract, including payment of all applicable fees. Contractor has no right to withhold or limit its performance of the Transition Services based on any alleged breach of this Contract by the District, other than a failure by the District to timely pay Contractor the invoiced amounts due and payable hereunder. The District will have the right to seek specific performance of this Paragraph 25.2 in any court of competent jurisdiction and Contractor hereby waives any defense that damages are an adequate remedy. Compliance with this Paragraph 25.2 by either party will not constitute a waiver or estoppel regarding any rights or remedies available to the parties. In the event of termination for default based on a breach by Contractor, the value of Transition Services provided to the District, based on the most recent prices applicable under this Contract to similar Services, will be applied in mitigation of any damages that may be awarded.

## **26.0 WAIVER**

No breach of any provision hereof can be waived unless in writing. No waiver by the District of any breach of any provision of this Contract will constitute a waiver of any other breach or of such provision. Failure of the District to enforce at any time, or from time to time, any provision of this Contract will not be construed as a waiver thereof. The rights and remedies set forth in this Paragraph 26.0 will not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

## **27.0 WARRANTY AGAINST CONTINGENT FEES**

- 27.1 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.
- 27.2 For breach of this warranty, the District has the right to terminate this Contract and at its sole discretion may deduct from the Contract price the consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

## **28.0 INDEPENDENT CONTRACTOR STATUS**

- 28.1 This Contract is by and between the District and Contractor and is not intended, and will not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the District and Contractor. The employees and agents of one party will not be, nor be construed to be employees or agents of the other party for any purpose whatsoever.

- 28.2 Contractor is solely liable and responsible for providing to, or on behalf of, all its agents, servants or employees performing Work pursuant to this Contract any and all compensation and benefits. The District will have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, federal, state, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of Contractor.
- 28.3 Contractor understands and agrees that all persons performing Work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of Contractor and not employees of the District. Contractor is solely liable and responsible for furnishing all Workers' Compensation benefits to all its agents, servants, or employees as a result of any injuries arising from or connected with any Work performed by or on behalf of Contractor pursuant to this Contract.

## **29.0 SUBCONTRACTING**

- 29.1 The District has relied, in entering into this Contract, on the reputation of and on obtaining the personal performance of Contractor, and more specifically Contractor's key staff. The requirements of this Contract cannot be subcontracted by Contractor without the advance written approval of the District. Any attempt by Contractor to Subcontract any performance of this Contract without prior written approval will be null and void and will be deemed a material breach of this Contract, upon which the District may immediately terminate this Contract.
- 29.2 In the event Contractor seeks to subcontract any portion of its performance of the Contract by Contractor's key staff, Contractor must first provide to the District, in writing, a notice regarding such proposed Subcontract, which must include:
- a. The reasons for the proposed Subcontract,
  - b. Identification of the proposed Subcontractor and an explanation of why and how the proposed Subcontractor was selected,
  - c. A detailed description of the Work to be provided by the proposed Subcontractor,
  - d. Confidentiality provisions applicable to the proposed Subcontractor, and if applicable its officers, employees and agents, which would be incorporated into the Subcontract,
  - e. Required District forms including: (i) Exhibit F1 (Contractor Acknowledgement, Confidentiality, and Copyright Assignment Agreement), (ii) Exhibit G (Safely Surrendered Baby Law), and (iii) any other standard County required provisions,
  - f. A representation from Contractor that:
    - i. The proposed Subcontractor is qualified to provide the Work for which Subcontractor is being hired ,
    - ii. Either the proposed Subcontractor maintains the insurance required by this Contract or Contractor has procured and maintains such insurance coverage for the proposed Subcontractor,

- iii. Either Contractor and/or the proposed Subcontractor will be liable and responsible for all of Subcontractor's taxes, payments, and compensation, including compensation to its employees, related to the performance of Work under this Contract, and
  - iv. Either Contractor and/or the proposed Subcontractor must indemnify the County under all the same terms and conditions as the indemnification provisions of this Contract.
- g. Other pertinent information and/or certifications reasonably requested by the District.
- 29.3 The District will review Contractor's request to Subcontract and determine on a case-by-case basis whether to consent to such request, which consent will not be unreasonably withheld.
- 29.4 Notwithstanding any provision of this Contract to the contrary, whether expressly or by implication, Contractor must indemnify, defend and hold harmless the County and its officers, employees and agents, from and against any and all claims, demands, liabilities, damages, costs and expenses, including, but not limited to, defense costs and legal, accounting or other expert consulting or professional fees in any way arising from or related to Contractor's use of any Subcontractor, including without limitation any officers, employees or agents of any Subcontractor, in the same manner as required for Contractor of its officers, employees and agents under this Contract.
- 29.5 Notwithstanding any other provision of this Paragraph 29.0 (Subcontracting), Contractor will remain fully responsible for all performance required under this Contract, including those which Contractor has determined to subcontract, including, but not limited to, the obligation to properly supervise, coordinate and provide all Work required under this Contract. All subcontracts must be made in the name of Contractor and will not bind nor purport to bind the District. Furthermore, subcontracting of any Work under this Contract will not be construed to limit in any way, Contractor's performance, obligations or responsibilities to the District or limit, in any way, any of the District's rights or remedies contained in this Contract.
- 29.6 Subcontracting of any Work performed by Contractor's key staff under this Contract will not waive the District's right to prior and continuing approval of any or all such Contractor's key staff pursuant to the provisions of Paragraph 8.3 (Approval of Contractor's Staff) of this Contract, including any subcontracted members of Contractor's key staff. Contractor must notify its Subcontractors of the District's right to approve or disapprove each member or proposed member of key staff providing Services or on-site Work to the District under this Contract or with access to any County data or information, including District's Confidential Information, System Data and other District Materials, prior to and during their performance of any Work hereunder, as well as to approving or disapproving any proposed deletions from or other changes in such Contractor key staff.

- 29.7 Notwithstanding subcontracting by Contractor of any Work under this Contract, Contractor will be solely liable and responsible for any and all payments and other compensation to all Subcontractors, and their respective officers, employees, agents, and successors in interest, for any Services performed by Subcontractors under this Contract.
- 29.8 In the event that the District consents to any subcontracting, such consent will apply to each particular Subcontract only and will not be, nor should be construed to be, a waiver of this Paragraph 29.0 (Subcontracting) or a blanket consent to any further subcontracting.

### **30.0 RISK OF LOSS**

Contractor bears the full risk of loss due to total or partial destruction of any software products loaded on CDs or other computer media, until such items are delivered to and accepted in writing by the District as evidenced by the District's signature on delivery documents.

### **31.0 RECORD RETENTION AND INSPECTION-AUDIT SETTLEMENT**

- 31.1 Contractor must maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. Contractor must also maintain accurate and complete employment records and other records relating to its performance of this Contract. Contractor agrees that the District or its authorized representatives, will have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, must be kept and maintained by Contractor and must be made available to the District during the Term of this Contract and for a period of five years thereafter unless the District's written permission is given to dispose of any such material prior to such time. All such material must be maintained by Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the District's option, Contractor must pay the District for travel, per diem, and other costs incurred by the District to examine, audit, excerpt, copy, or transcribe such material at such other location.
- 31.2 In the event that an audit of Contractor is conducted specifically regarding this Contract by any federal or state auditor, or by any auditor or accountant employed by Contractor or otherwise, then Contractor must file a copy of such audit report with the County's Auditor-Controller within 30 Days of Contractor's receipt thereof, unless otherwise provided by applicable federal or state law or under this Contract. Subject to applicable law, the District will make a reasonable effort to maintain the confidentiality of such audit report(s).
- 31.3 Failure on the part of Contractor to comply with any of the provisions of this Paragraph 31.0 (Record Retention and Inspection-Audit Settlement) will constitute

a material breach of this Contract upon which the District may terminate or suspend this Contract.

- 31.4 If, at any time during the entire Term of this Contract or within five years after the expiration or termination of this Contract, representatives of the District conduct an audit of Contractor regarding the Work performed under this Contract, and if such audit finds that the District's dollar liability for any such Work is less than payments made by the District to Contractor, then the difference will be either: a) repaid by Contractor to the District by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to Contractor from the District, whether under this Contract or any other agreement. If such audit finds that the District's dollar liability for such Work is more than the payments made by the District to Contractor, then the difference will be paid to Contractor by the District by cash payment, provided that in no event will the District's maximum obligation for this Contract exceed the funds appropriated by the District for the purpose of this Contract.

### **31.5 Audit and Inspection, Information Security and Privacy Requirements**

#### **a. Self-Audits**

Contractor must periodically conduct audits, assessments, testing of its System of controls, and testing of Information Security and privacy procedures, including penetration testing, intrusion detection, and firewall configuration reviews. These periodic audits must be conducted by staff certified to perform the specific audit in question at Contractor's sole cost and expense through either: (i) an internal independent audit function, (ii) a nationally recognized, external, independent auditor, or (iii) another independent auditor approved by the District.

Contractor must have a process for correcting control deficiencies that have been identified in the periodic audit, including follow up documentation providing evidence of such corrections. Contractor must provide the audit results and any corrective action documentation to the District promptly upon its completion at the District's request. With respect to any other report, certification, or audit or test results prepared or received by Contractor that contains any District Information, Contractor must promptly provide the District with copies of the same upon the District's reasonable request, including identification of any failure or exception in Contractor's information systems, products, and Services, and the corresponding steps taken by Contractor to mitigate such failure or exception. Any reports and related materials provided to the District pursuant to this Paragraph 31.5 (Audit and Inspection, Information Security and Privacy Requirements) must be provided at no charge to the District.

#### **b. District Requested Audits**

At the District's expense, it or an independent third-party auditor it commissions, will have the right to audit Contractor's infrastructure, security and privacy practices, data center, Services and/or Systems storing or processing the District Information via an onsite inspection at least once a year. Upon the District's request Contractor must complete a questionnaire regarding

Contractor's information security and/or privacy program. The District will pay for the District requested audit unless the auditor finds that Contractor has materially breached this Contract, in which case Contractor must bear all costs of the audit; and if the audit reveals material non-compliance with this Paragraph 31.5 (Audit and Inspection, Information Security and Privacy Requirements), the District may exercise its termination rights provided by this Contract.

A District requested audit will be conducted during Contractor's normal business hours with reasonable advance notice, in a manner that does not materially disrupt or otherwise unreasonably and adversely affect Contractor's normal business operations. The District's request for the audit will specify the scope and areas (e.g., administrative, physical, and technical) that are subject to the audit and may include, but are not limited to physical controls inspection, process reviews, policy reviews, evidence of external and internal vulnerability scans, penetration test results, evidence of code reviews, and evidence of System configuration and audit log reviews. It is understood that the results may be filtered to remove the specific Information of other Contractor customers such as IP address, server names, etc. Contractor must cooperate with the District in the development of the scope and methodology for the audit, and the timing and implementation of the audit. This right of access will extend to any regulators with oversight of the District. Contractor agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.

When not prohibited by regulation, Contractor will provide to the District a summary of: (i) the results of any security audits, security reviews, or other relevant audits, conducted by Contractor or a third party, and (ii) corrective actions or modifications, if any, Contractor will implement in response to such audits. Notwithstanding the preceding sentences, the District will have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide the District with a full and adequate defense, as determined by the District in its sole judgment, the District will be entitled to retain its own counsel, including without limitation County Counsel, and to reimbursement from Contractor for all such costs and expenses incurred by the District in doing so. Contractor has no right or authority to enter into any settlement, agree to any injunction, other equitable relief, or make any admission, in any case, on behalf of the District without the District's prior express written approval.

c. District Audit Settlements

If, at any time during or after the Term of this Contract, representatives of the District conduct an audit of Contractor regarding the Work performed under this Contract, and if such audit reasonably and accurately find that the District's dollar liability for such Work is less than payments made by District to Contractor, then the difference, together with the District's reasonable costs of audit, will be either repaid by Contractor to the District by cash payment upon demand or deducted from any amounts due to Contractor from the District, as

determined by the District. If such audit finds District's dollar liability for such Work is more than payments made by the District to Contractor, then the difference will be repaid to Contractor by cash payment.

### **32.0 DISTRICT'S QUALITY ASSURANCE PLAN**

The District, or its agent(s), will monitor Contractor's performance under this Contract on not less than an annual basis. Such monitoring will include assessing Contractor's compliance with all Contract terms and conditions and performance standards. Contractor deficiencies which the District determines are significant or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to the County Board of Supervisors and listed in the appropriate Contractor performance database. The report to the Board will include improvement/corrective action measures taken by the District and Contractor. If improvement does not occur consistent with the corrective action measures, the District may terminate this Contract or impose other penalties as specified in this Contract.

### **33.0 CONFLICT OF INTEREST**

- 33.1 No County employee whose position with the County enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, will be employed in any capacity by Contractor or have any other direct or indirect financial interest in this Contract. No officer or employee of Contractor who may financially benefit from the performance of Work hereunder will in any way participate in the District's approval, or ongoing evaluation, of such Work, or in any way attempt to unlawfully influence the District's approval or ongoing evaluation of such Work.
- 33.2 Contractor must comply with all conflict-of-interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the Term of this Contract. Contractor warrants that it is not now aware of any facts that create or appear to create a conflict of interest. If Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it must immediately make full written disclosure of such facts to District Project Director. Full written disclosure must include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this Paragraph 33.0 (Conflict of Interest) will constitute a material breach of this Contract upon which the District may terminate or suspend this Contract.
- 33.3 The terms and procedures of this Paragraph 33.0 (Conflict of Interest) will also apply to Subcontractors, consultants and partners of Contractor performing Work under this Contract.

### **34.0 COMPLIANCE WITH APPLICABLE LAW**

- 34.1 In the performance of this Contract, Contractor must comply with all applicable federal, state and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Contract are hereby incorporated by reference.

- 34.2 Contractor must indemnify, defend, and hold harmless the County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or Subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by the District in its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 34.0 (Compliance with Applicable Law) must be conducted by Contractor and performed by counsel selected by Contractor and approved by the District. Notwithstanding the preceding sentence, the District will have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide the District with a full and adequate defense, as determined by the District in its sole judgment, the District will be entitled to retain its own counsel, including without limitation, County Counsel, and receive reimbursement from Contractor for all such costs and expenses incurred by the District in doing so. Contractor has no right or authority to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in any such case, on behalf of the District without the District's prior express written approval.
- 34.3 Contractor certifies and agrees that it fully complies with all applicable requirements of the District's regulations, as well as rules, ordinances, court rules, municipal laws, directives and policies issued pursuant to the enabling statute(s) and/or state or federal regulation or law applicable to the Work and Contractor's District-approved Subcontractors' provision thereof. This includes compliance with mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan (Title 24, California Administrative Code), the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871) and compliance with Section 306 of the Clean Air Act (42 USC 1857[h]), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15). Contractor is responsible for staying apprised of any and all relevant changes in the law, including, but not limited to, rules, ordinances, court rules, municipal laws, directives and policies issued pursuant to the enabling statute(s) and/or state or federal regulation or law. Contractor must also comply with all applicable ordinances, rules, policies, directives, and procedures issued or adopted by the District applicable to the Work and Contractor's District-approved Subcontractors' provision thereof for which Contractor is provided actual or constructive notice. The District reserves the right to review Contractor's procedures to ensure compliance with the statutes, ordinances, regulations, rules, rulings, policies and procedures of the state and the federal government, as applicable to this Contract.
- 34.4 Failure by Contractor to comply with such laws and regulations will be material breach of this Contract and may result in termination or suspension of this Contract.



### **35.0 FAIR LABOR STANDARDS**

Contractor must comply with all applicable provisions of the Federal Fair Labor Standards Act and must indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for Work performed by Contractor's employees or Subcontractor personnel for which the County may be found jointly or solely liable.

### **36.0 COMPLIANCE WITH CIVIL RIGHTS LAW**

Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person will, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. Additionally, Contractor certifies to the District:

- a. That Contractor has a written policy statement prohibiting discrimination in all phases of employment.
- b. That Contractor periodically conducts a self-analysis or utilization analysis of its work force.
- c. That Contractor has a system for determining if its employment practices are discriminatory against protected groups.
- d. Where problem areas are identified in employment practices, Contractor has a system for taking reasonable corrective action, to include establishment of goals or timetables.

### **37.0 RESTRICTIONS ON LOBBYING - FEDERAL FUNDS PROJECTS**

If any federal funds are to be used to pay for any portion of Contractor's Work under this Contract, the District will notify Contractor in writing in advance of such payment and Contractor must fully comply with all certification and disclosure requirements prescribed by Section 319 of Public Law 101-121 (31 United States Code Section 1352) and any implementing regulations, and will ensure that each of its Subcontractors receiving funds provided under this Contract also fully complies with all applicable certification and disclosure requirements.

### **38.0 EMPLOYMENT ELIGIBILITY VERIFICATION**

- 38.1 Contractor and its Subcontractors warrant that they fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirements set forth in federal and state statutes and regulations. Contractor must obtain from all its employees and Subcontractors performing Work hereunder, all verification and other documentation of employment eligibility status required by federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently

exist and as they may be amended. Contractor must retain all documentation for all covered employees for the period prescribed by law.

- 38.2 Contractor must indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against Contractor or the District or both in connection with any alleged violation of any federal or state statutes or regulations pertaining to the eligibility for employment of any persons performing Work under this Contract.

**39.0 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFFS OR ARE ON A COUNTY RE-EMPLOYMENT LIST**

Should Contractor require additional or replacement personnel after the Effective Date of this Contract to perform the Services set forth herein, Contractor must give first consideration for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the entire Term of this Contract.

**40.0 CONSIDERATION OF HIRING GAIN/START PARTICIPANTS**

- 40.1 Should Contractor require additional or replacement personnel after the effective date of this Contract, Contractor must give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or Skills and Training to Achieve Readiness for Tomorrow (START) Program who meet Contractor's minimum qualifications for the open position. For this purpose, consideration will mean that Contractor will interview qualified candidates. The County will refer GAIN/START participants by job category to Contractor. Contractors must report all job openings and job requirements to: [GAINSTART@DPSS.LACOUNTY.GOV](mailto:GAINSTART@DPSS.LACOUNTY.GOV) and [BSERVICES@OPPORTUNITY.LACOUNTY.GOV](mailto:BSERVICES@OPPORTUNITY.LACOUNTY.GOV) and DPSS will refer qualified GAIN/START job candidates.
- 40.2 In the event that both laid-off County employees and GAIN/START participants are available for hiring, County employees must be given first priority.

**41.0 PROHIBITION AGAINST INDUCEMENT OR PERSUASION**

Notwithstanding the above, Contractor and the District agree that, during the entire Term of this Contract and for a period of one year thereafter, neither party will in any way intentionally induce or persuade any employee of one party to become an employee or agent of the other party. No bar exists against any hiring action initiated through a public announcement.

**42.0 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT**

Contractor must notify its employees, and must require each Subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice must be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

## **43.0 CONTRACTOR RESPONSIBILITY AND DEBARMENT**

### **43.1 Responsible Contractor**

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform this Contract. It is the County's policy to conduct business only with responsible Contractors.

### **43.2 Chapter 2.202 of the County Code**

Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of Contractor on this or other contracts which indicates that Contractor is not responsible, the County may, in addition to other remedies provided in this Contract, debar Contractor from bidding or proposing on, or being awarded, and/or performing Work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing contracts Contractor may have with the County.

### **43.3 Non-responsible Contractor**

The County may debar a Contractor if the County's Board of Supervisors finds, in its discretion, that Contractor has done any of the following: i) violated a material term of a contract with the County or a nonprofit corporation created by the County, ii) committed an act or omission which negatively reflects on Contractor's quality, fitness or capacity to perform a contract with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same, iii) committed an act or offense which indicates a lack of business integrity or business honesty, or iv) made or submitted a false claim against the County or any other public entity.

### **43.4 Contractor Hearing Board**

**43.4.1** If there is evidence that Contractor may be subject to debarment, District Project Director will notify Contractor in writing of the evidence which is the basis for the proposed debarment and will advise Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.

**43.4.2** The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. Contractor and/or Contractor's representative will be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board will prepare a tentative proposed decision, which will contain a recommendation regarding whether Contractor should be debarred, and, if so, the appropriate length of time of the debarment. Contractor and District Project Director will be provided an opportunity to object to the tentative proposed decision prior to its presentation to the County Board of Supervisors.

- 43.4.3** After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board will be presented to the County Board of Supervisors. The Board of Supervisors will have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.
- 43.4.4** If a Contractor has been debarred for a period longer than five years, that Contractor may after the debarment has been in effect for at least five years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The District may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that Contractor has adequately demonstrated one or more of the following: i) elimination of the grounds for which the debarment was imposed, ii) a bona fide change in ownership or management, iii) material evidence in favor of Contractor is discovered after debarment was imposed, or iv) any other reason that is in the best interests of the District.
- 43.4.5** The Contractor Hearing Board will consider a request for review of a debarment determination only where: i) Contractor has been debarred for a period longer than five years, ii) the debarment has been in effect for at least five years, and iii) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board will conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing will be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.
- 43.4.6** The Contractor Hearing Board's proposed decision will contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board will present its proposed decision and recommendation to the Board. The Board will have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

#### **43.5 Subcontractors of Contractor**

The terms and procedures of this Paragraph 43.0 (Contractor Responsibility and Debarment) will also apply to Subcontractors, consultants and partners of Contractor performing Work under this Contract.

#### **44.0 FEDERAL ACCESS TO RECORDS**

If, and to the extent that Section 1861(v)(1)(I) of the Social Security Act (42 United States Code Section 1395x(v)(1)(i) is applicable, Contractor agrees that for a

period of four years following the furnishing of Services under this Contract, Contractor must maintain and make available, upon written request, to the Secretary of the United States Department of Health and Human Services or the Comptroller General of the United States or to any of their authorized representatives, the contracts, books, documents and records of Contractor which are necessary to verify the nature and extent of the costs of Services provided hereunder. Furthermore, if Contractor carries out any of the Services described in United States Code Section 1395 through any Subcontract with a value or cost of \$10,000 or more over a 12-month period with a related organization (as that term is defined under federal law), Contractor agrees that each such Subcontract must provide for such access to the Subcontract, books, documents and records of the Subcontractor.

#### **45.0 REQUIRED CERTIFICATIONS**

Contractor must obtain and maintain in effect during the entire Term of this Contract all licenses, permits, registrations, accreditations and certificates required by all federal, state, and local laws, ordinances, rules, regulations, guidelines and directives, which are applicable to Contractor's provision of the Services under this Contract. Contractor must further ensure that all of its officers, employees, agents and Subcontractors who perform Services hereunder, must obtain and maintain in effect during the Term of this Contract all licenses, permits, registrations, accreditations and certificates which are applicable to their performance hereunder. A copy of each such license, permit, registration, accreditation, and certificate required by all applicable federal, state, and local laws, ordinances, rules, regulations, guidelines, and directives will be provided, if required by law, in duplicate, to District Project Manager at the address set forth in Exhibit D (District's Administration) to this Contract.

#### **46.0 NO THIRD-PARTY BENEFICIARIES**

Notwithstanding any other provision of this Contract, Contractor and the District do not in any way intend that any person or entity will acquire any rights as a third-party beneficiary of this Contract, except that this provision will not be construed to diminish Contractor's indemnification obligations hereunder.

#### **47.0 CONTRACTOR PERFORMANCE DURING CIVIL UNREST AND DISASTER**

Contractor recognizes that the District provides Services essential to the residents of the communities it serves, and that these Services are of particular importance at the time of a riot, insurrection, civil unrest, natural disaster, or similar event. Notwithstanding any other provision of this Contract, full performance by Contractor during any riot, insurrection, civil unrest, natural disaster, or similar event is not excused if such performance remains physically possible without related danger to Contractor's or Subcontractors' employees and suppliers. During any such event in which the health or safety of any of Contractor's staff members would be endangered by performing their Services on-site, such staff members may perform any or all of their Services remotely.

#### **48.0 CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO SAFELY SURRENDERED BABY LAW**

Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post County's "Safely Surrendered Baby Law" poster, in Exhibit G (Safely Surrendered Baby Law) to this Contract, in a prominent position at Contractor's place of business. Contractor will also encourage its Subcontractors, if any, to post this poster in a prominent position in the Subcontractor's place of business. Information and posters for printing are available at:

<https://lacounty.gov/residents/family-services/child-safety/safe-surrender/>.

#### **49.0 NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW**

Contractor must notify and provide to its employees and must require each Subcontractor to notify and provide to its employees, information regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The information is set forth in Exhibit G (Safely Surrendered Baby Law) to this Contract, Safely Surrendered Baby Law of this Contract.

#### **50.0 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

50.1 Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through contracts are in compliance with their court-ordered child, family, and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

50.2 As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting Contractor's duty under this Contract to comply with all applicable provisions of law, Contractor warrants that it is now in compliance and must during the Term of this Contract maintain in compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 10810.5, and must implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

#### **51.0 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 50.0 (Contractor's Warranty of Adherence to the County's Child Support Compliance Program) above, will constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of Contractor to cure such default within 90 Days

of written notice will be grounds upon which the County may terminate this Contract pursuant to Paragraph 20.0 (Termination for Default) above, and pursue debarment of Contractor, pursuant to County Code Chapter 2.202.

## **52.0 COMPLIANCE WITH COUNTY'S JURY SERVICE PROGRAM**

### **52.1 Jury Service Program**

This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code.

### **52.2 Written Employee Jury Service Policy**

**52.2.1** Unless Contractor has demonstrated to the District's satisfaction either that Contractor is not a "contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that Contractor qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), Contractor must have and adhere to a written policy that provides that its Employees must receive from Contractor, on an annual basis, no less than five Days of regular pay for actual jury service. The policy may provide that Employees deposit any fees received for such jury service with Contractor or that Contractor deduct from the Employee's regular pay the fees received for jury service.

**52.2.2** For purposes of this Paragraph 52.2 (Written Employee Jury Service Policy), "Contractor" means a person, partnership, corporation, or other entity which has a contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: i) the lesser number is a recognized industry standard as determined by the County, or ii) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 Days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Contractor uses any Subcontractor to perform Services for the County under this Contract, the Subcontractor is also be subject to the provisions of this Paragraph 52.2 (Written Employee Jury Service Policy). The provisions of this Paragraph 52.2 (Written Employee Jury Service Policy) must be inserted into any such Subcontract agreement and a copy of the Jury Service Program must be attached to the agreement.

**52.2.3** If Contractor is not required to comply with the Jury Service Program when the Contract commences, Contractor must have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and Contractor must immediately notify the District if Contractor at any time either comes within the Jury Service Program's definition of

“contractor” or if Contractor no longer qualifies for an exception to the Jury Service Program. In either event, Contractor must immediately implement a written policy consistent with the Jury Service Program. The District may also require, at any time during the Contract and at its sole discretion, that Contractor demonstrate, to the District’s satisfaction, that Contractor either continues to remain outside of the Jury Service Program’s definition of “Contractor” and/or that Contractor continues to qualify for an exception to the Program.

**52.2.4** Contractor’s violation of this Paragraph 52.2 (Written Employee Jury Service Policy) may constitute a material breach of this Contract. In the event of such material breach, the District may, in its sole discretion, terminate this Contract and/or pursue debarment of Contractor, pursuant to County Code Chapter 2.206.

### **53.0 WARRANTY OF COMPLIANCE WITH COUNTY’S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

53.1 Contractor acknowledges that the County has established a goal of ensuring that all individuals and businesses that benefit financially from the County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

53.2 Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the entire Term of this Contract will maintain compliance, with County Code Chapter 2.206.

### **54.0 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH COUNTY’S DEFAULTED PROPERTY TAX REDUCTION PROGRAM**

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 53.0 (Warranty of Compliance with County’s Defaulted Property Tax Reduction Program) above, will constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of Contractor to cure such default within ten Days of notice will be grounds upon which the District may terminate this Contract and/or pursue debarment of Contractor, pursuant to County Code Chapter 2.206.

### **55.0 DISPUTE RESOLUTION PROCEDURE**

55.1 Contractor and the District agree to act immediately to mutually resolve any disputes which may arise with respect to this Contract. All such disputes will be subject to the provisions of this Paragraph 55.0 (Dispute Resolution Procedure) and other provisions in this Contract (such provisions will be collectively referred to as the “Dispute Resolution Procedure”). Time is of the essence in the resolution of disputes.

55.2 Contractor and the District agree that the existence and details of a dispute notwithstanding, both parties will continue without delay their performance hereunder.



- 55.3 Neither party will delay or suspend its performance during the Dispute Resolution Procedure.
- 55.4 In the event of any dispute between the parties with respect to this Contract, Contractor and the District will submit the matter to their respective Project Managers for the purpose of endeavoring to resolve such dispute.
- 55.5 If the Project Managers are unable to resolve the dispute within a reasonable time not to exceed ten Days from the date of submission of the dispute to them, then the matter will be immediately submitted to the parties' respective Project Directors for further consideration and discussion to attempt to resolve the dispute.
- 55.6 If the Project Directors are unable to resolve the dispute within a reasonable time not to exceed ten Days from the date of submission of the dispute to them, then the matter will be immediately submitted to Contractor's chief operating officer or designee, and the Department's Chief Information Officer. These persons will have ten Days to attempt to resolve the dispute.
- 55.7 If at these levels, there is not a resolution of the dispute acceptable to both parties, then each party may assert its other rights and remedies provided under this Contract and/or its rights and remedies as provided by law.
- 55.8 All disputes utilizing this Dispute Resolution Procedure must be documented in writing by each party and will state the specifics of each alleged dispute and all actions taken. The parties will act in good faith to resolve all disputes. At all three levels described in this Paragraph 55.0 (Dispute Resolution Procedure), the efforts to resolve a dispute will be undertaken by conference between the parties' respective representatives, either orally, face-to-face meeting, by telephone, or in writing by exchange of correspondence.
- 55.9 Notwithstanding the foregoing, in the event of the District's infringement of Contractor's intellectual property rights under this Contract or violation by either party of the confidentiality obligations hereunder, the violated party will have the right to seek injunctive relief against the other without waiting for the outcome of the Dispute Resolution Procedure.
- 55.10 Notwithstanding any other provision of this Contract, the District's right to seek injunctive relief to enforce the provisions of Paragraph 16.0 (Confidentiality) above, will not be subject to this Dispute Resolution Procedure. The preceding sentence is intended only as a clarification of the District's rights and will not be deemed to impair any claims that the District may have against Contractor or the District's rights to assert such claims after any such injunctive relief has been obtained.

## **56.0 ASSIGNMENT BY DISTRICT**

This Contract may be assigned in whole or in part by the District, without the further consent of Contractor, to a party which is not a competitor of Contractor, and which agrees in writing to perform the District's obligations under this Contract.

## **57.0 NEW TECHNOLOGY**

Contractor and the District acknowledge the probability that the technology of the software and hardware which comprise the System will change and improve during

the Term of this Contract. The District desires the flexibility to incorporate into the System any new technologies as they may become available. Accordingly, Contractor's Project Manager must, promptly upon discovery and on a continuing basis, apprise District's Project Director of all new technologies, methodologies, and techniques which Contractor considers to be applicable to the System. Specifically, upon the District's request, Contractor must provide, in writing, a description of such new technologies, methodologies and techniques, indicating the advantages and disadvantages of incorporating same into the System, and provide an estimate of the impact such incorporation will have on the performance, scheduling and price of the System. The District, at its sole discretion, may request that this Contract be amended to incorporate the new technologies, methodologies, and techniques into the System.

#### **58.0 UNLAWFUL SOLICITATION**

Contractor must inform all its employees who provide Services hereunder of the provisions of Article 9 of Chapter 4 of Division 3 (commencing with Section 6150) of California Business and Professions Code (i.e., State Bar Act provisions regarding unlawful solicitation as a runner or capper for attorneys) and must take positive and affirmative steps in its performance hereunder to ensure that there is no violation of such provisions by its employees.

#### **59.0 GOVERNING LAW, JURISDICTION, AND VENUE**

This Contract will be governed by, and construed in accordance with, the laws of the State of California. Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder will be exclusively in the District. For claims that are subject to exclusive federal subject matter jurisdiction, Contractor agrees and consents to the exclusive jurisdiction of the Federal District Court of the Central District of California.

#### **60.0 AUTHORIZATION WARRANTY**

Contractor represents and warrants that the person executing this Contract for Contractor is an authorized agent who has actual authority to bind Contractor to each and every term, condition, and obligation of this Contract and that all requirements of Contractor have been fulfilled to provide such actual authority.

#### **61.0 VALIDITY**

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances will not be affected thereby.

#### **62.0 SEVERABILITY**

If any provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same will be deemed severable from the remainder of this Contract, if practicable, and will in no way affect, impair or invalidate any other provision contained herein. If any such provision is deemed invalid in its scope or breadth, such provision will be deemed valid to the extent of the scope or breadth

permitted by law. If any provision of this Contract is adjudged void or invalid for any reason whatsoever but would be valid if part of the wording thereof were deleted or changed, then such provision will apply with such modifications as may be necessary to make it valid and effective.

## **63.0 NOTICES**

- 63.1 All notices or demands required or permitted to be given or made under this Contract, unless otherwise specified, will be in writing and will be addressed to the parties at the following addresses and delivered: (i) by hand with signed receipt, (ii) by first class registered or certified mail, postage prepaid, or (iii) by facsimile or electronic mail transmission followed within 24 hours by a confirmation copy mailed by first-class registered or certified mail, postage prepaid. Notices will be deemed given at the time of signed receipt in the case of hand delivery, three Days after deposit in the United States mail as set forth above, or on the date of facsimile or electronic mail transmission if followed by timely confirmation mailing. Addresses may be changed by either party by giving ten Days prior written notice thereof to the other party.
- 63.2 To the District: Notices must be sent to the attention of District Project Manager and District Project Director at the respective addresses specified in Exhibit D (District's Administration) to this Contract.
- 63.3 To Contractor: Notices must be sent to the attention of Contractor's Project Manager at the address specified in Exhibit E (Contractor's Administration) to this Contract, with a copy to Contractor's Project Director.
- 63.4 Each party may change the names of the people designated to receive notices pursuant to this Paragraph 63.0 (Notices) by giving written notice of the change to the other party, subject to the District's right of approval in accordance with Paragraph 8.3 (Approval of Contractor's Staff) above.

## **64.0 ARM'S LENGTH NEGOTIATIONS**

This Contract is the product of arm's length negotiations between Contractor and the District, with each party having had the opportunity to receive advice from and representation by independent counsel of its own choosing. As such, the parties agree that this Contract is to be interpreted as fair between them and is not to be strictly construed against either as the drafter or otherwise.

## **65.0 RE-SOLICITATION OF BIDS AND PROPOSALS**

- 65.1 Contractor acknowledges that, prior to the expiration or earlier termination of this Contract, the District, in its sole discretion, may exercise its right to invite bids or request proposals for the continued provision of the goods and Services delivered or contemplated under this Contract. The District will make the determination to re-solicit bids or request proposals in accordance with applicable County policies.
- 65.2 Contractor acknowledges that the District, in its sole discretion, may enter into an agreement for the future provision of goods and Services, based upon the bids or proposals received, with a provider or providers other than Contractor. Further, Contractor acknowledges that it obtains no greater right to be selected through any

future invitation for bids or request for proposals by virtue of its present status as Contractor.

#### **66.0 RECYCLED BOND PAPER**

Consistent with the County's Board of Supervisor's policy to reduce the amount of solid waste deposited at the County landfills, Contractor agrees to use recycled-content paper to the maximum extent possible on this Contract.

#### **67.0 FORCE MAJEURE**

- 67.1 Neither party will be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by such party or any of such party's Subcontractors), freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party (such events are referred to in this Paragraph as "force majeure events").
- 67.2 Notwithstanding the foregoing, a default by a Subcontractor of Contractor will not constitute a force majeure event, unless such default arises out of causes beyond the control of both Contractor and such Subcontractor, and without any fault or negligence of either of them. In such case, Contractor is not liable for failure to perform, unless the goods or Services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule. As used in this Paragraph 67.0 (Force Majeure), the term "Subcontractor" and "Subcontractors" mean Subcontractors at any tier.
- 67.3 In the event Contractor's failure to perform arises out of a force majeure event, Contractor agrees to use commercially reasonable best efforts to obtain goods or services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

#### **68.0 NON-EXCLUSIVITY**

Nothing herein is intended nor will be construed as creating any exclusive arrangement with Contractor. This Contract will not restrict the District from acquiring similar, equal or like goods and/or Services from other entities or sources.

#### **69.0 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS**

- 69.1 Contractor must repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by Contractor, its employees or its agents. Such repairs will be made immediately after Contractor has become aware of such damage, but in no event later than 30 Days after the occurrence.
- 69.2 If Contractor fails to make timely repairs, the District may make any necessary repairs. All costs incurred by the District, as determined by the District, for such repairs will be repaid by Contractor by cash payment upon demand or without limitation of all District's other rights and remedies provided by law or under this

Contract, the District may deduct such costs from any amounts due Contractor from the District under this Contract.

#### **70.0 NOTICE OF DELAYS**

Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party will, within one Business Day, give notice thereof, including all relevant information with respect thereto, to the other party.

#### **71.0 ACCESS TO COUNTY FACILITIES**

Contractor, its employees, and agents, may be granted access to County facilities, subject to Contractor's prior notification to District Project Manager, for the purpose of executing Contractor's obligations hereunder. Access to County facilities may be restricted to normal business hours, 8:00 a.m. until 5:00 p.m., Pacific Time, Monday through Friday, County-observed holidays excepted. Access to County facilities outside of normal business hours must be approved in writing in advance by District Project Manager, which approval will not be unreasonably withheld. Contractor must have no tenancy, or any other property or other rights, in County facilities. While present at County facilities, Contractor's personnel will be accompanied by County personnel at all times, unless this requirement is waived in writing prior to such event by District Project Manager.

#### **72.0 DISTRICT FACILITY OFFICE SPACE**

For Contractor to perform Services hereunder and only for the performance of such Services, the District may elect, subject to the District's standard administrative and security requirements, to provide Contractor with office space and equipment, as determined at the discretion of the applicable District Project Manager at County facilities, on a non-exclusive use basis. The District will also provide Contractor with reasonable telephone service in such office space for use only for purposes of this Contract. The District disclaims all responsibility for the loss, theft or damage of any property or material left at such District office space by Contractor.

#### **73.0 PHYSICAL ALTERATIONS**

Contractor must not in any way physically alter or improve any County facility without the prior written approval of the District Project Director and the Director of County's Internal Services Department, in their discretion.

#### **74.0 STAFF PERFORMANCE WHILE UNDER THE INFLUENCE**

Contractor must use reasonable efforts to ensure that no employee of Contractor or its Subcontractors performs Services under this Contract while under the influence of any alcoholic beverage, medication, narcotic, or other substance which might impair the employee's physical or mental performance.

#### **75.0 TIME OFF FOR VOTING**

Contractor must notify its employees and must require each Subcontractor to notify and provide to its employees, information regarding the time off for voting law (Elections Code Section 14000). Not less than ten Days before every statewide

election, every Contractor and Subcontractors must keep posted conspicuously at the place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of California Elections Code Section 14000.

#### **76.0 COMPLIANCE WITH COUNTY'S ZERO TOLERANCE POLICY ON HUMAN TRAFFICKING**

- 76.1 Contractor acknowledges that the County has established a Zero Tolerance Policy on Human Trafficking prohibiting contractors from engaging in human trafficking.
- 76.2 If a Contractor or member of Contractor's staff is convicted of a human trafficking offense, the County will require that Contractor or member of Contractor's staff be removed immediately from performing Services under the Contract. The County will not be under any obligation to disclose confidential information regarding the offenses other than those required by law.
- 76.3 Disqualification of any member of Contractor's staff pursuant to this Paragraph 77.0 (Compliance with County's Zero Tolerance Policy on Human Trafficking) will not relieve Contractor of its obligation to complete all Work in accordance with the terms and conditions of this Contract.

#### **77.0 COMPLIANCE WITH FAIR CHANCE EMPLOYMENT PRACTICES**

Contractor, and its Subcontractors, must comply with fair chance employment hiring practices set forth in California Government Code Section 12952. Contractor's violation of this Paragraph 77.0 (Compliance with Fair Chance Employment Practices) of this Contract may constitute a material breach of this Contract. In the event of such material breach, the District may, in its sole discretion, terminate this Contract.

#### **78.0 COMPLIANCE WITH THE COUNTY POLICY OF EQUITY**

Contractor acknowledges that the County takes its commitment to preserving the dignity and professionalism of the workplace very seriously, as set forth in the County Policy of Equity (CPOE) (<https://ceop.lacounty.gov/>). Contractor further acknowledges that the County strives to provide a workplace free from discrimination, harassment, retaliation, and inappropriate conduct based on a protected characteristic, and which may violate the CPOE. Contractor, its employees, and Subcontractors acknowledge and certify receipt and understanding of the CPOE. Failure of Contractor, its employees, or its Subcontractors to uphold the County's expectations of a workplace free from harassment and discrimination, including inappropriate conduct based on a protected characteristic, may subject Contractor to termination of this Contract and other contractual agreements, as well as civil liability.

#### **79.0 PROHIBITION FROM PARTICIPATION IN FUTURE SOLICITATION(S)**

A Proposer, or a Contractor or its subsidiary or Subcontractor ("Proposer/Contractor"), is prohibited from submitting a bid or proposal in a County solicitation if the Proposer/Contractor has provided advice or consultation for the solicitation. A Proposer/Contractor is also prohibited from submitting a bid or

proposal in a County solicitation if the Proposer/Contractor has assisted in developing or preparing any of the solicitation materials on behalf of the County. A violation of this provision will result in the disqualification of Contractor/Proposer from participation in the County solicitation or the termination or cancellation of any resultant County contract. This provision will survive the expiration or termination of this Contract.

## **80.0 INTENTIONALLY OMITTED**

## **81.0 BUDGET REDUCTIONS**

In the event that the County's Board of Supervisors adopts, in any Fiscal Year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County contracts, the County reserves the right to reduce its payment obligation under this Contract correspondingly for that Fiscal Year and any subsequent Fiscal Year during the entire Term of this Contract (including any extensions), and the Services to be provided by Contractor under this Contract may also be reduced correspondingly. The District's notice to Contractor regarding said reduction in payment obligation will be provided within 30 Days of the Board's approval of such actions. Except as set forth in the preceding sentence, Contractor must continue to provide all the Services set forth in this Contract.

## **82.0 COMPLAINTS**

82.1 Contractor must develop, maintain, and operate procedures for receiving, investigating, and responding to complaints.

### **82.2 Complaint Procedures**

- a. Within 30 Business Days after the Contract effective date, Contractor must provide the District with Contractor's policy for receiving, investigating, and responding to complaints.
- b. The District will review Contractor's policy and provide Contractor with approval of said plan or with requested changes.
- c. If the District requests changes in Contractor's policy, Contractor must make such changes and resubmit the plan within five Business Days for District approval.
- d. If, at any time, Contractor wishes to change Contractor's policy, Contractor must again submit proposed changes to the District for approval.
- e. Contractor must preliminarily investigate all complaints and notify the District Project Manager of the status of the investigation within two Business Days of receiving the complaint.
- f. When complaints cannot be resolved informally, a system of follow-through will be instituted which adheres to formal plans for specific actions and strict time deadlines.
- g. Copies of all written responses must be sent to the District Project Manager within five Business Days of mailing to the complainant.

### **83.0 COUNTERPARTS AND ELECTRONIC SIGNATURES AND REPRESENTATIONS**

This Contract may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same Contract. The facsimile, email or electronic signature of the Parties will be deemed to constitute original signatures, and facsimile or electronic copies hereof will be deemed to constitute duplicate originals.

The District and Contractor hereby agree to regard electronic representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments prepared pursuant to Paragraph 9.0 (Amendments and Change Notices) above, and received via communications facilities (facsimile, email or electronic signature), as legally sufficient evidence that such legally binding signatures have been affixed to Amendments to this Contract.

### **84.0 MOST FAVORED PUBLIC ENTITY**

If Contractor's prices decline, or should Contractor, at any time during the Term of this Contract, provide similar software, Service Levels, software models, components, goods or Services under similar delivery conditions to the State of California or any county, municipality or district of the State or to any other state, county or municipality at prices below those set forth in this Contract, then such lower prices must be immediately extended to the District. The District will have the right, at the District's expense, to utilize a County auditor or an independent auditor to verify Contractor's compliance with this Paragraph 84.0 by review of Contractor's books and records.

### **85.0 NONDISCRIMINATION AND AFFIRMATIVE ACTION**

- 85.1 Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and must be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable federal and state anti-discrimination laws and regulations.
- 85.2 Contractor certifies to the District each of the following:
- a. That Contractor has a written policy statement prohibiting discrimination in all phases of employment,
  - b. That Contractor periodically conducts a self-analysis or utilization analysis of its work force,
  - c. That Contractor has a system for determining if its employment practices are discriminatory against protected groups, and
  - d. Where problem areas are identified in employment practices, that Contractor has a system for taking reasonable corrective action, to include establishment of goals or timetables.
- 85.3 Contractor must take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color,



religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable federal and state anti-discrimination laws and regulations. Such action must include, but is not limited to, employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- 85.4 Contractor certifies and agrees that it will deal with its Subcontractors, bidders, or vendors without regard to, or because of, race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.
- 85.5 Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies must comply with all applicable federal and state laws and regulations to the end that no person must, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any Project, program, or activity supported by this Contract.
- 85.6 Contractor must allow County representatives access to Contractor's employment records during regular business hours to verify compliance with the provisions of this Paragraph 85.0 (Nondiscrimination and Affirmative Action) when so requested by the District.
- 85.7 If the District finds that any provisions of this Paragraph 85.0 (Nondiscrimination and Affirmative Action) have been violated, such violation will constitute a material breach of this Contract upon which the District may terminate or suspend this Contract. The District reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated. In addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that Contractor has violated federal or state anti-discrimination laws or regulations will constitute a finding by the District that Contractor has violated the anti-discrimination provisions of this Contract.
- 85.8 The parties agree that in the event Contractor violates any of the anti-discrimination provisions of this Contract, the District will, at its sole option, be entitled to the sum of \$500 for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.
- 85.9 The terms and procedures of this Paragraph 85.0 (Nondiscrimination and Affirmative Action) will also apply to Subcontractors, consultants and partners of Contractor performing Work under this Contract.

## **86.0 PUBLIC RECORDS ACT**

- 86.1 Any documents submitted by Contractor; all information obtained in connection with the District's right to audit and inspect Contractor's documents, books, and accounting records pursuant to Paragraph 31.0 (Record Retention and Inspection-Audit Settlement) of this Contract; as well as those documents which were required

to be submitted in response to the RFP used in the solicitation process for this Contract, become the exclusive property of the District. All such documents become a matter of public record and will be regarded as public records. Exceptions will be those elements in the California Government Code Section 7920 et seq. (Public Records Act) and which are marked "trade secret," "confidential," or "proprietary". The District will not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

- 86.2 In the event the District is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret," "confidential," or "proprietary," Contractor agrees to defend and indemnify the County for all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

## **87.0 DISCLOSURE OF CONTRACT**

### **87.1 Disclosure**

Contractor must not disclose any terms or conditions of, or any circumstances or events that occur during the performance of, this Contract to any person or entity except as may be otherwise provided herein or required by law. In the event Contractor receives any court or administrative agency order, service of process, or request by any person or entity (other than Contractor's professionals) for disclosure of any such details, Contractor must, to the extent allowed by law or such order, promptly notify District Project Director. Thereafter, Contractor must comply with such order, process, or request only to the extent required by applicable law. Notwithstanding the preceding sentence, to the extent permitted by law, Contractor must delay such compliance and cooperate with the District to obtain relief from such obligations to disclose until the District has been given a reasonable opportunity to obtain such relief.

However, in recognizing Contractor's need to identify its services and related clients to sustain itself, the District will not inhibit Contractor from publicizing its role under this Contract under the following conditions:

- Contractor must develop all publicity material in a professional manner.
  - During the Term of this Contract, Contractor must not, and must not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name or seal of the District or any County department without the prior written consent of District Project Director for each such item.
- 87.2 Contractor may, without the prior written consent of the District, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this Paragraph 87.0 (Disclosure of Contract) will apply.

### **87.3 Required Disclosure**

Notwithstanding any other provision of this Contract, either party may disclose information about the other that: (i) is lawfully in the public domain at the time of disclosure, (ii) is disclosed with the prior written approval of the party to which such information pertains, or (iii) is required by law to be disclosed.

## **88.0 OWNERSHIP OF MATERIALS, SOFTWARE AND COPYRIGHT**

### **88.1 District Materials**

Contractor agrees that the District, as applicable, will own all rights, title and interest, including all copyrights, patent rights, trade secret rights and other proprietary rights therein, in and to all information, data, plans, schedules, Departmental procedures and processes, algorithms, diagrams, reports, working papers, documents, training materials, records and any other information or Work Products originated or created solely for the District, as applicable, through Contractor's Work pursuant to this Contract and any District data whether provided by the District or otherwise accessible or generated by Contractor or the Solution, excluding the Work Product and Licensed Software provided by Contractor and related Documentation (collectively "District Materials"). Contractor, therefore, hereby assigns and transfers to District all of Contractor's right, title and interest in and to all such District Materials, provided that notwithstanding such District ownership, Contractor may retain possession of all working papers prepared by Contractor.

During and for a minimum of five years subsequent to the Term of this Contract, Contractor must retain all of Contractor's working papers prepared under this Contract, including to the extent necessary District Materials. The District will have the right to inspect all such working papers, make copies thereof and use the working papers and the information contained therein.

### **88.2 Transfer to County**

The County will have the right to register all copyrights and patents in the name of County of Los Angeles. All material expense of effecting such assignment and transfer of rights will be borne by the County. Further, the County will have the right to assign, license or otherwise transfer all County's right, title, and interest, including, but not limited to, copyrights and patents, in and to County Materials.

### **88.3 Proprietary and Confidential**

All materials, software and tools which are developed or were originally acquired by Contractor outside the scope of this Contract, which Contractor desires to use hereunder, and which Contractor considers to be proprietary or confidential, must be specifically identified by Contractor to District Project Director as proprietary or confidential, and be plainly and prominently marked by Contractor as "PROPRIETARY" or "CONFIDENTIAL", if applicable.

Notwithstanding any other provision of this Contract, the District will not be obligated in any way under this Contract for:

- a. Any disclosure of any materials which the District is required to make under the California Public Records Act or otherwise by any state or federal law or order of court, or
  - b. Any Contractor's proprietary and/or confidential materials not plainly and prominently marked with restrictive legends.
- 88.4 The District will use reasonable means to ensure that Contractor's proprietary and/or confidential items are safeguarded and held in confidence. The District agrees not to reproduce, distribute, or disclose to non-County entities any such proprietary and/or confidential items without the prior written consent of Contractor.
- 88.5 Notwithstanding any other provision of this Contract, the District will not be obligated to Contractor in any way under Paragraph 88.4 above.
- 88.6 All the rights and obligations of this Paragraph 88.0 (Ownership of Materials, Software and Copyright) will survive the expiration or termination of this Contract.

## **89.0 PATENT, COPYRIGHT AND TRADE SECRET INDEMNIFICATION**

- 89.1 Contractor must indemnify, hold harmless and defend the County from and against all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, for or by reason of any actual or alleged infringement of any third party's patent or copyright, or any actual or alleged unauthorized trade secret disclosure, arising from or related to the operation and utilization of Contractor's Work under this Contract. The District will inform Contractor as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure and will support Contractor's defense and settlement thereof.
- 89.2 In the event any software product becomes the subject of any complaint, claim, or proceeding alleging infringement or unauthorized disclosure, such that District's continued use of such item is formally restrained, enjoined, or subjected to a risk of damages, Contractor, at its sole expense, and providing that District's continued use of the System is not materially impeded, must either:
- a. Procure for the District all rights to continued use of the questioned software product, or
  - b. Replace the questioned software product with a non-questioned item, or
  - c. Modify the questioned software so that it is free of claims.
- 89.3 Contractor will have no liability if the alleged infringement or unauthorized disclosure is based upon a use of the questioned product, either alone or in combination with other items not supplied by Contractor, in a manner for which the questioned product was not designed nor intended.

## **90.0 DATA DESTRUCTION**

If Contractor has maintained, processed, or stored District data and/or information, implied or expressed, Contractor has the sole responsibility to certify that the data and information has been appropriately destroyed consistent with the National Institute of Standards and Technology (NIST) Special Publication SP 800-88 titled Guidelines for Media Sanitization. Available at:

<https://csrc.nist.gov/publications/PubsDrafts.html#SP-800-88 Rev.%201>.

The data and/or information may be stored on purchased, leased, or rented electronic storage equipment (e.g., printers, hard drives) and electronic devices (e.g., servers, workstations) that are geographically located within the District, or external to County's boundaries. The District must receive within ten Business Days, a signed document from Contractor(s) that certifies and validates the data and information were placed in one or more of the following stored states: unusable, unreadable, and/or indecipherable.

Contractor must certify that any District data stored on purchased, leased, or rented electronic storage equipment and electronic devices, including, but not limited to printers, hard drives, servers, and/or workstations are destroyed consistent with the current National Institute of Standard and Technology (NIST) Special Publication SP-800-88, Guidelines for Media Sanitization. Contractor must provide the District with written certification, within ten Business Days of removal of any electronic storage equipment and devices that validates that all District data was destroyed and is unusable, unreadable, and/or undecipherable.

## **91.0 ELIGIBLE ENTITIES**

The District and Contractor agree that Eligible Entities may purchase products or services defined herein under the same terms and conditions as the District, subject to any applicable local purchasing ordinances and laws of the State of California.

For purposes of this Contract, an Eligible Entity is any public law enforcement/public safety agency whose procurement rules, whether internal or enacted pursuant to statute, allow them to purchase goods or services through a procurement vehicle such as this RFP.

The terms and conditions of this Contract will be made available, upon request, to public law enforcement/public safety agencies, "Eligible Entities", upon request.

The District will not be construed as a dealer, re-marketer, representative, partner, or agent of any type, of Contractor. Eligible Entities will be solely responsible for ordering services and products under this District Contract. Payments for services and products ordered by an Eligible Entity will be the exclusive obligation of such Eligible Entity.

The District will not be obligated, liable, or responsible for any order made by any Eligible Entity or any employee thereof, or for any payment required to be made with respect to such order, and that any disputes between Eligible Entities and Contractor are not the responsibility of the District. The exercise of any rights or remedies of the Eligible Entities or Proposer will be the exclusive obligation of such parties.

The District makes no representation or guaranty with respect to any minimum purchases by the District, or any Eligible Entity or any employee thereof, under this District contract or any Eligible Entity contract.

Notwithstanding any additional or contrary terms in the Eligible Entity's contract, the applicable provisions of this Contract (except for price, scope of work, product delivery, passage of title, risk of loss to equipment, and warranty conditions) will govern the purchase and sale of the services or products ordered by the Eligible Entities.

#### **92.0 LOCAL SMALL BUSINESS ENTERPRISE (LSBE) PREFERENCE PROGRAM (IF APPLICABLE)**

- 92.1 This Contract is subject to the provisions of the County's ordinance entitled LSBE Preference Program, as codified in Chapter 2.204 of the Los Angeles County Code.
- 92.2 Contractor must not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain, or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a LSBE.
- 92.3 Contractor must not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a LSBE.
- 92.4 If Contractor has obtained certification as a LSBE by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this Contract to which it would not otherwise have been entitled, must:
  - a. Pay to the County any difference between this Contract amount and what the County's costs would have been if this Contract had been properly awarded,
  - b. In addition to the amount described in subdivision (a) above, Contractor will be assessed a penalty in an amount of not more than ten percent of the amount of this Contract, and
  - c. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

The above penalties will also apply to any business that has previously obtained proper certification, however, because of a change in their status would no longer be eligible for certification and fails to notify the State and the Department of Consumer and Business Affairs of this information prior to responding to a solicitation or accepting a contract award.

#### **93.0 SOCIAL ENTERPRISE (SE) PREFERENCE PROGRAM (IF APPLICABLE)**

- 93.1 This Contract is subject to the provisions of the County's ordinance entitled SE Preference Program, as codified in Chapter 2.205 of the County Code.
- 93.2 Contractor must not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a SE.

- 93.3 Contractor must not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a SE.
- 93.4 If Contractor has obtained County certification as a SE by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this Contract to which it would not otherwise have been entitled, Contractor must:
- Pay to the County any difference between this Contract amount and what County's costs would have been if this Contract had been properly awarded,
  - In addition to the amount described in subdivision (a) above, Contractor will be assessed a penalty in an amount of not more than ten percent of the amount of this Contract, and
  - Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

The above penalties will also apply to any entity that has previously obtained proper certification, however, because of a change in their status would no longer be eligible for certification and fails to notify the Department of Consumer and Business Affairs of this information prior to responding to a solicitation or accepting a contract award.

**94.0 DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PREFERENCE PROGRAM (IF APPLICABLE)**

- 94.1 This Contract is subject to the provisions of the County's ordinance entitled DVBE Preference Program, as codified in Chapter 2.211 of the Los Angeles County Code.
- 94.2 Contractor must not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a DVBE.
- 94.3 Contractor must not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the certification or denial of certification of any entity as a DVBE.
- 94.4 If Contractor has obtained certification as a DVBE by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this contract to which it would not otherwise have been entitled, Contractor must:
- Pay to the County any difference between this Contract amount and what the County's costs would have been if this Contract had been properly awarded,

- b. In addition to the amount described in subdivision (a) above, Contractor will be assessed a penalty in an amount of not more than ten percent of the amount of this Contract, and
- c. Be subject to the provisions of Chapter 2.202 of the Los Angeles County Code (Determinations of Contractor Non-responsibility and Contractor Debarment).

Notwithstanding any other remedies in this Contract, the above penalties will also apply to any business that has previously obtained proper certification, however, as a result of a change in their status would no longer be eligible for certification and fails to notify the State and the Department of Consumer and Business Affairs of this information prior to responding to a solicitation or accepting a contract award.

#### **95.0 COMPLIANCE WITH COUNTY'S WOMEN IN TECHNOLOGY HIRING INITIATIVE**

At the direction of the Board of Supervisors, the County has established a "Women in Technology" (WIT) Hiring Initiative focused on recruiting, training, mentoring and preparing all genders, including women, at-risk youth, and underrepresented populations (program participants) for County Information Technology (IT) careers. In support of the subject initiative, IT contractors currently offering certification, training, and/or mentoring programs must make such program(s) available to WIT program participants, if feasible. Contractors must report such programs available to: [WITProgram@isd.lacounty.gov](mailto:WITProgram@isd.lacounty.gov).



IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Contract to be executed by the Fire Chief of the Consolidated Fire Protection District of Los Angeles County (or designee) and approved by County Counsel, and Contractor has caused this Contract to be executed in its behalf by its duly authorized officer, this 1st day of August, 2024.

By \_\_\_\_\_  
Contractor

Signed: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

CONSOLIDATED FIRE PROTECTION  
DISTRICT OF LOS ANGELES COUNTY

By \_\_\_\_\_  
Fire Chief

APPROVED AS TO FORM:

DAWYN R. HARRISON  
County Counsel

By \_\_\_\_\_  
Senior Deputy County Counsel

## SOLE SOURCE CHECKLIST

Department Name: \_\_\_\_\_

☐ New Sole Source Contract

☐ Existing Sole Source Contract      Date Sole Source Contract Approved: \_\_\_\_\_

Check (✓)	<b>JUSTIFICATION FOR SOLE SOURCE CONTRACTS</b> Identify applicable justification and provide documentation for each checked item.
	➤ Only one bona fide source (monopoly) for the service exists; performance and price competition are not available. A monopoly is an <i>“Exclusive control of the supply of any service in a given market. If more than one source in a given market exists, a monopoly does not exist.”</i>
	➤ Compliance with applicable statutory and/or regulatory provisions.
	➤ Compliance with State and/or federal programmatic requirements.
	➤ Services provided by other public or County-related entities.
	➤ Services are needed to address an emergent or related time-sensitive need.
	➤ The service provider(s) is required under the provisions of a grant or regulatory requirement.
	➤ Additional services are needed to complete an ongoing task and it would be prohibitively costly in time and money to seek a new service provider.
	➤ Services are needed during the time period required to complete a solicitation for replacement services; provided services are needed for no more than 12 months from the expiration of an existing contract which has no available option periods.
	➤ Maintenance and support services are needed for an existing solution/system during the time to complete a solicitation for a new replacement solution/ system; provided the services are needed for no more than 24 months from the expiration of an existing maintenance and support contract which has no available option periods.
	➤ Maintenance service agreements exist on equipment which must be serviced by the original equipment manufacturer or an authorized service representative.
	➤ It is more cost-effective to obtain services by exercising an option under an existing contract.
	➤ It is in the best economic interest of the County (e.g., significant costs to replace an existing system or infrastructure, administrative cost savings and excessive learning curve for a new service provider, etc.) In such cases, departments must demonstrate due diligence in qualifying the cost-savings or cost-avoidance associated with the best economic interest of the County.

*Rene' Phillips*

\_\_\_\_\_  
Chief Executive Office

\_\_\_\_\_  
Date