

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

This agreement (“Agreement”) is made and entered into effective as of the date of the last signature on the signature page by and between the County of San Diego, a political subdivision of the State of California (“County”) and [# enter full corporate title, describe company, located at (complete address)] (“Contractor”), with reference to the following facts:

RECITALS

- A. Pursuant to Administrative Code section 401, the County’s Director of the Department of Purchasing and Contracting is authorized to award a contract for **traffic data information services**.
- B. Contractor is specially trained and possesses certain skills, experience, education and competency to perform these services.
- C. The Chief Administrative Officer made a determination that Contractor can perform the services more economically and efficiently than the County, pursuant to Section 703.10 of the County Charter.
- D. The Agreement shall consist of this document, Exhibit A Statement of Work, Exhibit B Insurance Requirements and Exhibit C, Payment Schedule. In the event that any provision of the Agreement or its Exhibits, A, B or C, conflicts with any other term or condition, precedence shall be: First (1st) the Agreement; Second (2nd) Exhibit B; Third (3rd) Exhibit A; and Fourth (4th) Exhibit C.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE 1
PERFORMANCE OF WORK**

- 1.1 **Standard of Performance.** Contractor shall, in good and workmanlike manner and in accordance with the highest professional standards, at its own cost and expense, furnish all of the labor, technical, administrative, professional and all other personnel, all supplies and materials, equipment, printing, transportation, training, facilities, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by County, necessary or proper to perform and complete the work and provide the services required of Contractor by this Agreement.
- 1.2 **Contractor’s Representative.** The person identified on the signature page (“Contractor’s Representative”) shall ensure that Contractor’s duties under this Agreement shall be performed on behalf of the Contractor by qualified personnel; Contractor represents and warrants that (1) Contractor has fulfilled all applicable requirements of the laws of the State of California to perform the services under this Agreement and (2) Contractor’s Representative has full authority to act for Contractor hereunder. Contractor and County recognize that the services to be provided by Contractor’s Representative pursuant to this Agreement are unique: accordingly, Contractor’s Representative shall not be changed during the Term of the Agreement without County’s written consent. County reserves the right to terminate this Agreement pursuant to Clause 7.1 “Termination for Default”, if Contractor’s Representative should leave Contractor’s employ, or if, in County’s judgment, the work hereunder is not being performed by Contractor’s Representative.
- 1.3 **Contractor as Independent Contractor.** Contractor is, for all purposes of this Agreement, an independent contractor, and neither Contractor nor Contractor’s employees or subcontractors shall be deemed to be employees of the County. Contractor shall perform its obligations under this Agreement according to the Contractor’s own means and methods of work, which shall be in the exclusive charge and under the control of the Contractor, and which shall not be subject to control or supervision by County except as to the results of the work. County hereby delegates to Contractor any and all responsibility for the safety of Contractor’s employees, which shall include inspection of property to identify potential hazards. Neither Contractor nor Contractor’s employees or subcontractors shall be entitled to any benefits to which County employees are entitled, including without limitation, overtime, retirement benefits, workers’ compensation benefits and injury leave.
- 1.4 **Contractor’s Agents and Employees or Subcontractors.** Contractor shall obtain, at Contractor’s expense, all agents, employees and subcontractors required for Contractor to perform its duties under this Agreement, and all such services shall be performed by Contractor’s Representative, or under Contractor’s Representatives’ supervision, by persons authorized by law to perform such services. Retention by Contractor of any agent, employee or subcontractor shall be at Contractor’s sole cost and expense, and County shall have no obligation to pay Contractor’s agents, employees or subcontractors; to support any such person’s or entity’s claim against the Contractor; or to defend Contractor against any such claim.

Any subcontract or consultant agreement that is in excess of fifty thousand dollars (\$50,000) or twenty five percent (25%) of the value of the contract, whichever is less, or a combination of subcontracts or consultant agreements to the same individual or firm for the agreement period, or any subcontract or consultant agreement for professional medical or mental health services, regardless of value, must have prior concurrence of the Contracting Officer’s Representative (“COR”). Contractor shall provide Contracting Officer Representative with copies of all other subcontracts relating to this Agreement entered into by Contractor within 30 days after the effective date of the subcontract. Such subcontractors of Contractor shall be notified

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

of Contractor's relationship to County. "Subcontractor" means any entity, other than County, that furnishes to Contractor services or supplies relevant to this Agreement other than standard commercial supplies, office space, and printing services.

- 1.4.1 Contractor Responsibility. In the event any subcontractor is utilized by Contractor for any portion of the project, Contractor retains the prime responsibility for carrying out all the terms of this Agreement, including the responsibility for performance and insuring the availability and retention of records of subcontractors in accordance with this Agreement. No subcontract utilizing funds from this Agreement shall be entered into if it has a term extending beyond the ending date of this Agreement.
- 1.4.2 Mandated Clause. All subcontracts shall include the Standard Terms and Conditions required of Contractor Articles 3, 7, 8, 9, 10, 11, 12, 13, 14 and 16 herein.
- 1.4.3 County Approval. As identified above, all subcontracts under this Agreement shall have prior written approval of the Contracting Officer Representative.
- 1.5 Off Shore Prohibition. Except where Contractor obtains the County's prior written approval, Contractor shall perform the work of this Agreement only from or at locations within the United States. Any County approval for the performance of work outside of the United States shall be limited to the specific instance and scope of such written approval, including the types of work and locations involved. Notwithstanding the foregoing, this Section shall not restrict the country or countries of origin of any assets purchased to provide the work hereunder; provided that when such assets are used to provide the work, such assets shall be used only from or at locations within the geographic boundaries of the United States.

**ARTICLE 2
SCOPE OF WORK**

- 2.1 Statement of Work. Contractor shall perform the work described in the "Statement of Work" attached as Exhibit "A" to this Agreement, and by this reference incorporated herein, except for any work therein designated to be performed by County.
- 2.2 Right to Acquire Equipment and Services. Nothing in this Agreement shall prohibit the County from acquiring the same type or equivalent equipment and/or service from other sources, when deemed by the County to be in its best interest.
- 2.3 Responsibility for Equipment. For cost reimbursement agreements, County shall not be responsible nor be held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by Contractor or any of Contractor's employees, even though such equipment may be furnished, rented, or loaned to Contractor by County. The acceptance or use of any such equipment by Contractor or Contractor's employees shall be construed to mean that Contractor accepts full responsibility for and agrees to exonerate, indemnify and hold harmless County from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment, whether such damage be to the employee or property of Contractor, other Contractors, County, or other persons. Equipment includes, but is not limited to material, computer hardware and software, tools, or other things.
 - 2.3.1 Contractor shall repair or replace, at Contractor's expense, all County equipment or fixed assets that are damaged or lost as a result of Contractor negligence.
- 2.4 Non-Expendable Property Acquisition. County retains title to all non-expendable property provided to Contractor by County, or which Contractor may acquire with funds from this Agreement if payment is on a cost reimbursement basis, including property acquired by lease purchase Agreement. Contractor may not expend funds under this Agreement for the acquisition of non-expendable property having a unit cost of \$5,000 or more and a normal life expectancy of more than one year without the prior written approval of Contracting Officer Representative. Contractor shall maintain an inventory of non-expendable equipment, including dates of purchase and disposition of the property. Inventory records on non-expendable equipment shall be retained, and shall be made available to the County upon request, for at least three years following date of disposition. Non-expendable property that has value at the end of the Agreement (e.g. has not been depreciated so that its value is zero), and to which the County may retain title under this paragraph, shall be disposed of at the end of the Agreement as follows: At County's option, it may: 1) have Contractor deliver to another County contractor or have another County contractor pick up the non-expendable property; 2) allow the contractor to retain the non-expendable property provided that the contractor submits to the County a written statement in the format directed by the County of how the non-expendable property will be used for the public good; or 3) direct the Contractor to return to the County the non-expendable property.

**ARTICLE 3
DISENTANGLEMENT**

- 3.1 General Obligations.

At County's discretion, Contractor shall accomplish a complete transition of the services as set forth in Exhibit A to this Agreement (for purposes of this Article 3.1, these shall be referred to as the "Disentangled Services") being terminated from

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

Contractor and the Subcontractors to County, or to any replacement provider designated by County, without any interruption of or adverse impact on the Disentangled Services or any other services provided by third parties. This process shall be referred to as the Disentanglement. Contractor shall fully cooperate with County and any new service provider and otherwise promptly take all steps, including, but not limited to providing to County or any new service provider all requested information or documentation, required to assist County in effecting a complete Disentanglement. Contractor shall provide all information or documentation regarding the Disentangled Services or as otherwise needed for Disentanglement, including, but not limited to, data conversion, client files, interface specifications, training staff assuming responsibility, and related professional services. Contractor shall provide for the prompt and orderly conclusion of all work required under the Agreement, as County may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to County or the County's designee of the Disentangled Services. All Contractor work done as part of the Disentanglement shall be performed by Contractor and will be reimbursed by the County at no more than Contractor's costs, up to the total amount of this Agreement. Contractor shall not receive any additional or different compensation for the work otherwise required by the Agreement. Contractor's obligation to provide the Services shall not cease until the earlier of the following: 1) The Disentanglement is satisfactory to County, including the performance by Contractor of all asset-transfers and other obligations of Contractor provided in this Paragraph, has been completed to the County's reasonable satisfaction or 2) twelve (12) months after the Expiration Date of the Agreement.

3.2 Disentanglement Process.

The Disentanglement process shall begin on any of the following dates: (i) the date County notifies Contractor that no funds or insufficient funds have been appropriated so that the Term shall be terminated pursuant to the Agreement, Article 7; (ii) the date designated by County not earlier than sixty (60) days prior to the end of any initial or extended term that County has not elected to extend pursuant to the Agreement's, Signature Page, Agreement Term; or (iii) the date any Termination Notice is delivered, if County elects to terminate any or all of the Services pursuant to the Agreement, Article 7. Subject to Exhibit A Contractor's obligation to perform Disentangled Services, and County's obligation to pay for Disentangled Services, shall expire: (A) when funds appropriated for payment under this Agreement are exhausted, as provided in this Agreement, Article 7; (B) at the end of the initial or extended term set forth in this Agreement's, Signature Page, Agreement Term; or (C) on the Termination Date, pursuant to this Agreement, Article 7 (with the applicable date on which Contractor's obligation to perform the Services expires being referred to herein as the "Expiration Date"). Contractor and County shall discuss in good faith a plan for determining the nature and extent of Contractor's Disentanglement obligations and for the transfer of the Disentangled Services in process provided, however, that Contractor's obligation under this Agreement to provide all Disentangled Services shall not be lessened in any respect.

3.3 Specific Obligations.

The Disentanglement shall include the performance of the following specific obligations:

3.3.1 No Interruption or Adverse Impact

Contractor shall cooperate with County and all of the County's other service providers to ensure a smooth transition at the time of Disentanglement, with no interruption of Disentangled Services or other work required under the Agreement, no adverse impact on the provision of Disentangled Services or other work required under the Agreement or County's activities, no interruption of any services provided by third parties, and no adverse impact on the provision of services provided by third parties.

3.3.2 Third-Party Authorizations.

Without limiting the obligations of Contractor pursuant to any other clause in Exhibit A herein, Contractor shall, subject to the terms of any third-party agreements, procure at no charge to County any third-party authorizations necessary to grant County the use and benefit of any third-party agreements between Contractor and third-party contractors used to provide the Disentangled Services, pending their assignment to County. Similarly, at County's direction, Contractor shall obtain all legally necessary client consents or authorizations legally necessary to transfer client data to County or any new service provider.

3.3.3 Reserved.

3.3.4 Return, Transfer and Removal of Assets.

3.3.4.1 Contractor shall return to County all County assets in Contractor's possession, pursuant to Paragraph 2.4 of the Agreement.

3.3.4.2 County shall be entitled to purchase at net book value those Contractor assets used for the provision of Disentangled Services to or for County, other than those assets expressly identified by the Parties as not being subject to this provision. Contractor shall promptly remove from County's premises, or the site of

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

the work being performed by Contractor for County, any Contractor assets that County, or its designee, chooses not to purchase under this provision.

3.3.5 Transfer of Leases, Licenses, and Agreements.

Contractor, at its expense, shall convey or assign to County or its designee such fully-paid leases, licenses, and other agreements used by Contractor, County, or any other Person in connection with the Disentangled Services, as County may select, when such leases, licenses, and other agreements have no other use by Contractor. Contractor's obligation described herein, shall include Contractor's performance of all obligations under such leases, licenses, and other agreements to be performed by it with respect to periods prior to the date of conveyance or assignment and Contractor shall reimburse County for any losses resulting from any claim that Contractor did not perform any such obligations.

3.3.6 Delivery of Documentation.

Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, the County Data and client files, held by Contractor, and Contractor shall destroy all copies thereof not turned over to County, all at no charge to County. Notwithstanding the foregoing, Contractor may retain one (1) copy of the documentation and data, excluding County Data, for archival purposes or warranty support.

3.4 Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by Contractor under this Agreement that the County requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

3.5 Publication, Reproduction or Use of Materials. No material produced, in whole or in part, under this Agreement shall be subject to copyright in the United States or in any other country. The County shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement. All reports, data and other materials prepared under this Agreement shall be the property of the County upon completion of this Agreement.

**ARTICLE 4
COMPENSATION**

The Payment Schedule, and/or budget are in Exhibit C and the compensation is on the Signature page. County will pay Contractor the agreed upon price(s), pursuant to Exhibit C for the work specified in Exhibit A, Statement of Work. The County is precluded from making payments prior to receipt of services (advance payments). Contractor shall provide and maintain an accounting and financial support system to monitor and control costs to assure the Agreements completion. Invoices are subject to the requirements below.

4.1 Fiscal for Fixed Pricing. (Rev. 7/1/17)

- 4.1.1 General Principles.** Contractor shall, comply with generally accepted accounting principles and good business practices, including all applicable cost principles published by the [Federal Office of Management and Budget \(OMB\)](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl), including 2 CFR 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS "The Uniform Guidance", which can be viewed at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl. Contractor shall comply with all federal, State and other funding source requirements. Contractor shall, at its own expense, furnish all cost items associated with this Agreement except as herein otherwise specified in the budget or elsewhere to be furnished by County. Contractor shall submit annually to the County a cost allocation plan in accordance with The Uniform Guidance.
- 4.1.2 Invoices.** Payment for the services performed under this Agreement shall be in accordance with Exhibit C, unless other payment methodologies are negotiated and agreed to by both Contractor and County. Contractor shall submit approved invoices monthly to the Contracting Officer's Representative ("COR") for work performed in the monthly period, accordingly. Contractor's monthly invoices shall be completed and submitted in accordance with written COR instructions and shall include a statement certifying whether it is in compliance with Paragraph 8.16 of this Agreement
- 4.1.3 Payments.** County agrees to pay Contractor in arrears only after receipt and approval by COR of properly submitted, detailed and itemized original invoice referencing the Agreement number *and a detailed listing of each pay point target, accomplishment, unit price and/or percentages, and showing the appropriate calculation for each, a progress report documenting the status and accomplishments of Contractor during the billing pursuant to Exhibit C*. Payment shall be NET 30 days from receipt and approval of invoice unless otherwise stated.
- 4.1.4 Full Compensation.** Pending any adjustments by the COR, each invoice approved and paid shall constitute full and complete compensation to the Contractor for all work completed during the billing period pursuant to Exhibit A and

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

Exhibit C. Contractor shall be entitled only to compensation, benefits, reimbursements or ancillary services specified in this Agreement. Payment shall be NET 30 days from receipt and approval of invoice unless otherwise stated.

4.1.5 Prompt Payment for Vendors and Subcontractors

4.1.5.1 Prompt payment for vendors and subcontractors.

4.1.5.1.1. Unless otherwise set forth in this paragraph, Contractor shall promptly pay its vendors and subcontractor(s) for satisfactory performance under its subcontract(s) to this Agreement. Such prompt payment shall be no later than thirty (30) days after Contractor receives payment for such services from County and shall be paid out of such amounts as are paid to Contractor under this Agreement.

4.1.5.1.2 Contractor shall include a payment clause conforming to the standards set forth in Paragraph 4.1.5.2.3 of this Agreement in each of its subcontracts, and shall require each of its subcontractors to include such a clause in their subcontracts with each lower-tier subcontractor or supplier.

4.1.5.2 If Contractor, after submitting a claim for payment to County but before making a payment to a vendor or subcontractor for the goods or performance covered by the claim, discovers that all or a portion of the payment otherwise due such vendor or subcontractor is subject to withholding from the vendor or subcontractor in accordance with the vendor or subcontract agreement, then the Contractor shall:

4.1.5.2.1 Furnish to the vendor or subcontractor and the COR within three (3) business days of withholding funds from its vendor or subcontractor a notice stating the amount to be withheld, the specific causes for the withholding under the terms of the subcontract or vendor agreement; and the remedial actions to be taken by the vendor or subcontractor in order to receive payment of the amounts withheld.

4.1.5.2.2 Contractor shall reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph 4.1.5.2.1 of this Agreement and Contractor may not claim from the County this amount until its subcontractor has cured the cause of Contractor withholding funds;

4.1.5.2.3 Upon the vendor's or subcontractor's cure of the cause of withholding funds, Contractor shall pay the vendor or subcontractor as soon as practicable, and in no circumstances later than ten (10) days after the Contractor claims and receives such funds from County.

4.1.5.3 Contractor shall not claim from County all of or that portion of a payment otherwise due to a vendor or subcontractor that Contractor is withholding from the vendor or subcontractor in accordance with the subcontract agreement where Contractor withholds the money before submitting a claim to County. Contractor shall provide its vendor or subcontractor and the COR with the notice set forth in Paragraph 4.1.5.2.1 of this Agreement and shall follow Paragraph 4.1.5.2.3 of this Agreement when vendor or subcontractor cures the cause of Contractor withholding its vendors or subcontractor's funds.

4.1.5.4 Overpayments. If Contractor becomes aware of a duplicate contract financing or invoice payment or that County has otherwise overpaid on a contract financing or invoice payment, Contractor shall immediately notify the COR and request instructions for disposition of the overpayment.

4.1.6 Conditions Prerequisite To Payments. County may elect not to make a particular payment if any of the following exists:

4.1.6.1 Misrepresentation. Contractor, with or without knowledge, made any misrepresentation of substantial and material nature with respect to any information furnished to County.

4.1.6.2 Unauthorized Actions by Contractor. Contractor took any action pertaining to this Agreement, which required County approval, without having first received said County approval.

4.1.6.3 Default. Contractor was in default under any terms and conditions of this Agreement.

4.1.7 Withholding Of Payment. County may withhold payment until reports, data, audits or other information required for Agreement administration or to meet County or State reporting or auditing requirements are received and approved by COR or designee. The County may also withhold payment if, in the County's opinion, Contractor is in non-compliance with this Agreement.

4.1.8 Availability of Funding. The County's obligation for payment of any Agreement beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. No legal liability on the part of the County shall arise for payment beyond June 30 of the calendar year unless funds are designated by the County and are made available for such performance.

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

County shall, in its sole discretion, have the right to terminate or suspend Agreement or reduce compensation and service levels proportionately upon thirty (30) days' written notice to Contractor in the event that Federal, State or County funding for this Agreement ceases or is reduced prior to the ordinary expiration of the term of this Agreement. In the event of reduction of funding for the Agreement, County and Contractor shall meet within ten (10) days of written notice to renegotiate this Agreement based upon the modified level of funding. In this case if no agreement is reached between County and Contractor within 10 days of the first meeting, either party shall have the right to terminate this Agreement within ten (10) days written notice of termination.

In the event of termination of this Agreement in accordance with the terms of this Section, Contractor shall be entitled to retain all sums paid as of the effective date of such termination, subject to any payment offset to which County may be entitled, for damages or otherwise, under the terms of this Agreement. In the event of termination of this Agreement pursuant to this Section, in no event shall Contractor be entitled to any loss of profits on the portion of this Agreement so terminated, or to other compensation, benefits, reimbursements or ancillary services other than as herein expressly provided.

- 4.1.9 Disallowance. In the event the Contractor receives payment for services under this Agreement which is later disallowed by the County, Contractor shall promptly refund the disallowed amount to County on request, or at its option, County may offset the amount disallowed from any payment due or to become due to Contractor under any Agreement with the County.
- 4.1.10 Maximum Price. During the performance period of this Agreement, the maximum price for the same or similar items and/or services shall not exceed the lowest price at which Contractor then offers the items and/or services to its most favored customer.

**ARTICLE 5
AGREEMENT ADMINISTRATION**

- 5.1 County's Agreement Administrator. The Director of Purchasing and Contracting is designated as the Contracting officer ("Contracting Officer") and is the only County official authorized to make any Changes to this Agreement. The County has designated the individual identified on the signature page as the Contracting Officer's Representative ("COR")
- 5.1.1 County's COR will chair Contractor progress meetings and will coordinate County's Agreement administrative functions. The COR is designated to receive and approve Contractor invoices for payment, audit and inspect records, inspect Contractor services, and provide other technical guidance as required. The COR is not authorized to change any terms and conditions of this Agreement. Only the Contracting Officer, by issuing a properly executed amendment to this Agreement, may make changes to the scope of work or total price.
- 5.1.2 Notwithstanding any provision of this Agreement to the contrary, County's COR may make Administrative Adjustments ("AA") to the Agreement, such as line item budget changes or adjustments to the service requirements that do not change the purpose or intent of the Statement of Work, the Terms and Conditions, the Agreement Term or the total Agreement price. Each AA shall be in writing and signed by COR and Contractor. All inquiries about such AA will be referred directly to the COR.
- 5.2 Agreement Progress Meeting. The COR and other County personnel, as appropriate, will meet periodically with the Contractor to review the Agreement performance. At these meetings the COR will apprise the Contractor of how the County views the Contractor's performance and the Contractor will apprise the County of problems, if any, being experienced. The Contractor shall also notify the Contracting Officer (in writing) of any work being performed, if any, that the Contractor considers being over and above the requirements of the Agreement. Appropriate action shall be taken to resolve outstanding issues. The minutes of these meetings will be reduced to writing and signed by the COR and the Contractor. Should the Contractor not concur with the minutes, the Contractor shall set out in writing any area of disagreement. Appropriate action will be taken to resolve any areas of disagreement.

**ARTICLE 6
CHANGES**

- 6.1 Contracting Officer. The Contracting Officer may at any time, by a written order, make changes ("Changes"), within the general scope of this Agreement, in the definition of services to be performed, and the time (i.e.) hours of the day, days of the week, etc. and place of performance thereof. If any such Change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Agreement, whether changed or not changed by such an order, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified in writing accordingly. Such changes may require Board of Supervisors approval.
- 6.2 Claims. Contractor must assert any claim for adjustment under this clause within thirty (30) days from the date of receipt by the Contractor of the notification of Change; provided, however, that the Contracting Officer, if he decides that the facts justify such

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

action, may receive and act upon any such claim asserted at any time prior to final payment under this Agreement. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Agreement entitled "Disputes" (Article 15). However, nothing in this clause shall excuse the Contractor from proceeding with this Agreement as changed.

**ARTICLE 7
SUSPENSION, DELAY AND TERMINATION**

- 7.1 Termination for Default. Upon Contractor's breach of this Agreement, County shall have the right to terminate this Agreement, in whole or part. Prior to termination for default, County will send Contractor written notice specifying the cause. The notice will give Contractor ten (10) days from the date the notice is issued to cure the default or make progress satisfactory to County in curing the default, unless a different time is given in the notice. If County determines that the default contributes to the curtailment of an essential service or poses an immediate threat to life, health or property, County may terminate this Agreement immediately upon issuing oral or written notice to the Contractor without any prior notice or opportunity to cure. In the event of termination under this Article, all finished or unfinished documents, and other materials, prepared by Contractor under this Agreement shall become the sole and exclusive property of County.

In the event of such termination, the County may purchase or obtain the supplies or services elsewhere, and Contractor shall be liable for the difference between the prices set forth in the terminated order and the actual cost thereof to the County. The prevailing market price shall be considered the fair repurchase price. Notwithstanding the above, Contractor shall not be relieved of liability to County for damages sustained by County by virtue of any breach of this Agreement by Contractor, and County may withhold any reimbursement to Contractor for the purpose of off-setting until such time as the exact amount of damages due County from Contractor is determined.

If, after notice of termination of this Agreement under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall, if this Agreement contains a clause providing for termination for convenience of the County, be the same as if the notice of termination had been issued pursuant to such clause.

- 7.2 Damages for Delay. If Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall ensure its completion within the time specified in this Agreement, or any extension thereof, or fails to complete said work within such time, County will be entitled to the resulting damages caused by the delay. Damages will be the cost to County incurred as a result of continuing the current level and type of service over that cost that would be incurred had the Agreement segments been completed by the time frame stipulated and any other damages suffered by County.
- 7.3 County Exemption from Liability. In the event there is a reduction of funds made available by County to Contractor under this or subsequent agreements, the County of San Diego and its Departments, officers and employees shall incur no liability to Contractor and shall be held harmless from any and all claims, demands, losses, damages, injuries, or liabilities arising directly or from such action.
- 7.4 Full Cost Recovery Of Investigation And Audit Costs. Contractor shall reimburse County of San Diego for all direct and indirect expenditures incurred in conducting an audit/investigation when Contractor is found in violation (material breach) of the terms of the Agreement.

At the sole discretion of the County, and subject to funding source restrictions and federal and State law, County may (1) withhold reimbursement for such costs from any amounts due to Contractor pursuant to the payment terms of the Agreement, (2) withhold reimbursement for such costs from any other amounts due to Contractor from County, and/or (3) require Contractor to remit a check for the total amount due (or a lesser amount specified by the County) to County within thirty (30) days of request by County. Alternatively, at the County's sole discretion, County and Contractor may enter into a written repayment plan for the reimbursement of the audit/investigation costs.

- 7.5 Termination for Convenience. The County may, by written notice stating the extent and effective date terminate this Agreement for convenience in whole or in part, at any time. The County shall pay the Contractor as full compensation for work performed in accordance with the terms of this Agreement until such termination:
- 7.5.1 The unit or pro rata price for any delivered and accepted portion of the work.
- 7.5.2 A reasonable amount, as costs of termination, not otherwise recoverable from other sources by the Contractor as approved by the County, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price.
- 7.5.3 In no event shall the County be liable for any loss of profits on the resulting order or portion thereof so terminated.

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

- 7.5.4 County's termination of this Agreement for convenience shall not preclude County from taking any action in law or equity against Contractor for:
- 7.5.4.1 Fraud, waste or abuse of Agreement funds, or
 - 7.5.4.2 Improperly submitted claims, or
 - 7.5.4.3 Any failure to perform the work in accordance with the Statement of Work, or
 - 7.5.4.4 Any breach of any term or condition of the Agreement, or
 - 7.5.4.5 Any actions under any warranty, express or implied, or
 - 7.5.4.6 Any claim of professional negligence, or
 - 7.5.4.7 Any other matter arising from or related to this Agreement, whether known, knowable or unknown before, during or after the date of termination.
- 7.6 Suspension of Work. The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Agreement for the period of time that the Contracting Officer determines appropriate for the convenience of the Government. County reserves the right to prohibit, without prior notice, contractor or contractor's employees, directors, officers, agents, subcontractors, vendors, consultants or volunteers from 1) accessing County data systems and County owned software applications, including websites, domain names, platforms, physical files, 2) treating County's patients, clients, or facility residents, or 3) providing any other services under this Agreement.
- 7.7 Remedies Not Exclusive. The rights and remedies of County provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law, equity, or under resulting order.

**ARTICLE 8
COMPLIANCE WITH LAWS AND REGULATIONS**

- 8.1 Compliance with Laws and Regulations. Contractor shall at all times perform its obligations hereunder in compliance with all applicable federal, State, County, and local laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws and keep in effect any and all licenses, permits, notices and certificates as are required. Contractor shall further comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation.
- 8.2 Contractor Permits and License. Contractor certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to the County, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all existing foreign or domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of services hereunder. The County reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of any services hereunder.
- 8.3 Equal Opportunity. Contractor shall comply with the provisions of Title VII of the Civil Rights Act of 1964 in that it will not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment nor shall Contractor discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.
- 8.4 Affirmative Action. Each Contractor of services and supplies employing fifteen (15) or more full-time permanent employees, shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated herein by reference. A copy of this Affirmative Action Program will be furnished upon request by COR or from the County of San Diego Internet web-site (www.co.san-diego.ca.us).
- 8.5 Non Discrimination. Contractor shall ensure that services and facilities are provided without regard to ethnic group identification, race, color, nation origin, creed, religion, age, sex, physical or mental disability, political affiliation or marital status in accordance with applicable laws, including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C 200-d), Section 162 (a) of the Federal-Aid Highway Act of 1973 (23 U.S.C 324), Section 504 of the Rehabilitation Act of 1973, The Civil Rights Restoration Act of 1987 (P.L. 100-209), Executive Order 12898 (February 11, 1994), Executive Order 13166 (August 16, 2000), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000-d), the Age Discrimination of 1975 (42 U.S.C. 6101), Article 9.5, Chapter 1, Part 1, Division 2, Title 2 (Section 11135, et seq) of the California Government Code, Title 9, Chapter 4, Subchapter 6 (Section 10800, et seq) of the CCR and California Dept of Social Services Manual of Policies and Procedures (CDSS MPP) Division 21.

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

- 8.6 AIDS Discrimination. Contractor shall not deny any person the full and equal enjoyment of, or impose less advantageous terms, or restrict the availability of, the use of any County facility or participation in any County funded or supported service or program on the grounds that such person has Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS) as those terms are defined in Title 3, Division 2, Chapter 8, Section 32.803, of the San Diego County Code of Regulatory Ordinances.
- 8.7 American with Disabilities Act (ADA) 1990. Contractor shall not discriminate against qualified people with disabilities in employment, public services, transportation, public accommodations and telecommunications services in compliance with the Americans with Disabilities Act (ADA) and California Administrative Code Title 24.
- 8.8 Political Activities Prohibited. None of the funds, provided directly or indirectly, under this Agreement shall be used for any political activities or to further the election or defeat of any candidate for public office. Contractor shall not utilize or allow its name to be utilized in any endorsement of any candidate for elected office. Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities, or activities for or against the election of a candidate for an elected office.
- 8.9 Lobbying. Contractor agrees to comply with the lobbying ordinances of the County and to assure that its officers and employees comply before any appearance before the County Board of Supervisors. Except as required by this Agreement, none of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before State and federal Legislatures, the Board of Supervisors of the County, or before any other local governmental entity. This provision shall not preclude Contractor from seeking necessary permits, licenses and the like necessary for it to comply with the terms of this Agreement.
- 8.10 Religious Activity Prohibited. There shall be no religious worship, instructions or proselytization as part of or in connection with the performance of this Agreement.
- 8.11 Drug and Alcohol-Free Workplace. The County of San Diego, in recognition of individual rights to work in a safe, healthful and productive work place, has adopted a requirement for a drug and alcohol free work place, County of San Diego Drug and Alcohol Use Policy C-25, available on the County of San Diego website. This policy provides that all County-employed Contractors and Contractor employees shall assist in meeting this requirement.
- 8.11.1 As a material condition of this Agreement, the Contractor agrees that the Contractor and the Contractor employees, while performing service for the County, on County property, or while using County equipment:
- 8.11.1.1 Shall not be in any way impaired because of being under the influence of alcohol or a drug.
- 8.11.1.2 Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
- 8.11.1.3 Shall not sell, offer, or provide alcohol or an illegal drug to another person; provided, however, that the foregoing restriction shall not be applicable to a Contractor or Contractor employee who as part of the performance of normal job duties and responsibilities prescribes or administers medically prescribed drugs.
- 8.11.2 Contractor shall inform all employees who are performing service for the County on County property or using County equipment of the County objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.
- 8.11.3 The County may terminate for default or breach this Agreement, and any other agreement the Contractor has with the County, if the Contractor, or Contractor employees are determined by the Contracting Officer not to be in compliance with the conditions listed herein.
- 8.12 Board of Supervisors' Policies. Contractor represents that it is familiar, and shall use its best efforts to comply, with the following policies of the Board of Supervisors, available on the County of San Diego website:
- 8.12.1 Board Policy B-67, which encourages the County's Contractors to offer products made with recycled materials, reusable products, and products designed to be recycled to the County in response to the County's requirements; and
- 8.12.2 Board Policies B-53 and B-39a, which encourage the participation of small and disabled veterans' business enterprises in County procurements; and
- 8.12.3 Zero Tolerance for Fraudulent Conduct in County Services. Contractor shall comply with County of San Diego Board of Supervisors Policy A-120 "Zero Tolerance for Fraudulent Conduct in County Services." There shall be "Zero Tolerance" for fraud committed by contractors in the administration of County programs and the provision of County services. Upon proven instances of fraud committed by independent contractors in connection with their

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

performance under the Agreement, said contractor shall be subject to corrective action up to and including termination of the Agreement; and

8.12.4 Interlocking Directorate. In recognition of Board Policy A-79, available on the County of San Diego Website, not-for-profit Contractors shall not subcontract with related for-profit subcontractors for which an interlocking relationship exist unless specifically authorized in writing by the Board of Supervisors; and

8.12.5 Zero Tolerance in Coaching Medi-Cal or Welfare Clients (Including Undocumented Immigrants). The County of San Diego in recognition of its unique geographical location and the utilization of the Welfare and Medi-Cal systems by foreign nationals who are not legal residents of this county or country, has adopted a Zero Tolerance policy and shall aggressively prosecute employees and Contractors who coach Medi-Cal or Welfare clients (including undocumented immigrants), to obtain services for which they are not otherwise entitled.

As a material condition of this Agreement, Contractor agrees that the Contractor and Contractor's employees, while performing service for the County, on County property or while using County equipment shall not:

- (a) in any way coach, instruct, advise, or guide any Medi-Cal or Welfare clients or prospective clients who are undocumented immigrants on ways to obtain or qualify for Medi-Cal assistance, for which they are not otherwise entitled.
- (b) support or provide funds to any organization engaged directly or indirectly in advising undocumented immigrants on ways to obtain or qualify for Medi-Cal assistance, for which they are not otherwise entitled.

Contractor shall inform all employees that are performing service for the County on County property or using County equipment of County's Zero Tolerance Policy as referenced herein.

County may terminate for default or breach this Agreement and any other agreement Contractor has with County, if Contractor or Contractor employees are determined not to be in compliance with the conditions stated herein.

8.13 Cartwright Act. Following receipt of final payment under the Agreement, Contractor assigns to the County all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright act (Chapter 2) (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County under this Agreement.

8.14 Hazardous Materials. Contractor shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices, and training. Contractor agrees that it will not store any Hazardous Materials at any County facility for periods in excess of ninety (90) days or in violation of the applicable site storage limitations imposed by Environmental Law. Contractor agrees to take, at its expense, all actions necessary to protect third parties, including, without limitation, employees and agents of the County, from any exposure to Hazardous Materials generated or utilized in its performance under this Agreement. Contractor agrees to report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify the County of it. Contractor shall not be liable to the County for the County's failure to comply with, or violation of, any Environmental Law. As used in this section, the term "Environmental Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including, but not limited to, the Resource Conservation and Recovery Act, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions or other similar substances or conditions. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws, or (d) is any other material or substance giving rise to any liability, responsibility or duty upon the County or Lessee with respect to any third person under any Environmental Laws.

8.15 Clean Air Act and Federal Water Pollution Control Act.

8.15.1 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Contractor agrees to report each violation to the USDA and the appropriate EPA Regional Office.

8.15.2 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 et seq.). Contractor agrees to report each violation to the USDA and the appropriate EPA Regional Office.

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

8.16 Debarment, Exclusion, Suspension, and Ineligibility.

8.16.1 Contractor certifies that, except as disclosed to County and acknowledged in writing by County prior to the execution of this Agreement, Contractor, its employees, directors, officers, agents, subcontractors, vendors, consultants, and volunteers:

8.16.1.1 Are not presently debarred, excluded, suspended, declared ineligible, voluntarily excluded, or proposed for debarment, exclusion, suspension or ineligibility by any federal, state, or local department or agency; and

8.16.1.2 Have not within a 3-year period preceding this Agreement been convicted of, or had a civil or administrative judgment rendered against them for, the commission of fraud or a criminal offense or civil action in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction; violation of federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property; physical, financial or sexual abuse or misconduct with a patient or client, or medical negligence or malpractice;

8.16.1.3 Are not presently indicted or otherwise criminally, civilly or administratively charged by a government entity (federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and

8.16.1.4 Have not within a 3-year period preceding this Agreement had one or more public transaction (federal, State, or local) terminated for cause or default.

8.16.2 Contractor shall have an ongoing duty during the term of this Agreement to disclose to the County any occurrence that would prevent Contractor from making the certifications contained in this Section 8.16 on an ongoing basis. Such disclosure shall be made in writing to the COR and the County Office of Ethics and Compliance within five (5) business days of when Contractor discovers or reasonably believes there is a likelihood of such occurrence.

8.16.3 Contractor invoices shall include the following language:

I certify that the above deliverables and/or services were delivered and/or performed specifically for this Agreement in accordance with the terms and conditions set forth herein.

8.17 Display of Fraud Hotline Poster(s). As a material term and condition of this Agreement, Contractor shall:

8.17.1 Prominently display in common work areas within all business segments performing work under this Agreement County of San Diego Office of Ethics and Compliance Ethics Hotline posters;

8.17.2 Posters may be downloaded from the County Office of Ethics and Compliance website at: <http://www.sandiegocounty.gov/content/sdc/cao/oec.html>. Additionally, if Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website;

8.17.3 If Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, the Contractor need not display the County poster;

8.17.4 In the event Contractor subcontracts any of the work performed under this Agreement, Contractor include this clause in the subcontract(s) and shall take appropriate steps to ensure compliance by the subcontractor(s).

8.18 False Claims Act Training. Contractor shall, not less than annually, provide training on the Federal False Claims Act (31 USC 3729-3730) and State False Claims Act (California Government Code 12650-12653) to all employees, directors, officers, agents, subcontractors, consultants or volunteers providing services under this Agreement. Contractor shall maintain verification of this training. Contractor shall retain these forms, or an electronic version, in accordance with the Agreement requirement for retention of records. For the purposes of this section, "Subcontractor" shall include any entity, other than County, that furnishes to Contractor services or supplies relevant to this Agreement other than standard commercial supplies, office space, and printing services.

8.19 Code of Ethics. As a material term and condition of this Agreement, Contractor shall develop and implement a Code of Ethics or similar document and maintain it during the term of this Agreement. Additionally, Contractor shall train all employees and volunteers on the Code of Ethics, and all employees, volunteers, directors, officers, and agents shall certify that they have received training and have been provided an opportunity to ask questions of their employer regarding the Code of Ethics. Contractor shall retain these certifications in accordance with the Agreement's provision regarding retention of records. Contractor shall pass this requirement down to its subcontractors in its entirety. For purposes of this section, "Subcontractor" shall mean any entity, other than County, that furnishes to Contractor services or supplies relevant to this Agreement other than standard commercial supplies, office space, and printing services.

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

- 8.20 Compliance Program. Contractors with an agreement that exceeds more than \$250,000 in value annually shall establish, and maintain for the duration of this Agreement, a compliance program that meets the standards of Federal Sentencing Guidelines section 8B2.1 and 42 CFR 438.608 (b)(1) – (b) (7) regardless of funding source or services.
- 8.21 Investigations. Unless prohibited by an investigating government authority, Contractor shall cooperate and participate fully in any investigation initiated by County relative to this Agreement. Upon County's request, Contractor shall promptly provide to County any and all documents, including any and all communications or information stored digitally, and make available for interviews any employee(s) of Contractor identified by County. Contractor further agrees to immediately notify County if any employee, director, officer, agent, subcontractor, vendor, consultant or volunteer of Contractor comes under investigation by any federal, State or local government entity with law enforcement or oversight authority over the Agreement or its funding for conduct arising out of, or related to, performance under this Agreement.

Contractor shall promptly make available to County all internal investigative results, findings, conclusions, recommendations and corrective action plans pertaining to the investigation in its possession as requested by the County, unless otherwise protected by applicable law or privilege.

**ARTICLE 9
CONFLICTS OF INTEREST; CONTRACTOR'S CONDUCT**

- 9.1 Conflicts of Interest. Contractor presently has no interest, including but not limited to other projects or independent agreements, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor shall not employ any person having any such interest in the performance of this Agreement. Contractor shall not hire County's employees to perform any portion of the work or services provided for herein including secretarial, clerical and similar incidental services except upon the written approval of County. Without such written approval, performance of services under this Agreement by associates or employees of County shall not relieve Contractor from any responsibility under this Agreement.
- 9.1.1 California Political Reform Act and Government Code Section 1090 Et Seq. Contractor acknowledges that the California Political Reform Act ("Act"), Government Code section 81000 et seq., provides that Contractors hired by a public agency, such as County, may be deemed to be a "public official" subject to the Act if the Contractor advises the agency on decisions or actions to be taken by the agency. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. To the extent the Act applies to Contractor, Contractor shall abide by the Act. In addition, Contractor acknowledges and shall abide by the conflict of interest restrictions imposed on public officials by Government Code section 1090 et seq.
- 9.2 Conduct of Contractor.
- 9.2.1 Contractor shall inform the County of all Contractor's interests, if any, that are, or that Contractor believes to be, incompatible with any interests of the County.
- 9.2.2 Contractor shall not, under circumstances that might reasonably be interpreted as an attempt to influence the recipient in the conduct of his duties, accept any gratuity or special favor from individuals or organizations with whom the Contractor is doing business or proposing to do business, in accomplishing the work under this Agreement.
- 9.2.3 Contractor shall not use for personal gain or make other improper use of confidential information, which is acquired in connection with his employment. In this connection, the term "confidential information" includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of the individuals; anticipated materials requirements or pricing actions; and knowledge of selections of Contractors or subcontractors in advance of official announcement.
- 9.2.4 Contractor, its employees, directors, officers, agents, subcontractors, vendors, consultants, and volunteers shall not offer, directly or indirectly, any unlawful gift, gratuity, favor, entertainment, or other item(s) of monetary value to an employee or official of the County.
- 9.2.5 Referrals. Contractor further covenants that no referrals of clients through Contractor's intake or referral process shall be made to the private practice of any person(s) employed by the Contractor.
- 9.3 Prohibited Agreements. As required by Section 67 of the San Diego County Administrative Code, Contractor certifies that it is not in violation of the provisions of Section 67, and that Contractor is not, and will not subcontract with, any of the following:
- 9.3.1. Persons employed by County or of public agencies for which the Board of Supervisors is the governing body;

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

- 9.3.2. Profit-making firms or businesses in which employees described in sub-section 9.3.1, above, serve as officers, principals, partners, or major shareholders;
- 9.3.3. Persons who, within the immediately preceding twelve (12) months came within the provisions of the above sub-sections and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the Agreement, or (2) participated in any way in developing the Agreement or its service specifications; and
- 9.3.4. Profit-making firms or businesses, in which the former employees described in sub-section 9.3.3 above, serve as officers, principals, partners, or major shareholders.
- 9.4 Limitation of Future Agreements or Grants. It is agreed by the parties to the Agreement that Contractor shall be restricted in its future contracting with the County to the manner described below. Except as specifically provided in this clause, Contractor shall be free to compete for business on an equal basis with other companies.
- 9.4.1 If Contractor, under the terms of the Agreement, or through the performance of tasks pursuant to this Agreement, is required to develop specifications or statements of work and such specifications or statements of work are to be incorporated into a solicitation, Contractor shall be ineligible to perform the work described within that solicitation as a prime or subcontractor under an ensuing County agreement. It is further agreed, however, that County will not, as additional work, unilaterally require Contractor to prepare such specifications or statements of work under this Agreement.
- 9.4.2 Contractor may not apply for nor accept additional payments for the same services contained in the Statement of Work.

**ARTICLE 10
INDEMNITY AND INSURANCE**

- 10.1 Indemnity. County shall not be liable for, and Contractor shall defend and indemnify County and the employees and agents of County (collectively "County Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Agreement or the work covered by this Agreement and arising either directly or indirectly from any act, error, omission or negligence of Contractor or its Contractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the sole passive negligent act or the concurrent negligent act, error or omission, whether active or passive, of County Parties. Contractor shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.
- 10.2 Insurance. Prior to execution of this Agreement, Contractor must obtain at its own cost and expense, and keep in force and effect during the term of this Agreement, including all extensions, the insurance specified in Exhibit "B," "Insurance Requirements," attached hereto.

**ARTICLE 11
AUDIT AND INSPECTION OF RECORDS**

The County shall have the audit and inspection rights described in this section.

- 11.1 Audit and Inspection. Contractor agrees to maintain and/or make available within San Diego County accurate books and accounting records relative to all its activities under this Agreement. Authorized federal, State or County representatives shall have the right to monitor, assess, or evaluate Contractor's performance pursuant to this Agreement, said monitoring, assessments, or evaluations to include but not limited to audits, inspection of premises, reports, and interviews of project staff and participants. Contractor assertions of confidentiality shall not be a bar to full access to the records.

At any time during normal business hours and as often as County may deem necessary, Contractor shall make available to County, State or federal officials for examination all of its records with respect to all matters covered by this Agreement and will permit County, State or federal officials to audit, examine and make excerpts or transcripts from such records, and to make audits of all invoices, materials, payrolls, records of personnel, information regarding clients receiving services, and other data relating to all matters covered by this Agreement. If an audit is conducted, it will be done in accordance with generally accepted government auditing standards as described in "Government Auditing Standards," published for the United States General Accountability Office or the institute of Internal Auditors International Standards for the Professional Practice of Internal Auditing.

If any services performed hereunder are not in conformity with the specifications and requirements of this Agreement, County shall have the right to require the Contractor to perform the services in conformity with said specifications and requirements at no additional increase in total Agreement amount. When the services to be performed are of such nature that the difference

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

cannot be corrected, County shall have the right to (1) require Contractor immediately to take all necessary steps to ensure future performance of the services in conformity with requirements of the Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services performed. In the event Contractor fails to perform the services promptly or to take necessary steps to ensure future performance of the service in conformity with the specifications and requirements of the Agreement, County shall have the right to either (1) by agreement or to otherwise have the services performed in conformity with the Agreement specifications and charge to Contractor any cost occasioned to County that is directly related to the performance of such services, or (2) terminate this Agreement for default as provided in the Termination clause.

- 11.2 External Audits. Contractors will provide the following to the COR:
- 11.2.1 Contractor shall provide COR a copy of all notifications of audits or pending audits by federal or State representatives regarding contracted services identified in this Agreement no later than three (3) business days of Contractor receiving notice of the audit.
 - 11.2.2 Contractor shall provide COR with a copy of the draft and final State or federal audit reports within twenty four (24) hours of receiving them (Health and Human Services Agency (HHS) Contractors shall also provide electronic copies to Agency Contract Support (ACS) at ACS.HHS@sdcounty.ca.gov).
 - 11.2.3 Contractor shall provide COR a copy of the contractor's response to the draft and final State or federal audit reports at the same time as response provided to the State or federal representatives.
 - 11.2.4 Unless prohibited by the government agency conducting the audit, Contractor shall provide COR a copy of all responses made by the federal or State audit representative to the contractors' audit response no later than three (3) business days of receiving it. This will continue until the federal or State auditors have accepted and closed the audit.
- 11.3 Cost or Pricing Data. If the Contractor submitted cost or pricing data in connection with the pricing of this Agreement or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities of the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the County or its agent shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation pricing or performance of such Agreement, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted.
- 11.4 Availability. The materials described above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit or reproduction, until the expiration of three (3) years from the date of final payment under this Agreement, or by section 11.4.1 and 11.4.2, below:
- 11.4.1 If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.
 - 11.4.2 Record that relate to appeals under the "Disputes" clause of this Agreement, or litigation or the settlement of claims arising out of the performance of this Agreement, shall be made available until such appeals, litigation, or claims have been disposed of, or three years after Agreement completion, whichever is longer. County shall keep the materials described above confidential unless otherwise required by law.
- 11.5 Subcontract. The Contractor shall insert a clause containing all the provisions of this Article 11 in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the contracting officer.

**ARTICLE 12
INSPECTION OF SERVICE**

- 12.1 Subject to Inspection. All performance (including services, materials, supplies and equipment furnished or utilized in the performance of this Agreement, and workmanship in the performance of services) shall be subject to inspection and test by the County at all times during the term of this Agreement. Contractor shall cooperate with any inspector assigned by the County to permit the inspector to determine whether Contractor's performance conforms to the requirements of this Agreement. County shall perform such inspection in a manner as not to unduly interfere with Contractor's performance.
- 12.2 Specification and Requirements. If any services performed by Contractor do not conform to the specifications and requirements of this Agreement, County may require Contractor to re-perform the services until they conform to said specifications and requirements, at no additional cost, and County may withhold payment for such services until Contractor correctly performs them. When the services to be performed are of such a nature that Contractor's cannot correct its performance, the County shall have the right to (1) require the Contractor to immediately take all necessary steps to ensure future performance of services conforms to the requirements of this Agreement, and (2) reduce the Agreement price to reflect

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

the reduced value of the services received by County. In the event Contractor fails to promptly re-perform the services or to take necessary steps to ensure that future performance of the service conforms to the specifications and requirements of this Agreement, the County shall have the right to either (1) without terminating this Agreement, have the services performed, by agreement or otherwise, in conformance with the specifications of this Agreement, and charge Contractor, and/or withhold from payments due to Contractor, any costs incurred by County that are directly related to the performance of such services, or (2) terminate this Agreement for default.

**ARTICLE 13
USE OF DOCUMENTS AND REPORTS**

- 13.1 Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by Contractor under this Agreement that the County requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.
- 13.2 Ownership, Publication, Reproduction and Use of Material. All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other material or properties produced under this Agreement shall be the sole and exclusive property of County. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. County shall have unrestricted authority to publish, disclose, distribute and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.
- 13.3 Confidentiality. Contractor agrees to maintain the confidentiality of and take industry appropriate and legally required measures to prevent the unlawful disclosure of any information that is legally required to be kept confidential. Except as otherwise allowed by local, State or federal law or regulation and pursuant to this Section 13.3, Contractor agrees to only disclose confidential records where the holder of the privilege, whether the County, or a third party, provides written permission authorizing the disclosure.
- 13.4 Public Records Act. The California Public Records Act (“CPRA”) requires County to disclose “public records” in its actual or constructive possession unless a statutory exemption applies. This generally includes contracts and related documents. If County receives a CPRA request for records relating to the Agreement, County may, at its sole discretion, either determine its response to the request without notifying Contractor or notify Contractor of the request. If County determines its response to the request without notifying Contractor, Contractor shall hold County harmless for such determination. If County notifies Contractor of the request, Contractor may request that County withhold or redact records responsive to the request by submitting to County a written request within five (5) business days after receipt of the County’s notice. Contractor’s request must identify specific records to be withheld or redacted and applicable exemptions. Upon timely receipt of Contractor’s request, County will review the request and at its sole discretion withhold and/or redact the records identified by Contractor. Contractor shall hold County harmless for County’s decision whether to withhold and/or redact pursuant to Contractor’s written request. Contractor further agrees that its defense and indemnification obligations set forth in Section 10.1 of this Agreement extend to any Claim (as defined in Section 10.1) against the County Parties (as defined in Section 10.1) arising out of County’s withholding and/or redacting of records pursuant to Contractor’s request. Nothing in this section shall preclude Contractor from bringing a “reverse CPRA action” to prevent disclosure of records. Nothing in this section shall prevent the County or its agents or any other governmental entity from accessing any records for the purpose of audits or program reviews if that access is legally permissible under the applicable local, State or federal laws or regulations. Similarly, County or its agent or designee may take possession of the record(s) where legally authorized to do so.
- 13.5 Maintenance of Records. Contractor shall maintain all records relating to its performance under this Agreement, including all records of costs charged to this Agreement, and shall make them available within San Diego County for a minimum of five (5) years from the ending date of this Agreement, or longer where required by funding source or while under dispute under the terms of this Agreement, unless County agrees in writing to an earlier disposition. Contractor shall provide any requested records to County within two (2) business days of request.
- 13.6 Custody of Records. County, at its option, may take custody of Contractor's client records upon Agreement, termination, expiration, or at such other time as County may deem necessary. County agrees that such custody will conform to applicable confidentiality provisions of State and federal law. Said records shall be kept by County in an accessible location within San Diego County and shall be available to Contractor for examination and inspection.
- 13.7 Audit Requirement.
- (a) Contractor shall annually engage a Licensed Certified Public Accountant licensed to perform audits and attests in the State of California to conduct an annual audit of its operations. Contractors that expend \$750,000 or more of federal grant funds per year shall also have an audit conducted in compliance with Government Auditing Standards, which includes Single

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

Audit Act Amendments and the Compliance Supplement (2 CFR part 200 App. XI). Contractors that are commercial organizations (for-profit) are required to have a non-federal audit if, during its fiscal year, it expended a total of \$750,000 or more under one or more HHS awards. 45 CFR part 74.26(d) incorporates the threshold and deadlines of the Compliance Supplement but provides for-profit organizations two options regarding the type of audit that will satisfy the audit requirements. Contractor shall include a clause in any agreement entered into with an audit firm, or notify the audit firm in writing prior to the audit firm commencing its work for Contractor, that the audit firm shall, pursuant to 31 U.S.C. 7503, and to the extent otherwise required by law, provide access by the federal government or other legally required entity to the independent auditor's working papers that were part of the independent auditor's audit of Contractor. Contractor shall submit two (2) copies of the annual audit report, the audit performed in accordance with the Compliance Supplement, and the management letter to the County fifteen (15) days after receipt from the independent Certified Public Accountant but no later than nine (9) months after the Contractor's fiscal year end.

(b) Contractor shall immediately notify County upon learning that Contractor's independent Certified Public Accountant may or will issue a disclaimer of opinion due to substantial doubt of Contractor's ability to continue as a going concern.

- 13.8 **Reports.** Contractor shall submit reports required in Exhibit A and additional reports as may be requested by the COR and agreed to by the Contractor. Format for the content of such reports may be developed by County. The timely submission of these reports is a necessary and material term and condition of this Agreement and Contractor agrees that failure to meet specified deadlines will be sufficient cause to withhold payment. Contractor shall submit to County within thirty (30) days of the termination of this Agreement a report detailing all work done pursuant to this Agreement by Contractor.
- 13.9 **Evaluation Studies.** Contractor shall participate as requested by the County in research and/or evaluative studies designed to show the effectiveness and/or efficiency of Contractor services or to provide information about Contractor's project.

**ARTICLE 14
(RESERVED)**

**ARTICLE 15
DISPUTES**

Notwithstanding any provision of this Agreement to the contrary, the Contracting Officer shall decide any dispute concerning a question of fact arising out of this Agreement that is not otherwise disposed of by the parties within a reasonable period of time. The decision of the Contracting Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Contractor shall proceed diligently with its performance hereunder pending resolution by the Contracting Officer of any such dispute. Nothing herein shall be construed as granting the Contracting Officer or any other administrative official, representative or board authority to decide questions of law, or issues regarding the medical necessity of treatment or to pre-empt any medical practitioners' judgment regarding the medical necessity of treatment of patients in their care. The foregoing does not change the County's ability to refuse to pay for services rendered if County disputes the medical necessity of care.

**ARTICLE 16
GENERAL PROVISIONS**

- 16.1 **Assignment and Subcontracting.** Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the County; County's consent shall not be unreasonably withheld. The Contractor shall make no agreement with any party for furnishing any of the work or services herein contained without the prior written consent of the COR, pursuant to Paragraph 1.4.
- 16.2 **Contingency.** This Agreement shall bind the County only following its approval by the Board of Supervisors or when signed by the Purchasing and Contracting Director.
- 16.3 **Entire Agreement.** This Agreement, together with all Exhibits attached hereto and other agreements expressly referred to herein, constitute the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, including any proposals from Contractor and requests for proposals from County, are superseded.
- 16.4 **Sections and Exhibits.** All sections and exhibits referred to herein are attached hereto and incorporated by reference.
- 16.5 **Further Assurances.** Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

- 16.6 Governing Law. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.
- 16.7 Headings. The Article captions, Clause and Section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.
- 16.8 Modification Waiver. Except as otherwise provided in Article 6, "Changes," above, no modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by both parties.
- 16.9 Neither Party Considered Drafter. Despite the possibility that one party may have prepared the initial draft of this Agreement or played the greater role in the physical preparation of subsequent drafts, neither party shall be deemed the drafter of this Agreement and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one party on the ground that such provision was drafted by the other.
- 16.10 No Other Inducement. The making, execution and delivery of this Agreement by the parties hereto has been induced by no representations, statements, warranties or agreements other than those expressed herein.
- 16.11 Notices. Notice to either party shall be in writing and personally delivered; sent by certified mail, postage prepaid, return receipt requested; or emailed to the County's or Contractor's designated representative (or such party's authorized representative). Any such notice shall be deemed received by the party (or such party's authorized representative) on the earliest of the date of personal delivery, three (3) business days after deposit in the U.S. Mail, or upon sending of an email from which an acknowledgement of receipt has been received other than an out of office, unavailable, or undeliverable reply.
- 16.12 Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 16.13 Successors. Subject to the limitations on assignment set forth in Clause 16.1 above, all terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
- 16.14 Time. Time is of the essence for each provision of this Agreement.
- 16.15 Time Period Computation. All periods of time referred to in this Agreement shall be calendar days, unless the period of time specifies business days. Calendar days shall include all days of the week, including holidays. Business days shall be Monday through Friday, excluding County observed holidays.
- 16.16 Waiver. The waiver by one party of the performance of any term, provision, covenant or condition shall not invalidate this Agreement, nor shall it be considered as a waiver by such party of any other term, provision, covenant or condition. Delay by any party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.
- 16.17 Third Party Beneficiaries Excluded. This Agreement is intended solely for the benefit of the County and its Contractor. Any benefit to any third party is incidental and does not confer on any third party to this Agreement any rights whatsoever regarding the performance of this Agreement. Any attempt to enforce provisions of this Agreement by third parties is specifically prohibited.
- 16.18 Publicity Announcements and Materials. All public announcements, including those issued on Contractor letterhead, and materials distributed to the community shall identify the County of San Diego as the funding source for contracted programs identified in this Agreement. Copies of publicity materials related to contracted programs identified in this Agreement shall be filed with the COR. County shall be advised at least twenty four (24) hours in advance of all locally generated press releases and media events regarding contracted services identified in this Agreement. Alcohol and Drug Prevention Services Contractors shall notify COR or designee at least five (5) business days in advance of all Contractor generated media releases and media events regarding contracted services identified in this Agreement.
- 16.19 Critical Incidents. Contractor shall have written plans or protocols and provide employee training for handling critical incidents involving: external or internal instances of violence or threat of violence directed toward staff or clients; loss, theft or unlawful accessing of confidential client, patient or facility resident Personal Information (PI), Personally Identifiable Information (PII) and/or Personal Health Information (PHI); fraud, waste and/or abuse of Agreement funds; unethical conduct; or violation of any portion of San Diego County Board of Supervisors Policy C-25 "Drug & Alcohol Use" while performing under this Agreement. Contractor shall report all such incidents to the COR within one business day of their

**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

occurrence. However, if this Agreement includes Article 14, Contractor must adhere to the timelines and processes contained in Article 14.

16.20 Responsiveness to Community Concerns. Unless prohibited by applicable State or federal law, Contractor shall notify County within one business day of receipt of any material complaints including but not limited to complaints referring to issues of abuse or quality of care, submitted to Contractor orally or in writing, regarding the operation of Contractor's program or facility under this Agreement. Contractor shall take appropriate steps to acknowledge receipt of said complaint(s) from individuals or organizations. Contractor shall take appropriate steps to utilize appropriate forums to address or resolve any such complaints received. Nothing in this provision shall be interpreted to preclude Contractor from engaging in any legally authorized use of its facility, property or business as approved, permitted or licensed by the applicable authority.

16.21 Criminal Background Check Requirements. Contractor shall ensure that criminal background checks are required and completed prior to employment or placement of any employee, director, officer, agent, subcontractor, consultant or volunteer in compliance with any licensing, certification, funding, or Agreement requirements, including the Statement of Work, which may be higher than the minimum standards described herein. At a minimum, background checks shall be in compliance with Board of Supervisors Policy C-28, available on the County of San Diego website, and are required for any individuals identified above who will be providing services under this Agreement or who will be assigned to sensitive positions funded by this Agreement. Sensitive positions are those that: (1) physically supervise minors or vulnerable adults; (2) have unsupervised physical contact with minors or vulnerable adults; and/or (3) have a fiduciary responsibility to any County client, or direct access to, or control over, bank accounts or accounts with financial institutions of any client. If this Agreement includes Article 14, Contractor must also adhere to requirements contained in Article 14.

Contractor shall have a documented process for reviewing the information and determine if criminal history demonstrates behavior that could create an increased risk of harm to clients. Contractor shall document review of criminal background findings and consideration of criminal history in the selection of such persons listed above in this section

16.21.1 Contractor shall utilize a subsequent arrest notification service during the term of this Agreement for any individual required to undergo the Criminal Background Check process described in 16.21.

16.21.2 Contractor shall keep the documentation of their review and consideration of the individual's criminal history on file in accordance with paragraph 13.4 "Maintenance of Records."

16.21.3 Definitions

- A. Activities of Daily Living: The basic tasks of everyday life, such as eating, bathing, dressing, toileting, and transferring.
- B. Minor: Individuals under the age of eighteen (18) years old.
- C. Sensitive Position: A job with responsibilities that can be criminally abused at great harm to the Agreement or the clients served. All positions that (1) physically supervise minors or vulnerable adults, (2) have unsupervised physical contact with minors or vulnerable adults, or (3) have fiduciary responsibility to a County client or direct access to, or control over client bank accounts, or serve in a financial capacity to the County client.
- D. Vulnerable Adult: (1) Individuals age eighteen (18) years or older, who require assistance with activities of daily living and who may be put at risk of abuse during service provision; (2) Individuals age eighteen (18) years or older who have a permanent or temporary limited physical and/or mental capacity that may put them at risk of abuse during service provision because it renders them: unable to make decisions for themselves, unable to physically defend themselves, or unaware of physical abuse or other harm that could be perpetrated against them.
- E. Volunteer: A person who performs a service willingly and without pay.

16.22 Reserved.

16.23 Survival. The following sections or articles of this Agreement shall survive the expiration or earlier termination of this Agreement: Sections 8.1, 8.13, 8.14, 8.15, 8.21, 10.1, 11.1, 11.2, and 11.4, and Articles 7 and 13.

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**COUNTY CONTRACT NUMBER [#Insert Number]
AGREEMENT WITH [#CONTRACTOR'S NAME] FOR TRAFFIC DATA INFORMATION SERVICES**

SIGNATURE PAGE

AGREEMENT TERM. The initial term of this Agreement shall begin on the date of the last signature below and end on November 30, 2021 (“Initial Term”).

OPTION TO EXTEND. The County shall have the option to extend the term of this Agreement for three (3) increments of one (1) year each for a total of three (3) years beyond the expiration of the Initial Term, not to exceed November 30, 2024, pursuant to Exhibit C Payment Schedule or other applicable pricing provisions of this Agreement. Unless County notifies Contractor in writing not less than thirty (30) days prior to the expiration date that the County does not intend to extend the Agreement, the Agreement will be automatically extended for the next option period.

Options to Extend For One To Six Additional Months at End of Agreement. County shall also have the option to extend the term of this Agreement, in one or more increments, for a total of no less than one (1) and no more than six (6) calendar months (“Incremental Options”). The County may exercise each Incremental Option by providing written notice to Contractor no fewer than fifteen (15) calendar days prior to expiration of this Agreement. The rates in effect at the time an Incremental Option is exercised shall apply during the term of the Incremental Option.

COMPENSATION: Pursuant to Exhibit C or other applicable pricing provisions of this Agreement, County agrees to pay Contractor *[#optional]* a sum not to exceed _____ (\$#####) for the initial term of this Agreement and a sum not to exceed _____ (\$#####) for each of the # one-year option periods, for *[#]* a maximum Agreement amount of _____ (\$#####), in accordance with the method of payment stipulated in Article 4.

COR. The County has designated the following individual as the Contracting Officer’s Representative (“COR”)

#Name and Title
#Address
#Address
#Phone, FAX and email

CONTRACTOR’S REPRESENTATIVE. The Contractor has designated the following individual as the Contractor’s Representative.

#Name and Title
#Address
#Address
#Phone, FAX and email

IN WITNESS WHEREOF, County and Contractor have executed this Agreement effective as of the date of the last signature below.

COUNTY OF SAN DIEGO

[#CONTRACTOR NAME]

By: _____
JOHN M. PELLEGRINO, Director
Department of Purchasing and Contracting

By: _____
[#Name and Title]

Date: _____

Date: _____