



RFP 321SH

APPENDIX F
SAMPLE AGREEMENT

FOR

**AUTOMATED EMPLOYEE SCHEDULING SYSTEM
(AESS)
SOFTWARE AND SERVICES**

**BY AND BETWEEN
THE COUNTY OF LOS ANGELES
AND
[CONTRACTOR]**

NOVEMBER 2008

**AGREEMENT
BY AND BETWEEN
THE COUNTY OF LOS ANGELES
AND
CONTRACTOR**

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- EXHIBIT L – JURY SERVICE ORDINANCE
- EXHIBIT M – REQUEST FOR PROPOSALS (RFP) FOR AUTOMATED EMPLOYEE SCHEDULING SYSTEM (AESS) SOFTWARE AND SERVICES [INCORPORATED BY REFERENCE]
- EXHIBIT N – CONTRACTOR'S PROPOSAL [INCORPORATED BY REFERENCE]

RECITALS

THIS AGREEMENT is entered into as the _____ day of _____, 2009 by and between the County of Los Angeles ("County") and [Contractor], a corporation organized under the laws of [---], located at [Address] ("Contractor"), for the Los Angeles County Sheriff's Department (the "Department").

WHEREAS, Contractor is a manufacturer and supplier of commercial, off-the-shelf automated employee scheduling system ("AESS") software; and

WHEREAS, County desires to enter into an agreement with Contractor, among other things, to purchase licenses to and to configure and install the AESS software, to perform certain modifications to the AESS software necessary to achieve maximum utility for County, to create certain interfaces between the AESS software and certain components of County's existing timekeeping system and to implement and integrate the AESS software, including the modifications and interfaces thereto, as part of the Phase I Pilot Installation at the Los Angeles County Sheriff's, Fire and Probation Departments ("Work"); and

WHEREAS, should County determine in its sole discretion to proceed with Phase II Full Implementation of the AESS software, this Agreement shall be modified accordingly; and

WHEREAS, Contractor possesses the necessary special skills, knowledge, technical competence and sufficient staffing to perform all Work required by the Statement of Work and this Agreement; and

WHEREAS, this Agreement (as defined below) is authorized pursuant to California Government Code Section 31000.

NOW THEREFORE, In consideration of the mutual covenants contained herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Contractor agree as follows:

1.0 AGREEMENT AND INTERPRETATION

1.1 AGREEMENT

This base document along with [Exhibits A through L](#), attached hereto, and any attachments thereto and [Exhibits M and N](#), not attached hereto, all incorporated herein by reference, and any executed Change Orders or Amendments hereto collectively constitute and throughout and hereinafter are referred to as the "Agreement." This Agreement shall constitute the complete and exclusive statement of understanding between County and Contractor and supersedes any and all prior or contemporaneous agreements, written or oral, and all

communications between the parties relating to the subject matter of this Agreement.

1.2 INTERPRETATION

In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any Task, Subtask, Deliverable, goods, service, or other Work, or otherwise between the base Agreement and the [Exhibits or Attachments](#) thereto, such conflict or inconsistency shall be resolved by giving precedence first to this base document, and then to the [Exhibits and Attachments](#) according to the following priority:

- Exhibit A – Additional Terms and Conditions
 - Attachment A.1 – County's Administration
 - Attachment A.2 – Contractor's Administration
- Exhibit B – Statement of Work and Attachments A through D
 - Exhibit B.1 – Functional Business Requirements
 - Exhibit B.2 – Interface Requirements
 - Exhibit B.3 – Technical Requirements
 - Exhibit B.4 – System Environment Requirements
- Exhibit C – Price and Schedule of Payments
 - Attachment C.1 – Performance Discrepancy Report
 - Attachment C.2 – Performance Requirements Summary
- Exhibit E – Invoice Discrepancy Report
- Exhibit D – Maintenance and Support Requirements
 - Attachment D.1 – Severity Level Definitions
 - Attachment D.2 – Project Overview Diagram
 - Attachment D.3 – Pilot Locations and Staffing
 - Attachment D.4 – Departmental Profile Statements
- Exhibit F – Contractor's EEO Certification
- Exhibit G1 – Contractor Acknowledgement, Confidentiality and Copyright Assignment Agreement
- Exhibit G2 – Contractor Employee Acknowledgement, Confidentiality, and Copyright Assignment Agreement
- Exhibit G3 – Contractor Non-Employee Acknowledgement, Confidentiality, and Copyright Assignment Agreement
- Exhibit H – Change Order Format
- Exhibit I – Task/Deliverable Summary Review Form
- Exhibit J – Pilot System Acceptance Certificate
- Exhibit K – Safely Surrendered Baby Law
- Exhibit L – Jury Service Ordinance
- Exhibit M – Request for Proposals (RFP) for Automated Employee Scheduling System (AESS) Software and Services
- Exhibit N – Contractor's Proposal

1.3 ADDITIONAL TERMS AND CONDITIONS

Without limiting the generality of [Paragraph 1.1 \(Agreement\)](#), attached hereto as [Exhibit A \(Additional Terms and Conditions\)](#) and incorporated by reference herein are additional terms and conditions to this Agreement. Contractor acknowledges and agrees that it shall be bound by the additional terms and conditions enumerated in such [Exhibit A](#) as if such terms and conditions were enumerated in the body of this base document.

1.4 CONSTRUCTION

The words “herein”, “hereof”, and “hereunder” and words of similar import used in this Agreement refer to this Agreement, including all annexes, attachments and [Exhibits](#), as the context may require. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural. Whenever examples are used in this Agreement with the words “including”, “for example”, “e.g.”, “such as”, “etc.”, or any derivation of such words, such examples are intended to be illustrative and not limiting. [Paragraph](#) headings used in the Agreement are for convenience only and are not a part of the Agreement and shall not be used in construing the Agreement. References in this Agreement to Federal, State, and/or other governmental statutes, codes, rules, regulations, ordinances, guidelines, directives, and/or policies, including those copies of which are attached to this Agreement, shall mean and shall be to such statutes, codes, rules, regulations, ordinances, guidelines, directives, and/or policies as amended from time to time.

2.0 DEFINITIONS

The following terms and phrases in quotation marks and with initial letters capitalized shall have the following specific meaning when used in this Agreement.

“Acceptance Criteria” means certain criteria pre-defined by County and/or Contractor in accordance with the Statement of Work for the purpose of conducting Acceptance Tests.

“Acceptance Test(s)” means any one or all of the tests conducted by County or by Contractor in accordance with [Task 6 \(Acceptance Tests\) of the Statement of Work and Paragraph 5.6 \(Acceptance Tests\)](#), including Unit Test, System Integration Test, User Acceptance Test and System Performance Test.

“Additional Interfaces” means Interfaces, including all components and Documentation, which may provided by Contractor on a fixed price basis in the form of Software Modifications upon County's request therefor pursuant to [Paragraph 17.2 \(Optional Work\)](#). The Additional Interfaces are and shall become components of the System Software.

“Additional Products” means software, tools and other products relating to System Software, which may provided by Contractor upon County's request therefor pursuant to [Paragraph 17.2 \(Optional Work\)](#). The Additional Products are and shall become components of the System Software.

"AESS" has the same meaning as "System" defined below.

"Agreement" has the meaning set forth in [Paragraph 1.1 \(Agreement\)](#).

"Amendment" has the meaning set forth in [Paragraph 6.0 \(Change Notices, Change Orders and Amendments\)](#).

"Application Modifications" means Custom Programming, Interfaces, Customizations and any other modifications or alterations to Application Software provided by Contractor under this Agreement, as further specified in [Paragraph 13.1 \(Ownership\)](#).

"Application Software" means the Baseline Application, Software Modifications, Interfaces and Updates, including all components and Documentation, provided by Contractor pursuant to this Agreement. The Application Software is and shall become a component of the System Software.

"Baseline Interfaces" means Interfaces, including all components and Documentation, provided by Contractor to meet the System Requirements, including the Statement of Work and Specifications. The Baseline Interfaces are and shall become components of the System Software.

"Board"; "Board of Supervisors" means the Board of Supervisors of the County of Los Angeles.

"Business Day" means Monday through Friday, excluding County observed holidays.

"Change Order" has the meaning set forth in [Paragraph 6.0 \(Change Notices, Change Orders and Amendments\)](#).

"CIO" means the County's Chief Information Officer.

"Compatible"; "Compatibility" has the meaning set forth in [Paragraph 11.0 \(System Environment Requirements\)](#).

"Contractor's Administration" has the meaning set forth in [Paragraph 4.1 \(Contractor's Administration\)](#).

"Contractor Project Director" has the meaning set forth in [Paragraph 4.2 \(Contractor Project Director\)](#).

"Contractor Project Manager" has the meaning set forth in [Paragraph 4.3 \(Contractor Project Manager\)](#).

"Contractor Technical Staff" has the meaning set forth in [Paragraph 4.4 \(Approval of Contractor's Staff\)](#).

“Core Application” means Contractor’s proprietary Commercial Off-the-Shelf (COTS) software, including all components and Documentation, Licensed by Contractor to County to meet the System Requirements, including the Statement of Work and Specifications. The Core Application is and shall become a component of the System Software.

“County” means the County of Los Angeles.

“County Counsel” means County’s Office of the County Counsel.

“County Indemnities” has the meaning set forth in [Paragraph 9 \(Indemnification\) of Exhibit A \(Additional Terms and Conditions\)](#).

“County Project Director” has the meaning set forth in [Paragraph 3.2 \(County Project Director\)](#).

“County Project Manager” has the meaning set forth in [Paragraph 3.3 \(County Project Manager\)](#).

“Custom Programming” means customizations or modifications to the Baseline Application, including all components and Documentation, which may provided by Contractor on a fixed price basis in the form of Software Modifications upon County's request therefor pursuant to [Paragraph 17.2 \(Optional Work\)](#). The Custom Programming is and shall become a component of the System Software.

“Customization(s)” means customizations or modifications to the Core Application, including all components and Documentation, provided by Contractor to meet the System Requirements, including the Statement of Work and Specifications. The Customizations are and shall become components of the System Software.

“Cutover to Production” has the meaning set forth in [Paragraph 5.7.2 \(Cutover to Production\)](#).

“Deficiency” has the meaning set forth in [Paragraph 19.0 \(Correction of Deficiencies\)](#).

“Deliverable” means a service, product or good to be provided by Contractor to County under this Agreement and identified as a numbered Deliverable in the Statement of Work or any executed Change Order or Amendment.

“Department” means the Los Angeles County Sheriff’s Department.

“Disabling Device” has the meaning set forth in [Paragraph 12.0 \(General Warranties\) of Exhibit A \(Additional Terms and Conditions\)](#).

“Dispute Resolution Procedure” has the meaning set forth in [Paragraph 2.0 \(Dispute Resolution Procedure\) of Exhibit A \(Additional Terms and Conditions\)](#).

“Documentation” means any and all written and electronic materials provided or made available by Contractor, including, but not limited to, user manuals, training materials, testing protocols, methodologies, customer technical information and reference materials, quick-reference guides, FAQs, specifications, system designs and system design reviews and all other instructions and information relating to the capabilities, operation, installation and use of System Software.

“Effective Date” means the date of execution of the Agreement by County's Board of Supervisors.

“Fixed Price Services” means Professional Services and/or Software Modifications, which may be provided by Contractor in accordance with [Paragraph 17.2 \(Optional Work\)](#).

“Holdback Amount” has the meaning set forth in [Paragraph 10.5 \(Holdbacks\)](#).

“Hourly Labor Rate”; “Daily Labor Rate” means, for Contractor's personnel, the fully burdened hourly or daily rate set forth in [Exhibit C \(Price and Schedule of Payments\)](#), which rate includes an allocated average of direct and indirect costs, overhead, administrative expenses, any and all out-of-pocket expenses and any other incidental expenses attributable to each personnel hour worked for the Hourly Labor Rate, and to each eight hour period worked for the Daily Labor Rate.

“Infringement Claims” has the meaning set forth in [Paragraph 14.0 \(Intellectual Property Indemnification\) of Exhibit A \(Additional Terms and Conditions\)](#).

“Initial Term” has the meaning set forth in [Paragraph 7.0 \(Term\)](#).

“Interfaces” means the software mechanisms, consisting of Baseline Interfaces and Additional Interfaces, which allow the transfer of electronic data or software commands between computer systems, computer programs or computer program modules, including all components and Documentation. The Interfaces are and shall become components of the System Software.

“Invoice Discrepancy Report”; “IDR” has the meaning set forth in [Paragraph 10.7 \(Invoice Discrepancy Report\)](#).

“Jury Service Program” has the meaning set forth in [Paragraph 33.0 \(Compliance with Jury Service Program\) of Exhibit A \(Additional Terms and Conditions\)](#).

“License” has the meaning set forth in [Paragraph 13.2 \(License\)](#).

“Maintenance and Support” has the meaning set forth in [Paragraph 5.1.2 \(Maintenance and Support\)](#).

“Maintenance Services” has the meaning set forth in Paragraph [17.1 \(Maintenance and Support\)](#).

"Maintenance Fees" means the fees to be paid by County to Contractor for Maintenance and Support, commencing upon termination of the Pilot Warranty Period, as set forth in Paragraph [17.1 \(Maintenance and Support\)](#), in accordance with [Exhibit C \(Price and Schedule of Payments\)](#).

"Maximum Contract Sum" has the meaning set forth in [Paragraph 8.0 \(Prices and Fees\)](#).

"Maximum Fixed Price" has the meaning set forth in Paragraph [6.21 \(Change Order Detail\)](#).

"Natural Degeneration" has the meaning set forth in [Paragraph 15.1 \(Self Escrow\)](#).

"Notice of Delay" has the meaning set forth in [Paragraph 52.0 \(Notice of Delay\) of Exhibit A \(Additional Terms and Conditions\)](#).

"Operating Software" means the third party owned software to be supplied by County in accordance with the minimum requirements provided by Contractor pursuant to [Paragraph 11.0 \(System Environment Requirements\)](#).

"Option Term" has the meaning set forth in [Paragraph 7.0 \(Term\)](#).

"Optional Work" means T&M Consulting Services, Fixed Price Services and/or Additional Products, which may be provided by Contractor in accordance with [Paragraph 17.2 \(Optional Work\)](#).

"Participating Department(s)" means any one or all of the following County Departments which be using System Software in accordance with the terms of this Agreement: Sheriff's, Fire and Probation.

"Phase I Pilot Installation" has the meaning set forth in the [Statement of Work](#).

"Phase II Full Implementation" has the meaning set forth in the [Statement of Work](#).

"Pilot Go-Live" means the point of full transitioning of the System to the Production Environment, as set forth in [Paragraph 5.7.1 \(Transition to Production Environment\)](#).

"Pilot Installation Cost" means the cost of performing Tasks 1 through 8 under the [Statement of Work](#).

"Pilot Site" means any one of the sites operating the System as part of the Phase I Pilot Implementation, as further define in [Paragraph 13.3 \(Fully-Paid License\)](#).

"Pilot System Acceptance" has the meaning set forth in [Paragraph 5.4.3 \(Specific Approval and Acceptance\)](#).

"Pilot System Acceptance Test" has the meaning set forth in [Paragraph 5.4.3 \(Specific Approval and Acceptance\)](#).

"Pilot Warranty Period" has the meaning set forth in [Paragraph 16.1 \(Warranty\)](#).

"Pilot Warranty Support" has the meaning set forth in [Paragraph 16.2 \(Warranty Support\)](#).

"Pool Dollars" has the meaning set forth in [Paragraph 8.4 \(Pool Dollars\)](#).

"Production Environment" means the System Environment for Production Use.

"Production Use" means the actual use of the System on the production server as it relates to the Application Software.

"Professional Services" means training, consulting and other professional services, which may be provided by Contractor on a fixed price basis upon County's request therefor pursuant to [Paragraph 17.2 \(Optional Work\)](#).

"Project Control Document" has the meaning given to the defined term "PCD" in the Statement of Work.

"Project Plan" has the meaning given to the defined term "PCD" in the Statement of Work.

"Project Status Reports" has the meaning set forth in [Paragraph 4.5 \(Project Status Reports by Contractor\)](#).

"Replacement Product" has the meaning set forth in [Paragraph 18.0 \(Continuous Product Support\)](#).

"Severity Level(s)" means identified Severity Levels "1", "2", "3" and "4" for correction of Deficiencies, as defined in [Attachment D.1 \(Severity Level Definitions\)](#).

"Sheriff" means the elected official who is the Sheriff of the County of Los Angeles.

"Software Modifications" means Custom Programming and/Additional Interfaces, including all components and Documentation, provided by Contractor pursuant to [Paragraph 17.2 \(Optional Work\)](#). The Software Modifications are and shall become components of the System Software.

"Source Code" means computer programming code in human readable form that is not suitable for machine execution without the intervening steps of program interpretation or compilation, including the tools and developer kits that created and that enable creation of such code. Unless otherwise noted, references in this Agreement to Source Code are to Source Code for the System Software.

"Specifications" means the specifications for the System Software as set forth in this Agreement, including, but not limited to, the Statement of Work, System Requirements, the Documentation, and any executed Change Order or Amendment, including specifications regarding Application Modifications and specifications regarding System Environment.

"Statement of Work"; means the statement of Tasks, Subtasks, Deliverables, goods, services and other work to be provided by Contractor under this Agreement, as specified in [Exhibit B \(Statement of Work\)](#) to this Agreement, including all Attachments thereto, as the same may be amended by any executed Change Order or Amendment.

"Subtask" means one or more sub-areas of work to be performed under this Agreement and identified as a numbered Subtask in the Statement of Work or any executed Change Order or Amendment.

"System" means System Software, System Environment and any Optional Work product, including all components and Documentation, provided by Contractor or by County in accordance with Contractor's requirements or specifications for the purpose of this Agreement.

"System Environment" means System Hardware, System Network and Operating Software to be supplied by County in accordance with the minimum requirements provided by Contractor pursuant to [Paragraph 11.0 \(System Environment Requirements\)](#), which may comprise either the Test Environment or the Production Environment for the purpose of this Agreement.

"System Hardware" means computer hardware to be supplied by County in accordance with the minimum requirements provided by Contractor pursuant to [Paragraph 11.0 \(System Environment Requirements\)](#).

"System Network" means network and other data communications components to be provided by County in accordance with the minimum requirements provided by Contractor pursuant to [Paragraph 11.0 \(System Environment Requirements\)](#).

"System Requirements" the business, functional and technical requirements regarding the System, specified in [Exhibits B.1 \(Functional Business Requirements\)](#), [B.2 \(Interface Requirements\)](#), [B.3 \(Technical Requirements and B.4 \(System Environment Requirements\)\)](#) and elsewhere in the Agreement.

"System Software" means Application Software, Additional Software and Operating Software, including all components and Documentation, provided by Contractor or by County in accordance with Contractor's requirements or specifications for the purpose of this Agreement.

"System Support" has the meaning set forth in Paragraph [17.1 \(Maintenance and Support\)](#).

“T&M Consulting Services” means training, consulting and other professional services, which may be provided by Contractor on a time and materials basis upon County's request therefor pursuant to [Paragraph 17.2 \(Optional Work\)](#).

“Task” means one or more major areas of work to be performed under this Agreement and identified as a numbered Task in the Statement of Work or any executed Change Order or Amendment.

“Task/Deliverable Summary Review” means the form issued by County upon Contractor's satisfactory completion of the applicable Tasks, Subtasks, Deliverables, goods, and services and other Work in accordance with the requirements, Specifications, and timetables set forth in the Statement of Work or any executed Change Order or Amendment, a form of which is attached hereto as [Exhibit I \(Task/Deliverable Summary Review Form\)](#).

“Tax,” “Taxes” means governmental fees (including license, filing and registration fees) and all taxes (including franchise, excise, stamp, value added, income, gross receipts, gross revenue, import, export, sales, use, transfer, and property taxes), withholdings, assessments, levies, imposts, duties, charges, or interest thereon imposed.

“Term” has the meaning set forth in [Paragraph 7.0 \(Term\)](#).

“Test Environment” means the System Environment for conducting Acceptance Tests.

“Test Plan” has the meaning set forth in [Paragraph 4.3 \(Acceptance Tests\) of the Statement of Work](#).

“Third Party Software” means software, tools and other products relating to System Software, including all components and Documentation provided by Contractor to meet the System Requirements, including the Statement of Work and Specifications, in accordance with [Paragraph 12.0 \(Third Party Software\)](#). The Third Party Software is and shall become a component of the System Software.

“Updates” means any upgrades, enhancements, revisions, improvements, bug fixes, patches, modifications and replacements to Application Software, other than Customizations or Software Modifications, provided by Contractor during the Term of this Agreement as part of Contractor's Maintenance and Support obligations, and also include:

- i. any updates or modifications to the System Software required during the Term (inclusive of existing modifications, Customizations, Interfaces and Custom Programming) in order for the System Software to remain in compliance with applicable federal laws and regulations; and
- ii. any updates or modifications required in order for the System Software to achieve compliance with applicable state and local laws and regulations in

effect as of the date County and Contractor mutually agree upon the design specifications.

The Updates are and shall become components of the System Software.

“Work” means any and all Tasks, Subtasks and Deliverables in the Statement of Work, Optional Work, goods, services and other work performed or provided by or on behalf of Contractor in order to meet the requirements of this Agreement, including the Statement of Work, all [Exhibits](#) and all executed Change Orders and Amendments hereto.

3.0 ADMINISTRATION OF AGREEMENT – COUNTY

3.1 COUNTY'S ADMINISTRATION

A listing of all County personnel responsible for the administration of this Agreement on behalf of County ("County's Administration"), as referenced in this Paragraph 3 below, is set forth in [Attachment A.1 \(County's Administration\)](#). No member of County's Administration is authorized to make any changes in any of the terms and conditions of this Agreement unless specifically authorized under [Paragraph 6.0 \(Change Notices, Change Orders and Amendments\)](#). County shall notify Contractor in writing of any change in the names or addresses shown.

3.2 COUNTY PROJECT DIRECTOR

3.2.1 County Project Director will be responsible for ensuring that the objectives of this Agreement are met. County Project Director shall have the right at all times to inspect any and all Work provided by or on behalf of Contractor.

3.2.2 County Project Director, in County Project Director's discretion, may grant Contractor extension of time in writing for the Work or deadlines listed in the Statement of work or otherwise in this Agreement provided that such extension shall not extend the Term of this Agreement.

3.3 COUNTY PROJECT MANAGER

3.3.1 County Project Manager shall be a resource for addressing the technical standards and requirements of this Agreement, shall interface regularly with Contractor and further shall have the duties from time to time given to such person by County.

3.3.2 County Project Manager shall advise County Project Director as to Contractor's performance in areas relating to technical requirements and standards, County policy, information requirements, and procedural requirements.

- 3.3.3 Unless otherwise specifically noted, whenever this Agreement calls for a notice, report, or other delivery to be made by Contractor (or any representative thereof) to County Project Manager, such notice, report, or other delivery shall be made to County Project Manager in accordance with the notice information set forth above or in accordance with such other notice information as County may notify Contractor from time to time pursuant to this [Paragraph 3.3](#).
- 3.3.4 County Project Manager, in County Project Manager's discretion, may grant Contractor extension of time in writing for the Work or deadlines listed in the Statement of work or otherwise in this Agreement provided that such extension shall not extend the Term of this Agreement.

3.4 CONSOLIDATION OF DUTIES

County reserves the right to consolidate the duties of County Project Director, enumerated in [Paragraph 3.2 \(County Project Director\)](#), and the duties of County Project Manager, enumerated in [Paragraph 3.2 \(County Project Manager\)](#), into one County position, and to assign all such duties to one individual who will act as County's liaison in all matters relating to this Agreement. County will notify Contractor no later than five (5) days prior to exercising its rights pursuant to this [Paragraph 3.3](#).

3.5 COUNTY PERSONNEL

All County personnel assigned to this Agreement shall be under the exclusive supervision of County. Contractor understands and agrees that all such County personnel are assigned only for the convenience of County.

4.0 ADMINISTRATION OF AGREEMENT – CONTRACTOR

4.1 CONTRACTOR'S ADMINISTRATION

A listing of all Contractor personnel responsible for the administration of this Agreement on behalf of Contractor ("Contractor's Administration"), as referenced in this Paragraph 7 below, is set forth in Attachment A.2 (Contractor's Administration). No member of Contractor's Administration is authorized to make any changes in any of the terms and conditions of this Agreement unless specifically authorized under Paragraph 6.0 (Change Notices, Change Orders and Amendments). Contractor shall notify County in writing of any change in the names or addresses shown.

4.2 CONTRACTOR PROJECT DIRECTOR

- 4.2.1 Contractor Project Director shall be responsible for Contractor's performance of all of the Work and ensuring Contractor's compliance with this Agreement.

4.2.2 During the Term of this Agreement, Contractor Project Director shall be available to meet and confer with County Project Director, as determined by County Project Director or County Project Manager, in person or by phone to review project progress and discuss project coordination.

4.3 CONTRACTOR PROJECT MANAGER

4.3.1 Contractor Project Manager shall be responsible for Contractor's day-to-day activities as related to this Agreement. Contractor Project Manager shall ensure that all reports are submitted as specified in the Statement of Work.

4.3.2 During the Term of this Agreement, Contractor Project Manager shall be available to meet and confer with County as necessary, but no less frequently than weekly, unless otherwise specified by County Project Director or County Project Manger.

4.4 APPROVAL OF CONTRACTOR'S STAFF

4.4.1 Contractor's Administration, including Contractor Project Director and Contractor Project Manager shall be subject to County approval. County Project Director has the right to approve or disapprove any proposed replacement for the Contractor Project Director and the Contractor Project Manager. If Contractor desires to replace, or if County, at its discretion, requires removal of, either the Contractor Project Director or the Contractor Project Manager, Contractor shall provide County with a resume of each such proposed replacement, and an opportunity to interview such person prior to such person performing any Work hereunder. County shall not unreasonably delay its approval of a replacement of Contractor Project Director or Contractor Project Manager.

4.4.2 Contractor shall use best efforts to assure continuity during the Term of Contractor personnel performing key functions under this Agreement, including but not limited to (collectively, "Contractor Technical Staff," and together with Contractor Project Director and Contractor Project Manager, the "Contractor Key Personnel"). Notwithstanding the foregoing, County Project Director may require removal of any Contractor Technical Staff.

4.4.3 In the event Contractor should desire to remove any Contractor Key Personnel from performing Work under this Agreement, Contractor shall provide County with notice at least fifteen (15) days in advance, except in circumstances in which such notice is not possible (e.g., a removal for cause or other egregious act), and shall work with County on a mutually agreeable transition plan so as to ensure project continuity.

4.4.4 Contractor shall promptly fill any vacancy in Contractor Key Personnel with individuals having qualifications at least equivalent to those of Contractor Key Personnel being replaced.

4.4.5 All staff employed by and on behalf of Contractor shall be adults who are legally eligible to work under the laws of the United States of America and the State of California. All Contractor Key Personnel and all other members of Contractor's staff who have direct contact with County (either by telephone, electronic or written correspondence, or in person) shall be fully fluent in both spoken and written English.

4.5 PROJECT STATUS REPORTS BY CONTRACTOR

In order to control expenditures and to ensure the reporting of all Work provided by Contractor, Contractor Project Manager shall provide County Project Director and County Project Manager with minimum weekly written reports ("Project Status Reports") which contain the information set forth in Subtask 1.2 (Provide Ongoing Project Management) of the Statement of Work and such other information as County Project Director or County Project Manager may from time to time reasonably request.

5.0 WORK AND SYSTEM ACCEPTANCE

5.1 SCOPE OF WORK

Contractor shall on a timely basis provide, complete, deliver and implement all tasks, subtasks, deliverables, goods, services and other work set forth in this Agreement and in Exhibit B (Statement of Work), including Application Software and its implementation, Maintenance and Support services, if elected by County, and agreed upon Optional Work. Contractor shall perform all such tasks, subtasks, deliverables, goods, services and other work in accordance with Exhibit B (Statement of Work), with all Attachments thereto, at the applicable rates and prices specified in Exhibit C (Price and Schedule of Payments), with all Attachments thereto.

5.1.1 Implementation Services

Contractor shall implement the Baseline Application, by providing the minimum System Environment configuration requirements, developing Baseline Interfaces and any necessary Customizations, installing Baseline Application, performing applicable Acceptance Tests, conducting System training, achieving Pilot System Acceptance, and providing any other services required for successful completion of Phase I Pilot Installation, as specified in Tasks 1 through 8 of Exhibit B (Statement of Work) and this Agreement.

5.1.2 Maintenance and Support

Contractor shall provide to County maintenance and support of the System, including Maintenance Services and System Support, as provided in, and in accordance with, Task 9 (Maintenance and Support) of Exhibit B (Statement of Work), Paragraph 17 (Maintenance and Support

[and Optional Work](#)) and this Agreement ("[Maintenance and Support](#)"). Maintenance and Support shall commence upon the Effective Date, continue throughout the Pilot Warranty Period and, upon County's election and payment of the applicable fees specified in [Exhibit C \(Price and Schedule of Payments\)](#), throughout the term of this Agreement. The payment for Maintenance and Support shall commence upon expiration of the Pilot Warranty Period.

5.1.3 Optional Work

Upon County's request and mutual agreement, Contractor shall provide Optional Work, including Professional Services, Software Modifications, Additional Products and/or T&M Consulting Services, in accordance with [Paragraph 17.2 \(Optional Work\)](#) at the applicable pricing terms set forth in [Exhibit C \(Price and Schedule of Payments\)](#), by executing a Change Order or an Amendment pursuant to [Paragraph 6.0 \(Change Notices, Change Orders and Amendments\)](#). Upon completion by Contractor and approval by County in accordance with the terms of this Agreement, the amount of the remaining Pool Dollars will be reduced accordingly.

5.2 WORK APPROVAL

Upon commencement of the Term of this Agreement, Contractor shall fully and timely perform all Work specified under this Agreement and approved by County, including under each executed Change Order or Amendment, in accordance with the terms and conditions of this Agreement. If Contractor provides any work, other than as specified in this Agreement, including under any executed Change Order or Amendment, the same shall be deemed a gratuitous effort on the part of Contractor, and Contractor shall have no claim whatsoever against County.

5.3 FIXED PRICE WORK

Contractor acknowledges that all Work performed under this Agreement, with the exception of T&M Consulting Services, is payable on a fixed price basis in accordance with the terms and conditions of this Agreement, including this [Paragraph 5.0](#) and [Paragraphs 8.0 \(Prices and Fees\)](#) and [10.0 \(Invoices and Payments\)](#). Notwithstanding anything herein to the contrary, Contractor must complete all Work required pursuant to this Agreement in order to complete and deliver to County the System Software. Contractor further acknowledges that the Specifications set forth in [Exhibit B \(Statement of Work\)](#) and the System Requirements listed in [Exhibits B.1, B.2, B.3 and B.4](#) are functional Specifications, and that it is Contractor's responsibility and risk to design, achieve and timely deliver the System Software.

5.4 TIME AND MATERIALS WORK

T&M Consulting Services shall be provided, and are approved and payable, on a time and materials basis in accordance with the terms and conditions of this

Agreement, including [Paragraphs 6.4 \(T&M Consulting Services\) and 10.0 \(Invoices and Payments\)](#).

For T&M Consulting Services, which is the only Work that is permissible on a time and materials basis under this Agreement, upon full completion of the particular Task or Deliverable that is part of the particular T&M Consulting Services, Contractor shall submit a Task/Deliverable Summary Review to County Project Director, together with any supporting documentation reasonably requested by County Project Director, for County Project Director's written approval. All T&M Consulting Services shall be completed in a timely manner and in accordance with the requirements and Specifications set forth in this Agreement, including the Statement of Work, the Project Control Document, and any executed Change Order or Amendment, as applicable, and must have the written approval of County Project Director, as evidenced by County Project Director's countersignature to the applicable Task/Deliverable Summary Review form.

5.5 TASK/DELIVERABLE SUMMARY REVIEW

Upon completion of particular Tasks, including all applicable Subtasks, Deliverables, goods, services, and other Work to be provided by Contractor pursuant to this Agreement, including the Statement of Work and any executed Change Order or Amendment, Contractor shall submit a Task/Deliverable Summary Review in the form attached as [Exhibit I \(Task/Deliverable Summary Review Form\)](#) to County Project Director, together with any supporting documentation reasonably requested by County, for County Project Director's written approval. All Work shall be completed in a timely manner and in accordance with the requirements and Specifications set forth in this Agreement, including the Statement of Work, the Project Control Document, and any executed Change Order or Amendment, and must have the written approval of County Project Director as evidenced by County Project Director's countersignature to the applicable Task/Deliverable Summary Review form.

County Project Director shall endeavor reasonably to approve or disapprove particular Tasks, Deliverables and other Work provided by Contractor pursuant to this Agreement within the time frames set forth in the Project Control Document, or if none, within thirty (30) days from the date of Contractor's submission of the applicable Task/Deliverable Summary Review. In no event shall County be liable or responsible for payment respecting a particular Task or Deliverable prior to execution of the Task/Deliverable Acceptance Certificate or the County approved final Task/Deliverable Summary Review applicable for such Work.

5.6 ACCEPTANCE TESTS

County and/or Contractor, as applicable, shall conduct all tests ("Acceptance Test(s)") specified in this [Paragraph 5.6](#) and [Exhibit B \(Statement of Work\)](#). Such Acceptance Tests shall include, without limitation, the following:

A. Unit Test

Unit Test shall be conducted by Contractor to test individual units or components of Application Software as part of the internal configuration effort, as specified in [Task 6 \(Acceptance Tests\) of the Statement of Work](#).

B. System Integration Test

System Integration Test, conducted by Contractor, consists of integrated testing of all components of Application Software, as specified in [Subtask 6.1 \(Conduct System Integration Test\) of the Statement of Work](#).

C. User Acceptance Test

User Acceptance Test will be conducted by County with Contractor's support to test the System functionalities and capabilities, as specified in [Subtask 6.2 \(Support User Acceptance Test\) of the Statement of Work](#).

D. System Performance Test

System Performance Test will be conducted by Contractor to ensure that County's System performance requirements are met, as specified in [Subtask 6.3 \(Conduct System Performance Test\) of the Statement of Work](#).

5.7 SYSTEM ACCEPTANCE

5.7.1 Transition to Production Environment

Contractor shall perform full transitioning of the System to the Production Environment on or before the date set forth in the Project Control Document following successful completion of all of the following: (a) its completion and delivery of all Work associated with the System implementation requirements for the System, including installing, implementing and testing all Baseline Interfaces and Customizations, if any, but without Cutover to Production; (b) successful implementation of all functions and features of the System has been verified by Contractor; (c) County Project Director has provided Contractor with written approval, as evidenced by County Project Director's countersignature on all applicable Task/Deliverable Summary Review forms associated with the Tasks and Deliverables indicated in [Exhibit B \(Statement of Work\)](#) up to and including Pilot Go-Live.

5.7.2 Cutover to Production

Contractor shall achieve "Cutover to Production" on or before the date set forth in the Project Control Document upon successful completion of all of the following: (a) its completion and delivery of all Work associated with

the Cutover to Production requirements for the System, including installing, Baseline Interfaces and Customizations, if any; (b) successful implementation of all functions and features of the System has been verified by Contractor; (c) County Project Director has provided Contractor with written approval, as evidenced by County Project Director's countersignature on all applicable Task/Deliverable Summary Review associated with the Tasks and Deliverables indicated in [Exhibit B \(Statement of Work\)](#) up to and including Cutover to Production, as set forth in [Subtask 7.5 \(Cutover to Production\) of the Statement of Work](#).

5.7.3 Pilot System Acceptance

Contractor shall achieve Pilot Final Acceptance on or before the date specified in the Project Control Document upon successful completion of all of the following: (a) Cutover to Production; (b) its completion and delivery of all Work and testing protocols associated with Pilot System Acceptance; (c) successful implementation of all functions and features and successful achievement of all testing protocols has been verified by Contractor; (d) County Project Director has provided Contractor with written approval, as evidenced by County Project Director's countersignature on the applicable Task/Deliverable Summary Review form of Contractor's achievement of Pilot System Acceptance, as set forth in [Task 8 \(Pilot System Acceptance\) of the Statement of Work](#); and (e) all System functions have been provided, installed and operate in County's Production Environment without Deficiencies of Severity Level "3" or higher (as defined in [Attachment D.1 \(Severity Level Definitions\)](#)) for one continuous uninterrupted sixty (60) day period ("[Pilot System Acceptance Test](#)").

6.0 CHANGE NOTICES, CHANGE ORDERS AND AMENDMENTS

No representative of either County or Contractor, including those named in this Agreement, is authorized to make any changes in any of the terms, obligations, or conditions of this Agreement, except through the procedures set forth in this [Paragraph 6.0](#).

6.1 GENERAL

County reserves the right to change any portion of the Work required under this Agreement or amend such other terms and conditions, as may become necessary. Any such revision shall be accomplished provided below.

6.1.1 Change Notice

For any change which is clerical or administrative in nature (for example: changes to Contractor or County contact information, or to correct or clarify any published statement, other clerical corrections, etc.) and does not materially affect the scope of Work, period of performance, amount

of payments, or any other term or condition included under this Agreement, provided that the change does not increase the Maximum Contract Sum, a Change Notice shall be executed by both the County Project Director and Contractor Project Director, with the concurrence of County Counsel.

6.1.2 Change Order Work

For any Work-related change which does not *materially* affect the scope of Work, period of performance, amount of payments, or any other term or condition included under this Agreement, a Change Order shall be executed by both the County Project Director and Contractor Project Director, with the concurrence of County Counsel. To the extent that extensions of time for Contractor performance do not impact either the scope of Work or cost of this Agreement, County Project Director, in County Project Director's discretion, may grant Contractor extensions of time in writing for the Work listed in the [Exhibit B \(Statement of Work\)](#) or otherwise in this Agreement, provided that such extensions shall not (i) cause Contractor to fail to achieve Cutover to Production or Pilot System Acceptance by the dates set forth in the Project Control Document, subject to [Paragraphs 52.0 \(Notice of Delay\) and 2.0 \(Dispute Resolution\) of Exhibit A \(Additional Terms and Conditions\)](#) or (ii) extend the Term of this Agreement.

Without limiting [Paragraphs 6.1.1 \(Change Notice\) or 6.1.2 \(Change Order Work\)](#) above, for any (a) change related to Deliverable due dates, or (b) other change related solely to the scope of Work, including for example, a change in the number of days of on-site versus off-site technical assistance, provided that the required Optional Services or change is to be effected through the use of, and will not exceed, the available Pool Dollars, then in either instance a Change Order shall be mutually agreed upon and executed by Contractor Project Director and the County Project Director, with written concurrence of County Counsel.

6.1.3 Amendment

For any change that *materially* affects any term or condition in the body of this Agreement or [Exhibit A \(Additional Terms and Conditions\)](#) or change in the scope of Work the cost for which would exceed the Pool Dollars, a negotiated Amendment to this Agreement shall be executed by the Board and Contractor.

The County's Board of Supervisors or Chief Executive Officer, or designee, may require the addition and/or change of certain terms and conditions in the Agreement during the Term of this Agreement. County reserves the right to add and/or change such provisions as may be required by County's Board of Supervisors or Chief Executive Officer.

To implement such changes, an Amendment to the Agreement shall be prepared and executed by Contractor and the Department.

6.2 CHANGE ORDER DETAIL

Any "Change Order" proposed or executed by the parties shall be in the form attached hereto as Exhibit H (Change Order Format), and shall include:

- 6.2.1 A functional description of the Work to be performed under the Change Order and a statement, signed by Contractor Project Director, which statement explains and certifies that such Work does not materially affect the scope of Work, but is nonetheless outside the scope of Work required of Contractor under this Agreement, and that the Change Order is required in order for Contractor to deliver the System Software;
- 6.2.2 For Fixed Price Services, including Professional Services and Software Modifications and Additional Products, other than those for which the mutually agreed upon fixed price is indicated in Exhibit C (Price and Schedule of Payments), a quotation of a "not to exceed" amount ("Maximum Fixed Price") for completion and delivery of the requested Work, including a proposed Task and Deliverable completion and payment schedule, and Contractor staff and estimated personnel hours recommended for completion of such Work, and the balance of Pool Dollars both before and after giving effect to the Change Order;
- 6.2.3 For T&M Consulting Services, (a) a statement of the amount of Pool Dollars allocated to the particular Change Order which amount is a "not to exceed" price for completion and delivery of the requested Work, (b) a monthly budget for Work to be performed pursuant to such Change Order from commencement to completion, including Contractor staff and estimated personnel hours recommended for completion of such Work, (c) the balance of Pool Dollars both before and after giving effect to the Change Order, and (d) a proposed Task and Deliverable completion schedule. The requirements of this Paragraph 6.2.3 shall not apply to T&M Consulting Services which County may require Contractor to provide in order to remedy Critical or Severe System Deficiencies outside of the hours indicated in Attachment D.1 (Severity Level Definitions);
- 6.2.4 A description of, and Contractor's cost of, any (a) applicable hardware, (b) third party software, or (c) other materials required to complete the requested Work;
- 6.2.5 For Software Modifications, including Additional Interfaces and Custom Programming, functional System Software Specifications;
- 6.2.6 Final delivery date for completed Work, including any post-delivery acceptance period as may be applicable; and

6.2.7 If applicable, a revised Task and Deliverable completion schedule under the Statement of Work for the remaining Work (other than the Work requested under the Change Order).

6.3 PRICE QUOTATIONS

Contractor's quotations under the proposed Change Order, whether for Fixed Price Services, Additional Products or T&M Consulting Services under [Paragraphs 6.2.2 or 6.2.3](#), as applicable, shall be valid for sixty (60) days from the date of submission to County, unless such period is extended by County and Contractor.

6.4 T&M CONSULTING SERVICES

As a general matter, the parties agree that Change Orders will be based on a fixed-price basis payable by County for completion of the requested Work with the exception of T&M Consulting Services, which may be provided on a time and materials basis in pursuant to [Paragraph 17.2.2 \(T&M Consulting Services\)](#), as provided herein. If the parties agree and execute a Change Order for T&M Consulting Services, then Contractor shall provide County Project Director and County Project Manager twice monthly Project Status Reports, and a final Project Status Report for such T&M Consulting Services that, in addition to the relevant information required under the Statement of Work, details on a "budgeted" and "actual" basis, the amount of fees, and the cost of materials purchased. In no event shall Contractor accrue fees, costs and expenses in excess of the Pool Dollars allocated to such Change Order without written approval of the County Project Manager and the written concurrence of County Counsel.

6.5 DIRECTED WORK

In the event the parties fail to agree on the amount to be paid by County for the Work requested pursuant to a Change Order, County may, upon notice to Contractor, elect to direct Contractor to commence performing such Work (and Contractor agrees to commence performing such Work) and resolve the dispute over amounts owed to Contractor in accordance with the Dispute Resolution Procedure. To give effect to the preceding sentence, however, County agrees to pay the undisputed portion of such fees in accordance with the procedures set forth in [Paragraphs 8.1 \(General\) and 10.0 \(Invoices and Payments\)](#).

6.6 AUDIT OF CHANGE ORDER WORK

County is entitled to audit, in accordance with [Paragraph 42.0 \(Records, Audits and Public Records Act\) of Exhibit A \(Additional Terms and Conditions\)](#), Contractor's compliance with [Paragraph 6.0 \(Change Notices, Change Orders and Amendments\)](#) in respect of Work performed pursuant to any executed Change Order or Amendment.

7.0 **TERM**

7.1 **DEFINITION OF TERM**

The term of this Agreement shall commence upon the Effective Date and shall continue through completion of [Task 10 \(Phase II Full Implementation Plan\) of the Statement of Work](#), as evidenced by Contractor's receipt from County of the Pilot System Acceptance Certificate, unless terminated earlier in whole or in part, as provided in this Agreement ("Initial Term"). At the end of the Initial Term, County may, at its sole option, extend this Agreement for up to five (5) additional consecutive one (1) year terms ("Option Term"); provided that if County elects not to exercise its option to extend at the end of the Initial Term, or an Option Term, the remaining option(s) shall automatically lapse. County shall be deemed to have exercised its extension option(s) automatically, without further act, unless, no later than thirty (30) days prior to the expiration of the Initial Term or any Option Term, as applicable, County notifies Contractor in writing that it elects not to extend the Agreement pursuant to this Paragraph 7. As used herein, the word "Term" shall mean the Initial Term and, if extended, the Option Term and all Work required therein through the end of such Term.

7.2 **NOTICE OF EXPIRATION**

Contractor shall notify County when this Agreement is within six (6) months from the expiration of the Term as provided herein above. Upon occurrence of this event, Contractor shall send written notification to County Project Director at the address set forth in Attachment A.1 (County's Administration).

8.0 **PRICES AND FEES**

8.1 **GENERAL**

Attached to this Agreement as [Exhibit C \(Price and Schedule of Payments\)](#) is a schedule of all fees applicable to this Agreement, along with a payment schedule for completion of Work commencing upon execution of this Agreement by the Board of Supervisors and continuing up to and including [Task 10 \(Phase II Full Implementation Plan\) Exhibit B \(Statement of Work\)](#), including the aggregate Maintenance Fees beginning at the termination of the Pilot Warranty Period.

8.2 **MAXIMUM CONTRACT SUM**

The "Maximum Contract Sum" under this Agreement shall be the total monetary amount payable by County to Contractor for supplying all the tasks, subtasks, deliverables, goods, services and other Work provided or may be by Contractor under this Agreement, including all Pool Dollars allocated for the Term of the Agreement. The Maximum Contract Sum for this Agreement, including applicable Taxes, authorized by County hereunder shall in no event, expressly or by implication, exceed \$XXXX and shall be allocated as set forth in [Exhibit C \(Price and Schedule of Payments\)](#), which allocation shall include an itemization

of the amounts to be paid for, without duplication: (a) Application Software Licenses (b) Baseline Application implementation, (c) Optional Work, including any T&M Consulting Services, (d) Maintenance and Support services, and (e) applicable Taxes, if any. [Exhibit C \(Price and Schedule of Payments\)](#) further shall include an itemization of Pool Dollars and the applicable Hourly Labor Rate(s) or Daily Labor Rate(s). Contractor shall perform and complete all Work required of Contractor by this Agreement in exchange for the amounts to be paid to Contractor as set forth in this Agreement, but in any event, not in excess of the Maximum Contract Sum.

Contractor acknowledges and agrees that the Maximum Contract Sum is an all-inclusive, not-to-exceed price, including for T&M Consulting Services, that is an agreed upon assessment of the amount to be paid by County to Contractor in exchange for Contractor delivering to County, and County accepting, within the required delivery schedule the System Software. Contractor also acknowledges that the Specifications set forth in [Exhibit B \(Statement of Work\)](#), including [Exhibits B.1, B.2, B.3 and B.4 thereto](#), are functional Specifications, and that it is Contractor's risk and responsibility to design, achieve, and timely deliver the System Software.

Notwithstanding any provision of this Agreement to the contrary, Contractor is not obligated to perform Work under Change Orders if Pool Dollars are not available to pay for such Work.

8.3 MAINTENANCE FEES

[Exhibit C \(Price and Schedule of Payments\)](#) includes the Maintenance Fees payable under the Agreement for Maintenance and Support services to be provided by Contractor during the Term. Maintenance Fees cover Maintenance Services and System Support for each annual period for a period of not less than five (5) years following the termination of the Pilot Warranty Period. Maintenance Fees will be invoiced in twelve (12) month increments. Contractor's rates for Maintenance and Support services shall not increase during the Term of the Agreement.

8.4 POOL DOLLARS

[Exhibit C \(Price and Schedule of Payments\)](#) includes the total amount of pool dollars allocated for Change Orders or for the purchase by County of Optional Work in accordance with [Paragraph 17.2 \(Optional Work\)](#) ("Pool Dollars"). The total amount of available Pool Dollars may be increased only by executing an Amendment in accordance with [Paragraph 6.0 \(Change Notices, Change Orders and Amendments\)](#).

8.5 ADJUSTMENTS TO HOURLY LABOR RATE AND DAILY LABOR RATE

If elected by County, commencing one (1) year from the expiration of the Pilot Warranty Period, the Hourly Labor Rate and the Daily Labor Rate may be

adjusted annually based on the increase or decrease in the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index for the Los Angeles – Riverside – Orange County Area for the most recently published percentage change for the twelve (12) month period preceding the anniversary of the Pilot Warranty Period expiration date, which shall be the effective date for any such adjustment. However, any increase shall not exceed the general annual percentage salary change granted to County employees as determined by County's Chief Executive Office as of the prior July 1. Furthermore, should fiscal circumstances ultimately prevent the Board from approving any increase in the County employee salaries, Contractor acknowledges and agrees that there shall be no corresponding adjustment to the Hourly Labor Rate or the Daily Labor Rate.

8.6 TAXES

The amounts set forth on [Exhibit C \(Price and Schedule of Payments\)](#) include all amounts necessary for County to reimburse Contractor for all applicable California and other state and local Taxes on all Application Software and other Work procured by County from Contractor. In addition, County shall be liable for Taxes for Updates and upgrades that are not transmitted to County electronically, but only to the extent such Taxes are required by law. County shall not be liable or responsible for reimbursement of any Taxes associated with such procurement except as set forth on [Exhibit C \(Price and Schedule of Payments\)](#). Contractor shall be solely liable and responsible for, and shall pay such Tax directly to, the state or other taxing authority. In addition, Contractor shall be solely responsible for all Taxes based on Contractor's income or gross revenue, or personal property Taxes levied or assessed on Contractor's personal property to which County does not hold title, and, accordingly, shall not invoice County for any such Taxes.

9.0 COUNTY'S OBLIGATION FOR FUTURE FISCAL YEARS

Notwithstanding any other provision of this Agreement, either expressly or by implication, County shall not be obligated for Contractor's performance hereunder or by any provision of this Agreement during any of County's future fiscal years unless and until the Board appropriates funds for this Agreement in County's budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated, and such termination shall be deemed a termination for convenience pursuant to [Paragraph 6.0 \(Termination for Convenience\) of Exhibit A \(Additional Terms and Conditions\)](#). County shall endeavor to notify Contractor in writing of any such non-appropriation of funds at the earliest possible date.

10.0 INVOICES AND PAYMENTS

10.1 APPROVAL OF INVOICES

All invoices submitted by Contractor for payment must have the written approval of County Project Director, as evidenced by County Project Director's countersignature to the applicable Task/Deliverable Summary Review, prior to any payment thereof. In no event shall County be liable or responsible for any payment prior to such written approval.

10.2 SUBMISSION OF INVOICES

Contractor shall invoice County upon completion of Tasks, Subtasks, Deliverables, goods and services and other Work which are specified in this Agreement, [Exhibit B \(Statement of Work\)](#), [Exhibit C \(Price and Schedule of Payments\)](#) or any executed Change Orders or Amendments, as applicable, and which have been approved in writing by County pursuant to [Paragraph 5.0 \(Work and System Acceptance\)](#).

10.3 INVOICING OF MAINTENANCE AND SUPPORT

Upon written approval of County's Project Director to proceed with Maintenance and Support services, Contractor shall invoice County with respect to the Maintenance Fees. Contractor shall invoice County on a twelve (12) month basis for each twelve (12) month period commencing on the effective date for said Maintenance and Support services, the date of which shall be agreed to by County and Contractor not less than 30 days prior to the proposed effective date.

Contractor shall mail an original and submit one copy, by mail, facsimile or electronic mail transmission, of the invoice for payment for services to the following addresses:

ORIGINAL:

Los Angeles County Sheriff's Department
County Project Manager

COPY:

Los Angeles County Sheriff's Department
Fiscal Administration, Accounts Payable
4700 Ramona Boulevard, Room 316
Monterey Park, CA 91754

E-mail or fax copy to:

Los Angeles County Sheriff's Department
Accounts Payable

10.4 INVOICE DETAIL

Each invoice submitted by Contractor shall include:

- 10.4.1 The Tasks, Subtasks, Deliverables, goods, services and other Work as described in [Exhibit B \(Statement of Work\) and Exhibit C \(Price and Schedule of Payments\)](#) for which payment is claimed, including a copy of the fully executed Task/Deliverable Summary Review evidencing County Project Director's approval of such Work, and the amount of payment therefor;
- 10.4.2 If the invoice is for Fixed Price Services, Additional Products or for any other Work for which Pool Dollars and a fixed price Change Order will be utilized, a copy of the applicable executed Change Order, executed by the applicable representative of County (see [Paragraph 6.0 \(Change Notices, Change Orders and Amendments\)](#)), permissible, a copy of the fully executed Task/Deliverable Summary Review evidencing County Project Director's approval of such Work, and any additional supporting documentation reasonably requested by County. If applicable, the invoice further shall include the cumulative amount of Pool Dollars charged to County to date and the remaining Pool Dollars available for use in connection with this Agreement generally;
- 10.4.3 If the invoice is for T&M Consulting Services, a copy of the applicable Change Order executed by the applicable representative of County (see [Paragraph 6.0 \(Change Notices, Change Orders and Amendments\)](#)), a copy of the applicable final Project Status Report, a statement of all fees accrued calculated using the Hourly Labor Rate or Daily Labor Rate, as applicable, Contractor's costs for materials purchased (on an item-by-item basis), a copy of the fully-executed Task/Deliverable Summary Review evidencing Contractor's completion of such Work and County Project Director's approval of such Work and any additional supporting documentation reasonably requested by County. The invoice further shall include, if applicable, the cumulative amount of Pool Dollars charged to County to date for the particular T&M Consulting Services, as well as the cumulative amount of Pool Dollars charged under this Agreement, and the remaining Pool Dollars available for use in connection with this Agreement generally;
- 10.4.4 If the invoice is for Maintenance and Support services, a statement by Contractor that a Task/Deliverable Summary Review is not applicable for this reason; and
- 10.4.5 Indication of the applicable Holdback Amount and the cumulative Holdback Amount accrued under this Agreement or, if for T&M Consulting Services to be completed after Pilot System Acceptance, the

cumulative Holdback Amount accrued under the applicable executed Change Order.

10.5 HOLDBACKS

Except for invoices for Maintenance Fees, County will hold back twenty percent (20.00%) of the dollar amount of each invoice ("Holdback Amount"), approved by County, including invoices for Change Orders. Other than for Change Orders that the parties intend will be completed after Pilot System Acceptance, twenty-five percent (25%) of the aggregate Holdback Amount will be due and payable to Contractor following Pilot System Acceptance, and the remaining seventy-five percent (75%) of the aggregate Holdback Amount will be due and payable to Contractor at the conclusion of the Pilot Warranty Period, subject to adjustment for any amounts owed to County by Contractor, including any amounts arising from [Paragraphs 10.7 \(Invoice Discrepancy Report\) and 10.6 \(County's Right to Withhold\)](#) and any partial termination of any Task, Subtask, or Deliverable set forth in the Statement of Work as provided hereunder. As to Change Orders that are to be completed after Pilot System Acceptance, the aggregate Holdback Amount for such Change Order will be due and payable to Contractor upon final acceptance by County of the Work provided under such Change Order.

10.6 NO PARTIAL OR PROGRESS PAYMENTS

Contractor shall be entitled to payment in respect of any Task, Subtask or Deliverable or other Work, only upon successful completion by Contractor and approval by County of such Task, Subtask or Deliverable or other Work. Except with regard to Maintenance and Support services and permissible T&M Consulting Services, no partial or progress payments towards anticipated or substantial completion of Tasks, Subtask or Deliverables or other Work, will be made under this Agreement.

10.7 INVOICE DISCREPANCY REPORT

County Project Director or designee shall review all invoices for any discrepancies and issue an "Invoice Discrepancy Report" ("IDR"), a form of which is attached hereto as [Exhibit E \(Invoice Discrepancy Report\)](#), to Contractor within ten (10) days of receipt of invoice if payment amounts are disputed. Contractor shall review the disputed charges and send a written explanation detailing the basis for the charges within ten (10) days of receipt of the IDR from County Project Director. If County Project Director does not receive a written response within ten (10) days of County's notice to Contractor of an IDR, then County payment will be made, less the disputed charges.

10.8 COUNTY'S RIGHT TO WITHHOLD

In addition to any rights of County provided in this Agreement, or at law or in equity, County may, upon notice to Contractor, withhold payment for any Work while Contractor is in default hereunder, or at any time that Contractor has not provided County approved Work.

11.0 SYSTEM ENVIRONMENT REQUIREMENTS

Under [Subtask 1.3 \(Conduct Technology Assessment\) of Exhibit B \(Statement of Work\)](#), Contractor is required to provide a Technology Assessment Report, which shall include minimum requirements for the System Environment (also documented in [Attachment B.4 \(System Environment Requirements\)](#)), including System Hardware, Operating Software and System Network configuration, that shall be Compatible (as defined below) with the System Software, including any Software Modifications and Updates thereto, and are required for County to enjoy and exercise fully its rights in respect of the System Software. The Technology Assessment Report shall include version Compatibility and provide Specifications for implementing the System Environment in order to achieve Compatibility with the System Software, along with recommended System Hardware make and model numbers, which shall be consistent with all specifications specified in [Attachment B.3 \(Technical Requirements\)](#). Contractor may request to inspect County's implementation of the System Environment. As used in this Agreement, "Compatible" or "Compatibility" means that the applicable components of System Environment as set forth in the Technology Assessment Report are capable of supporting, operating and otherwise performing all anticipated functions of such System Environment components, as the case may be, when used in conjunction with the System Software, including any configurations, Interfaces, Updates and Software Modifications thereto.

12.0 THIRD PARTY SOFTWARE

Contractor's use of Third Party Software as part of the Application Software in order to satisfy the requirements of this Agreement with respect to the System is subject to the provisions of this [Paragraph 12.0](#) as specified below.

12.1 Contractor hereby represents and warrants that none of the Application Software, other than any Third Party Software provided by Contractor under the Agreement in order to meet the Specifications, is owned by third parties. Contractor represents and warrants that it has not modified and shall not modify, nor does Contractor have any need to modify, Third Party Software in order for the System Software to fully perform in accordance with all requirements of this Agreement. Contractor represents and warrants that all Third Party Software is provided to County in the same unmodified form as received by Contractor from the applicable third party. Contractor represents and warrants that Third Party Software shall, together with the remainder of the System Software, fully satisfy all requirements of this Agreement without the need for any modification of Third Party Software by Contractor or otherwise.

12.2 County acknowledges that it may have to execute certain third party license agreements in respect of such Third Party Software. These third party license agreements shall be at no additional cost to County. To the extent that any such third party license agreement conflicts with this Agreement or in any way restricts County's full use and enjoyment of the System Software as contemplated herein, Contractor shall take all necessary action and pay all sums required for County fully to enjoy all the rights and benefits in respect of the System Software granted under this Agreement. Contractor shall promptly and at no cost to County, either: (a) obtain a license from the appropriate third party which shall enable Contractor to modify such Third Party Software, and Contractor shall provide all necessary modifications, or (b) to the extent that Contractor is unable to obtain such a license, provide an Update or alternative solution, which is functionally equivalent, in the sole determination of County Project Director or designee, in lieu of modifying such Third Party Software.

13.0 OWNERSHIP AND LICENSE

13.1 OWNERSHIP

County acknowledges that all proprietary and intellectual property rights, title and interest, including copyright, in and to the original and copies of the Application Software and the Documentation provided to County pursuant to this Agreement, other than Third Party Software (which shall remain the property of the applicable third party, subject to County's License), or any changes or modifications to such Application Software by Contractor are and shall remain the exclusive property of Contractor, and all such Application Software is subject to the License granted to County pursuant to this [Paragraph 13.0 \(Ownership and License\)](#).

County releases all proprietary and intellectual property rights, title and interest, including copyright, in and to all Custom Programming modifications, Interfaces and Customizations ("[Application Modifications](#)") to Contractor, subject to Contractor's incorporation of said Application Modifications into the Application Software in perpetuity and subject to Contractor's provision of Maintenance and Support for the Application Software, as required by this Agreement and [Paragraph 17.0 \(Maintenance and Support and Optional Work\)](#), inclusive of such Application Modifications and any Updates to Application Software, to County in exchange for County's full consideration therefor.

13.2 LICENSE

Subject to Paragraph 13.1 (Ownership), Contractor grants to County, effective upon the Effective Date, and except as limited by [Paragraph 13.3 \(Fully-Paid License\)](#), a perpetual, nonexclusive, irrevocable license ("License"):

13.2.1 To use, install, integrate with other software, operate and execute the Application Software on an unlimited number of computers, servers,

local area networks and wide area networks at the Pilot Sites for use by an unlimited number of users;

- 13.2.2 To archive and make sufficient numbers of copies of the System Application Software as is necessary for County to enjoy and exercise fully its rights under this Agreement and the License;
- 13.2.3 To use, modify, copy and display the Documentation, as necessary or appropriate for County to enjoy and exercise fully the rights granted under this Agreement and the License;
- 13.2.4 For the purpose of modifying existing reports, creating new reports, and creating or modifying interfaces for transferring data to and from other systems, to access Application Software Source Code and use, copy, modify, and create derivative works from the relevant portions of such Source Code, which Source Code will be provided pursuant to [Paragraph 15.0 \(Source Code\)](#);
- 13.2.5 To use, modify, copy, translate and compile the Source Code as necessary or appropriate for County to enjoy and exercise fully the rights granted under this Agreement and the License; provided, however, that without limiting the rights granted pursuant to [Paragraph 15.0 \(Source Code\)](#), County covenants and agrees that it shall not exercise any of the rights contained in this [Paragraph 13.2.5](#) unless and until the occurrence of any act that causes or results in, or entitles County to, a release of the Source Code from escrow pursuant to [Paragraph 15.0 \(Source Code\)](#); and
- 13.2.6 To permit third party access to the Application Software, Documentation, Source Code, or any part thereof, as necessary or appropriate for County to enjoy and exercise fully the rights granted under this Agreement and the License, including for the provision of Maintenance and Support services, Fixed Price Services, T&M Consulting Services or other business use or support of the Application Software; provided, however, County covenants and agrees that it shall not exercise any of the rights contained in this [Paragraph 13.2.6](#) unless and until the occurrence of any act that causes or results in, or entitles County to, a release of the Source Code from escrow pursuant to [Paragraph 15.0 \(Source Code\)](#).

13.3 FULLY-PAID LICENSE

Upon (a) the date of Pilot System Acceptance and (b) County's payment to Contractor of all approved invoiced amounts for [Tasks 1 through 8 of the Statement of Work](#), including the Baseline Application License, Baseline Application configuration and implementation, Customizations, Baseline Interfaces, training and other Work required to be provided pursuant to this

Agreement prior to the Pilot System Acceptance ("Pilot Installation Cost"), this License is and shall be a fully paid, irrevocable License to the Application Software and the Source Code as a whole, in each case, as modified by the Work performed under this Agreement, which License survives the termination or expiration of this Agreement for any reason.

13.4 DELIVERY OF SOURCE CODE

From time to time within ten (10) days of any notice by County to Contractor, Contractor shall deliver to County Project Manager, the relevant portions of the Source Code to meet County's request, as reasonably determined by Contractor but subject to County review, necessary or useful to County's exercising of its License pursuant to this [Paragraph 13.0](#).

14.0 PRODUCTION USE OF THE SYSTEM

Following Application Software installation by Contractor and prior to the Pilot System Acceptance by County, County shall have the right to use, in Production Use mode, any completed portion of the System Software, without any additional cost to County if County determines that it is necessary for County operations. Such Production Use shall not restrict Contractor's performance under this Agreement and shall not be deemed Pilot System Acceptance of the System.

15.0 SOURCE CODE

15.1 SELF ESCROW

As soon as available and continuously during the Term of the Agreement, Contractor shall deposit with County the Source Code for all Application Software, including all Application Modifications, and any other modifications or alterations to the Application Software), other than the Third Party Software. In addition, Contractor shall also deposit with County the Source Code for any and all Updates to the Application Software, other than to Third Party Software, promptly after delivery to County, for any reason whatsoever, of the corresponding object code. Contractor's duty to deposit the Source Code with County shall continue throughout the Term. Contractor shall keep all Source Code for the Application Software, other than Third Party Software, current and equivalent to the Application Software, other than Third Party Software, then being executed and utilized by County. Except as provided in [Paragraphs 15.2 \(Release Conditions\) and 15.3 \(County's Right to Verify Source Code\)](#), County shall hold the Source Code in strict confidence and not use it for any purpose unless one of the conditions described in [Paragraph 15.2 \(Release Conditions\)](#) has occurred which would permit County to use the Source Code as provided in [Paragraphs 13.2.5 and 13.2.6](#).

The parties acknowledge that as a result of the passage of time alone, the deposited Source Code may be susceptible to loss of quality ("Natural Degeneration"). For the purpose of reducing the risk of Natural Degeneration,

during the Term, Contractor shall deliver to County a new copy of all deposited Source Code at least once every three (3) years. In the event the Source Code or any part of it is destroyed or corrupted, upon County Project Director's request, Contractor shall provide a replacement copy of the Source Code. Contractor shall deliver the replacement copy of the Source Code within thirty (30) days of receipt of County Project Director's written request. County shall pay to Contractor the actual cost of the replacement copy media, or provide Contractor with the copy media.

15.2 RELEASE CONDITIONS

Upon the occurrence of any of the events identified below (collectively "Release Conditions"), County shall be granted access to the Source Code and shall have the right to exercise its License rights provided in [Paragraphs 13.2.5 and 13.2.6](#), at no cost to County.

- 15.2.1 The occurrence of an event that would give rise to County's ability to terminate pursuant to [Paragraph 4.0 \(Termination for Insolvency\) of Exhibit A \(Additional Terms and Conditions\)](#);
- 15.2.2 The occurrence of an event that would give rise to County's ability to terminate this Agreement, as a whole, or Maintenance Services pursuant to [Paragraph 5.0 \(Termination for Default\) of Exhibit A \(Additional Terms and Conditions\)](#);
- 15.2.3 Contractor ceases to do business without a permitted successor, or if there is such a successor, before such successor commences to continue Contractor's business; or
- 15.2.4 Contractor ceases to provide, other than for nonpayment by County, Maintenance and Support services pursuant to [Paragraph 17.0 \(Maintenance and Support and Optional Work\)](#).

In the event of a claim to the Source Code under this [Paragraph 15.2](#), County shall provide Contractor with a written notice outlining the facts upon which County bases its claim that a Release Condition has occurred, following which Contractor shall have seven (7) days to dispute the release of the Source Code. If Contractor does not notify County within seven (7) days of County's notice that Contractor disputes the basis for County's claim that a Release Condition has occurred, then County is entitled to utilize any or all of the Source Code in the manner set forth in [Paragraphs 13.2.5 and 13.2.6](#) and [Paragraph 15.4 \(Use and Possession of Source Code\)](#). Contractor may contest County's right to use the Source Code pursuant to the Dispute Resolution Procedure, other than judicial proceedings as provided in [Paragraph 2.0 \(Dispute Resolution Procedure\) of Exhibit A \(Additional Terms and Conditions\)](#), which process, if invoked, shall stay County's right to utilize the Source Code unless and until there has been a resolution of such dispute in accordance with the Dispute Resolution Procedure

and the remainder of this [Paragraph 15.0](#). If the Dispute Resolution Procedures result in disagreement as to whether a basis exists for any claim by County to the Source Code, and the County Project Director continues to believe that such a basis does exist, then the County Project Director may, in the County Project Director's sole discretion, give notice of such belief to Contractor, in which event County may, at any time on or after a date that is seven (7) days after the giving of such notice, utilize any or all of the Source Code in the manner set forth in [Paragraphs 13.2.4, 13.2.5 and 13.2.6 and Paragraph 15.4 \(Use and Possession of Source Code\)](#).

15.3 COUNTY'S RIGHT TO VERIFY SOURCE CODE

Regardless of whether one of the Release Conditions occurs, County shall have the right to verify the relevance, completeness, currency, accuracy and functionality of the Source Code by, among other things, compiling the Source Code and performing test runs for comparison with the applicable Application Software. In the event such testing demonstrates that the Source Code does not correspond to the applicable Application Software, Contractor shall reimburse County for all costs and fees incurred in the testing and immediately deposit the correct Source Code.

15.4 USE AND POSSESSION OF SOURCE CODE

Subject to the provisions of [Paragraphs 13.2.4, 13.2.5 and 13.2.6](#), Source Code obtained by County under the provisions of this Agreement shall remain subject to every License restriction, proprietary rights protection, and other County obligation specified in this Agreement. County may use Source Code for the sole purpose as it is licensed hereunder, including maintaining the System. When Source Code is not in use, County agrees to keep such Source Code in a locked, secure place. When Source Code resides in a central processing unit, County shall limit access solely to its authorized employees and consultants who have a need to know in order to support the System.

16.0 WARRANTY OBLIGATIONS

16.1 WARRANTY

Contractor represents, warrants, and covenants to County that, commencing on the date of Pilot System Acceptance and continuing for a minimum of ninety (90) days thereafter ("*Pilot Warranty Period*"), the System Software, taken as a whole, including all Application Modifications, shall perform fully in accordance with the Specifications, including System Requirements and Documentation, or any amendments thereto, and without Deficiencies. All Deficiencies reported during the Warranty Period shall be corrected in accordance with [Paragraph 17 \(Maintenance and Support and Optional Work\) and Task 9 \(Maintenance and Support\) of Exhibit B \(Statement of Work\)](#) at no cost to County. Without limiting the foregoing, during the Warranty Period, Contractor shall correct any and all

Deficiencies in the System Software, including, but not limited to, supplying County with corrective or replacement codes and/or programs and making such additions, modifications or adjustments to the System Software as may be necessary to keep the System operating in conformance with the Specifications.

16.2 WARRANTY SUPPORT

Commencing with Pilot Go-Live and continuing through the end of the Pilot Warranty Period, Contractor shall provide Maintenance and Support services as specified in this [Paragraph 16.2 \("Pilot Warranty Support"\)](#), including, but not be limited to, all Maintenance Services and System Support described in [Paragraph 17.1 \(Maintenance and Support\)](#). The first thirty (30) calendar days of Warranty Support shall be provided by Contractor's personnel on site at the Department locations. The balance of Warranty Support shall be provided by telephone, email and over the internet (web access), unless required otherwise in order to comply with Contractor's obligations to provide Maintenance and Support. During the Pilot Warranty Period, Contractor shall provide, and County shall have discretion to implement, at least one system version upgrade, inclusive of all Application Modifications to date, representative of all enhancements, patches, and/or bug fixes processed to-date, to County at no additional cost.

17.0 **MAINTENANCE AND SUPPORT AND OPTIONAL WORK**

17.1 MAINTENANCE AND SUPPORT

If elected by County and upon County's commitment to pay applicable Maintenance Fees specified in [Exhibit C \(Price and Schedule of Payments\)](#), Contractor shall provide to County, commencing upon expiration of the Pilot Warranty Period, Maintenance and Support services consisting of Maintenance Services and System Support, as further specified in [Task 9 \(Maintenance and Support\) of Exhibit B \(Statement of Work\)](#) and subject to the provisions of [Exhibit D \(Maintenance and Support Requirements\)](#).

17.1.1 Maintenance Services

Maintenance Services shall include provision of Updates to keep current with Contractor's technology standards, industry standards, upgrades, enhancements, updates, regulatory and statutory changes, patches, bug fixes and other updates to the Application Software, including all Application Modifications provided by Contractor to its general customer base, required to maintain the Application Software conformance with the Specifications, including Compatibility amongst all components and modules of the System, and as may be provided by Contractor upon County's request. Installation of each Update shall be subject to prior written approval of County Project Director. Contractor's provision of and assistance in the installation of any Updates to the Application Software shall be at no additional cost beyond the Maintenance Fees.

17.1.2 System Support

As part of System Support services under this Agreement, Contractor shall (i) provide operational support for the System, including without limitation, through a Help Desk, (ii) correct any and all Deficiencies, and (iii) provide Updates to the System Software in order to achieve Compatibility between Application Software and System Environment.

In the event that (i) the System fails to meet the System Requirements relating to System performance or the System components are not all Compatible amongst each other and (ii) County, upon recommendation by Contractor, upgrades, repairs or replaces any of the System Environment components without remedying the resulting Deficiency, Contractor shall reimburse County for any and all amounts expended by County based on Contractor recommended System Environment upgrade to remedy such Deficiency.

Without limiting any rights or remedies of County under this Agreement or at law or in equity, and except as may be required pursuant to [Paragraph 9.2 \(Transition Services\) of Exhibit A \(Additional Terms and Conditions\)](#), Contractor's obligation to provide Maintenance and Support services shall cease concurrently with a release of Source Code to County pursuant to [Paragraph 15.2 \(Release Conditions\)](#).

17.2 OPTIONAL WORK

17.2.1 Fixed Price Services

Subject to [Paragraph 6.0 \(Change Notices, etc.\)](#), upon the written request of County Project Director made at any time, and from time to time during the Term, Contractor shall provide to County "Fixed Price Services" requested by County Project Director, including (i) Software Modifications for creating new functionality and customizations, modifications and custom interfaces not required prior to the Pilot System Acceptance, excluding Customizations, and (ii) Professional Services, including consulting and training, outside the scope of [Tasks 1 through 8 of Exhibit B \(Statement of Work\)](#) and the Maintenance and Support obligations of Contractor. Fixed Price Services shall utilize and be capped by the available Pool Dollars. In no event shall County be obligated to pay in excess of the then available Pool Dollars for Fixed Price Services, nor shall Contractor be required to perform any Fixed Price Services for which there are no Pool Dollars available to pay Contractor.

Fixed Price Services, including Software Modifications and Professional Services, shall be treated by the parties as a change requiring the execution of a Change Order pursuant to [Paragraph 6.0 \(Change Notices,](#)

[Change Orders and Amendments](#)) and will be provided on a fixed price basis with a not to exceed Maximum Fixed Price.

Upon County's request for Fixed Price Services, Contractor shall provide to County, within seven (7) days of receipt of such request, a proposed Change Order containing a written quotation of a Maximum Fixed Price, the recommended Contractor's staff levels and any other information or documentation requested by County under [Paragraph 6.0 \(Change Notices, Change Orders and Amendments\)](#). Approval of the Change Order and of the Work to be performed thereunder shall be in accordance with [Paragraph 6.0 \(Change Notices, Change Orders and Amendments\)](#).

Upon completion, delivery and acceptance by County of any Software Modifications, such Software Modifications shall become part of and be included in the System Software.

17.2.2 T&M Consulting Services

Upon County's request and written approval, T&M Consulting Services may be provided by Contractor to County only for the following types of services: (a) training in the use of Software Modifications, (b) Contractor staff support during implementation or installation of Software Modifications, (c) production customization to meet unplanned business requirements, and (d) services provided to remedy Critical or Severe System failures or Deficiencies (as defined in [Attachment D.1 \(Severity Level Definitions\)](#)) that occur outside of the work hours provided in [Exhibit B \(Statement of Work\)](#). The Work described in clauses (a) through (d) collectively is referred to as "[T&M Consulting Services](#)".

17.2.3 Additional Products

Subject to [Paragraph 6.0 \(Change Notices, Change Orders and Amendments\)](#), upon the written request of County Project Director made at any time, and from time to time during the Term, Contractor shall provide to County "[Additional Products](#)" requested by County Project Director, including software, tools and other products relating to System Software, outside the scope of the Specifications for System Software. Additional Products shall utilize and be capped by the available Pool Dollars. In no event shall County be obligated to pay in excess of the then available Pool Dollars for Additional Products, nor shall Contractor be required to provide any Additional Products for which there are no Pool Dollars available to pay Contractor.

Additional Products shall be treated by the parties as a change requiring the execution of a Change Order pursuant to [Paragraph 6.0 \(Change Notices, Change Orders and Amendments\)](#) and will be provided on a fixed price basis with a not to exceed Maximum Fixed Price.

Upon County's request for Additional Products, Contractor shall provide to County, within seven (7) days of receipt of such request, a proposed Change Order containing a written quotation of a Maximum Fixed Price and any other information or documentation requested by County under [Paragraph 6.0 \(Change Notices, Change Orders and Amendments\)](#). Approval of the Change Order and of the Work to be provided thereunder shall be in accordance with [Paragraph 6.0 \(Change Notices, Change Orders and Amendments\)](#).

Upon completion, delivery and acceptance by County of any Additional Products, such Additional Products shall become part of and be included in the System Software.

18.0 CONTINUOUS PRODUCT SUPPORT

If Contractor assigns or transfers this Agreement to a permitted assignee and subsequent to such assignment, the System Software is not supported to at least the same level that Contractor supported the System Software as determined by County Project Director (because, for example, Contractor's permitted assignee chooses to support other products in preference to the products licensed herein) or, absent any assignment or transfer, if County, upon eighteen (18) months prior written request by Contractor and at County's sole discretion, waives Contractor's obligation to continue providing Maintenance and Support services in respect of the System Software under [Paragraph 17.1 \(Maintenance and Support\)](#) (if for example, Contractor generally is ceasing support of the product), then in either instance County, at its option and without limiting or altering its License rights or rights to the Application Software Source Code, County may elect to transfer the License, without cost or penalty, to another similar product ("[Replacement Product](#)") within Contractor's, or Contractor's permitted assignee's, if applicable, product offering. The assignee, by taking benefit (including, without limitation, acceptance of any payment under this Agreement) shall be deemed to have ratified this [Paragraph 18.0](#). All terms and conditions of this Agreement shall continue in full force and effect for the Replacement Product. In addition, the following terms and conditions shall apply if County elects to transfer the license to a Replacement Product:

- 18.1 Contractor, or permitted assignee, shall, at no cost to County, provide License for and implement the Replacement Product in County's System Environment, convert and migrate all of County's System data from the Application Software format to the Replacement Product format to ensure Production User of such Replacement Product;
- 18.2 Any prepaid Maintenance Fees for Maintenance and Support of System Software shall transfer in full force and effect for the balance of the Replacement Product's Maintenance and Support term (or equivalent service) at no additional cost. If the prepaid moneys are greater than the Replacement Product's Maintenance Fees for the same term, the credit balance shall be applied to future Maintenance Fees or returned to County, at County's option;

- 18.3 All County users and support personnel shall receive reasonable training for purposes of learning the Replacement Product. Training shall be provided at no additional direct cost to County or users;
- 18.4 Any and all units of the Replacement Product or otherwise offered separately, and needed to match the original System Software's level of functionality or Specifications, as determined by County's Project Director, shall be supplied by Contractor's permitted assignee without additional cost or penalty and shall not affect the calculation of any Maintenance Fees;
- 18.5 All License terms and conditions shall remain as granted herein with no additional fees imposed on County; and
- 18.6 The definition of System Software shall then include the Replacement Product.

19.0 CORRECTION OF DEFICIENCIES

19.1 DEFICIENCIES

As used herein, the term "Deficiency" shall mean and include, as applicable to any Work provided by or on behalf of Contractor to County: any malfunction, error, or defect in the design, development, or implementation of any Work provided hereunder; any error or omission, or deviation from the Specifications or mutually agreed upon industry standards, or any other malfunction or error, including the provision of negligent workmanship, which results in the System Software, in whole or in part, not performing in accordance with the provisions of this Agreement, including the Statement of Work and the Specifications, and any executed Change Order or Amendment, as determined by County Project Director, in County Project Director's sole discretion.

19.2 CORRECTIVE MEASURES

Upon the earlier of (i) notice (orally, in writing or electronically) from County, or (ii) Contractor's discovery, of any Deficiency, Contractor shall promptly commence corrective measures to resolve any such Deficiency as provided in this [Paragraph 19.2](#) below. Contractor shall resolve each Deficiency reported by County in accordance with the time frame specified in [Attachment D.1 \(Severity Level Definitions\)](#) as Maximum Resolution Time applicable for such Deficiency Severity Level, as may be escalated by County. The time during which Contractor must resolve each Deficiency shall start tolling when County notifies Contractor of such Deficiency by telephone or otherwise, including Contractor's entering it into Contractor maintained incident reporting system, and shall end when Contractor submits resolution of such Deficiency to County Project Director for approval thereof in accordance, provided such resolution is thereafter so approved by County without prior rejection by County or significant delay in County's approval thereof. The actual Resolution Time for Deficiency correction shall not exceed the Maximum Resolution Times set forth in [Attachment D.1 \(Severity Level Definitions\)](#).

Contractor acknowledges that, as part of corrective measures to resolve a Deficiency, Contractor may be required to repair, replace or reinstall all or any part of the System Software, provide other material or update the System, including but not limited to System Environment for purposes of maintaining Compatibility within the System, in order to remedy such Deficiency.

19.3 APPROVAL

No Deficiency shall be deemed remedied until all necessary remedial action has been completed and approved in writing by County Project Director in accordance with the procedures set forth in [Paragraph 5.0 \(Work and System Acceptance\)](#).

20.0 LIQUIDATED DAMAGES

- 20.1 If, in the judgment of the County Project Director, Contractor is deemed to be non-compliant with the terms and obligations assumed hereby, the County Project Director, at sole option, in addition to, or in lieu of, other remedies provided herein, may withhold the entire monthly payment or deduct pro rata from Contractor's invoice for Work not performed in accordance with the requirements of this Agreement. Information regarding the Work performed deficiently or not performed and the amount to be withheld or deducted from payments to Contractor from County will be forwarded to Contractor by the County Project Director in a written notice describing the reasons for said action.
- 20.2 If the County Project Director determines that there are deficiencies in Contractor's performance of this Agreement, including Contractor's failure to resolve a System Deficiency within a Maximum Resolution Time prescribed for the applicable Severity Level of such Deficiency (as specified [Attachment D.1 \(Severity Level Definitions\)](#)) or Contractor's failure to complete any required task in a timely manner in accordance with the applicable Project Plan or Project Control Document, and Contractor fails to correct such deficiency within the time frame specified by County Project Director in a written notice to Contractor or the prescribed Maximum Resolution Time (if applicable), then County Project Director may:
- 19.2.1 Deduct from Contractor's payment, pro rata, the applicable portions of the monthly amounts due to Contractor; and/or
- 19.2.2 Deduct liquidated damages. The parties agree that it will be impracticable or extremely difficult to fix the extent of actual damages resulting from the failure of Contractor to correct a deficiency within the specified time frame. The parties hereby agree that under the current circumstances a reasonable estimate of such damages is one hundred dollars (\$100) per day per infraction, or as specified in the Performance Requirements Summary (PRS) Chart, as may further be defined in [Attachment C.2 \(Performance Requirements Summary\)](#) or PRS and that

With a copy to:

- (2) Los Angeles County Sheriff's Department
Legal Advisory Unit

To Contractor: (1) Contractor

With a copy to:

- (2)

The County Project Director shall have the authority to issue all notices or demands, which are required or permitted by County under this Agreement.

23.0 ARM'S LENGTH NEGOTIATIONS

This Agreement is the product of an arm's length negotiation between Contractor and County. Each party has had at all times the opportunity to receive advice from independent counsel of its own choosing. Accordingly, this Agreement is to be interpreted fairly as between the parties, and not strictly construed as against either party as drafter or creator.

24.0 SURVIVAL

The following Paragraphs of this Agreement shall survive its expiration or termination for any reason: 1, 2, 6, 9, 11, 13, 14, 15, 16, 17, 20, 21, 22 and all the terms and conditions set forth in Exhibit A (Additional Terms and Conditions).

* * * * *

[Following Page for Execution]

**AGREEMENT
BY AND BETWEEN
THE COUNTY OF LOS ANGELES
AND
CONTRACTOR**

IN WITNESS WHEREOF, the Los Angeles County Board of Supervisors has caused this Agreement to be subscribed by its Chair and the seal of such Board to be hereto affixed and attested by the Executive Officer thereof, and Contractor has caused this Agreement to be subscribed in its behalf by its authorized officer.

COUNTY OF LOS ANGELES

By _____
Chair, Board of Supervisors

ATTEST:
SACHI A. HAMAI
Executive Officer
Los Angeles County
Board of Supervisors

By _____
Deputy

Contractor: _____
Signed: _____
Printed: _____
Title: _____

APPROVED AS TO FORM:
RAYMOND G. FORTNER, JR.
County Counsel

By _____
Deputy County Counsel