

**APPENDIX A**



**CONTRACT**

**BY AND BETWEEN**

**COUNTY OF LOS ANGELES**

**AND**

[ \_\_\_\_\_ ]

**FOR**

**AUTOMOTIVE FLEET MANAGEMENT AND MAINTENANCE  
SERVICES**

**REVISED UNDER BULLETIN #2**

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  - Attachment 10 Performance Requirements Summary (PRS) Chart
- B Price Sheet  
*[Not attached to Appendix A (Contract); see Exhibit 9 (Price Sheet) of Appendix B (Required Forms)]*
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- H Contract Discrepancy Report
- I Living Wage Program Staffing Plan  
*[Not attached to Appendix A (Contract); see Exhibit 11 (Living Wage Program Staffing Plan) of Appendix B (Required Forms)]*

**CONTRACT BETWEEN  
COUNTY OF LOS ANGELES  
AND**

[ \_\_\_\_\_ ]

**FOR  
AUTOMOTIVE FLEET MANAGEMENT AND MAINTENANCE  
SERVICES**

This Contract (Contract) made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the County of Los Angeles (County) on behalf of its Sheriff's Department (Department) and \_\_\_\_\_ (Contractor). Contractor is located at \_\_\_\_\_.

**RECITALS**

WHEREAS, the County, through the Department may contract with private businesses for Automotive Fleet Management and Maintenance Services (Services) when certain requirements are met; and

WHEREAS, Contractor is a private firm specializing in providing Services; and

WHEREAS, the County, has determined that it is legal, feasible, and cost-effective to contract for automotive fleet management and maintenance services; and

WHEREAS, this Contract is therefore authorized under [Section 44.7 of the County Charter](#) and [County Codes Section 2.121.250](#); and

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

**1.0 APPLICABLE DOCUMENTS**

This base document along with Exhibits A through I, and any Attachments thereto, are attached to and form a part of this Contract. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, Service, or other Work, or otherwise between the base Contract and the Exhibits, or between Exhibits, such conflict or inconsistency will be resolved by giving precedence first to the terms and conditions of this Contract and then to the Exhibits according to the following priority:

**Standard Exhibits (Priority List):**

Exhibit A      Statement of Work

- Attachment 1 Vehicle and Equipment List
- Attachment 2 Department-Owned Tools and Equipment
- Attachment 3 Repair Locations and Minimum Staffing Requirements
- Attachment 4 Preventive Maintenance Schedules, Labor Times, and Vehicle Classifications
- Attachment 5 Preventive Maintenance and Other Inspection Checklists
- Attachment 6 Out of Service Rates
- Attachment 7 Components, Parts, and Labor Warranty
- Attachment 8 **Fixed-Price to Fee-for-Service Vehicle Reassignment Guidelines**
- Attachment 9 Detailed Equipment Specifications, ShopFax
- Attachment 10 Performance Requirements Summary (PRS) Chart
  
- Exhibit B Price Sheet  
*[Not attached to Appendix A (Contract); see Exhibit 9 (Price Sheet) of Appendix B (Required Forms)]*
- Exhibit C County's Administration
- Exhibit D Contractor's Administration
- Exhibit E1 Contractor Acknowledgement and Confidentiality Agreement
- Exhibit E2 Contractor Employee Acknowledgement and Confidentiality Agreement
- Exhibit E3 Contractor Non-Employee Acknowledgement and Confidentiality Agreement
- Exhibit F Payroll Statement of Compliance
- Exhibit G Invoice Discrepancy Report
- Exhibit H Contract Discrepancy Report
- Exhibit I Living Wage Program Staffing Plan  
*[Not attached to Appendix A (Contract); see Exhibit 11 (Living Wage Program Staffing Plan) of Appendix B (Required Forms)]*

This Contract constitutes the complete and exclusive statement of understanding between the parties, and supersedes all previous contracts, written and oral, and all communications between the parties relating to the subject matter of this Contract. No change to this Contract will be valid unless prepared pursuant to Paragraph 8.1 (Change Notices and Amendments) below and signed by both parties.

## 2.0 DEFINITIONS

2.1 The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein must be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

- 2.1.1 **Business Day(s):** Monday through Friday, excluding County-observed holidays.
- 2.1.2 **Change Notice:** Has the meaning set forth in Paragraph 8.1 (Change Notices and Amendments) of this Contract.
- 2.1.3 **Contract:** This Contract executed between the County and Contractor and includes all supplemental agreements amending or extending the Services to be performed. This Contract sets forth the terms and conditions for the issuance and performance of all tasks, deliverables, Services, and other Work.
- 2.1.4 **Contractor:** The person or persons, sole proprietor, partnership, joint venture, corporation, or other legal entity who has entered into this Contract with the County to perform or execute the Work covered by this Contract.
- 2.1.5 **Contractor Key Personnel:** Personnel performing key functions under this Contract, including but not limited to Contractor Project Director, Contractor Project Manager, IT System Administrator/Programmer, IT Assistant System Administrator/Programmer, Body Shop Supervisor, and Collision Estimator.
- 2.1.6 **Contractor Project Director:** Has the meaning set forth in Paragraph 7.2 (Contractor Project Director) of this Contract.
- 2.1.7 **Contractor Project Manager:** Person designated by Contractor to administer the Contract operations under this Contract and has the meaning set forth in Paragraph 7.3 (Contractor Project Manager) of this Contract.
- 2.1.8 **County Contract Program Monitor:** Person with responsibility to oversee the day-to-day administration of this Contract. All references here forward to the County Contract Program Monitor means "County Contract Program Monitor or designee", unless otherwise specified.
- 2.1.9 **County Project Director:** Person designated by the County with authority for the County on contractual or administrative matters relating to this Contract that cannot be resolved by County Project Manager in accordance with Paragraph 6.2 (County Project Director) of this Contract. All references here forward to County Project Director means "County Project Director or designee," unless otherwise specified.
- 2.1.10 **County Project Manager:** Person designated by the County Project Director to administer the Contract operations under this Contract and has the meaning set forth in Paragraph 6.3 (County Project Manager) of this

Contract. All references here forward to the County Project Manager means "County Project Manager or designee," unless otherwise specified.

- 2.1.11 County Supervising Contract Program Monitor:** Has the meaning set forth in Paragraph 6.4 (County Supervising Contract Program Monitor) of this Contract. All references here forward to County Supervising Contract Program Monitor means "County Supervising Contract Program Monitor or designee", unless otherwise specified.
- 2.1.12 Day(s):** Calendar day(s) unless otherwise specified.
- 2.1.13 Fee-for-Service (FFS):** Has the meaning as set forth in Paragraph 1.4.4 of Exhibit A (Statement of Work) to this Contract.
- 2.1.14 Fixed-Price:** Has the meaning as set forth in Paragraph 1.4.3 of Exhibit A (Statement of Work) to this Contract.
- 2.1.15 Fiscal Year:** The 12-month period beginning July 1st and ending the following June 30th.
- 2.1.16 Statement of Work or SOW:** A written description of the Work to be performed by Contractor to meet the needs of the County, including special provisions pertaining to the method, frequency, manner, and place of performing the contract Services.
- 2.1.17 Subcontract:** An agreement by Contractor to employ a Subcontractor to provide Services to fulfill this Contract.
- 2.1.18 Subcontractor:** Any individual, person or persons, sole proprietor, firm, partnership, joint venture, corporation, or other legal entity furnishing supplies, services of any nature, equipment, and/or materials to Contractor in furtherance of Contractor's performance of this Contract, at any tier, under oral or written agreement.
- 2.1.19 Work:** Has the meaning of any and all tasks, deliverables, Services, and other Work performed by or on behalf of Contractor including the Work required pursuant of this Contract, including Exhibit A (Statement of Work) to this Contract, and all other Exhibits, and all fully executed Amendments and Change Notices hereto.
- 2.1.20 Work State Date:** Has the meaning of the mutually-agreed upon date on which Contractor commences providing the actual day-to-day Services required under this Contract.

### **3.0 WORK**

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

## **4.0 TERM OF CONTRACT**

- 4.1 The term of this Contract will commence on the date of execution of this Contract by the County's Board of Supervisors (Board) and will terminate four years from Work Start Date, unless sooner terminated or extended, in whole or in part, as provided in this Contract.
- 4.2 The County will have the sole option to extend this Contract term for up to three additional one-year option periods, for a total Contract term not to exceed seven years. Each such option period will be exercised at the sole discretion of the Sheriff, as authorized by the Board in accordance with Paragraph 8.1 (Change Notices and Amendments) of this Contract.
- 4.3 The County maintains a database that tracks/monitor Contractor performance history. Information entered into the database will be used for a variety of purposes, including determining whether the County will exercise a Contract term option period.

## **5.0 CONTRACT SUM**

### **5.1 Total Contract Sum**

5.1.1 The Contract Sum under this Contract will be the total monetary amount payable by the County to Contractor for supplying all the goods, Services and other Work specified under this Contract, in accordance with the rates identified in Exhibit B (Price Sheet) to this Contract.

#### **5.1.2 Start-Up Costs**

The County will reimburse Contractor for one-time Start-Up costs in the amount of \$\_\_\_\_\_. Contractor must submit a separate invoice to the County for payment of Start-Up costs.

#### **5.1.3 Regulatory Compliance Costs**

The County will reimburse Contractor for one-time only facility regulatory compliance costs as described in Paragraph 4.1.2(b) (Regulatory Compliance) of Exhibit A (Statement of Work) to this Contract. Contractor must submit a separate invoice to the County for payment of regulatory compliance costs.

### **5.2 Written Approval for Reimbursement**

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

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

Contractor will have no claim against the County for payment of any money or reimbursement, of any kind whatsoever, for any Service provided by Contractor after the expiration or other termination of this Contract. Should Contractor receive any such payment it must immediately notify the County and must immediately repay all such funds to the County. Payment by the County for Services rendered after expiration-termination of this Contract will not constitute a waiver of the County's right to recover such payment from Contractor.

### **5.4 Invoices and Payments**

5.4.1 Contractor must invoice the County only for providing the tasks, deliverables, goods, Services, and other Work specified in Exhibit A (Statement of Work) to this Contract and elsewhere hereunder. Contractor must prepare and submit invoices that include only those charges due and payable by the County to Contractor under the terms of this Contract.

5.4.2 Contractor's invoices must be priced in accordance with Exhibit B (Price Sheet) to this Contract.

5.4.3 Contractor must submit electronic copies of their monthly invoices to County Project Manager, as specified in Exhibit C (County's Administration) to this Contract, by the 15th Day of the month following the month of Service.

5.4.3.1 All invoices must include Exhibit F (Payroll Statement of Compliance) to this Contract and any supporting documentation.

#### **5.4.4 County Approval of Invoices**

All invoices submitted by Contractor for payment must have the written approval of County Project Manager prior to any payment thereof. In no event will the County be liable or responsible for any payment prior to such written approval. Approval for payment will not be unreasonably withheld.

#### **5.4.5 Preference Program Enterprises – Prompt Payment Program (if applicable)**

Certified Preference Program Enterprises (PPEs) will receive prompt payment for Services they provide to County departments. Prompt payment is defined as 15 Days after receipt of an approved, undisputed invoice which has been properly matched against documents such as a receiving, shipping, or services delivered report, or any other validation of receipt document consistent with [Board Policy 3.035 \(Preference Program Payment Liaison and Prompt Payment Program\)](#).

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

5.5.1 The County, at its sole discretion, has determined that the most efficient and secure default form of payment for goods and/or services provided

under Contract with the County will be Electronic Funds Transfer (EFT) or direct deposit, unless an alternative method of payment is deemed appropriate by the Auditor-Controller (A-C).

- 5.5.2 Contractor must submit a direct deposit authorization request via the website <https://directdeposit.lacounty.gov/> with banking and vendor information, and any other information that the A-C determines is reasonably necessary to process the payment and comply with all accounting, record keeping, and tax reporting requirements.
- 5.5.3 Any provision of law, grant, or funding agreement requiring a specific form or method of payment other than EFT or direct deposit will supersede this requirement with respect to those payments.
- 5.5.4 At any time throughout the term of this Contract, Contractor may submit a written request for an exemption to this requirement. Such request must be based on specific legal, business, or operational needs and explain why the payment method designated by the A-C is not feasible and an alternative is necessary. The A-C, in consultation with the contracting department(s), will decide whether to approve exemption requests.

## **5.6 Invoice Discrepancy Report**

County Project Manager will review all invoices for any discrepancies and issue Exhibit G (Invoice Discrepancy Report (IDR)) to this Contract to Contractor within ten Business Days of receipt of invoice if payment amounts are disputed. Contractor must review the disputed charges and submit to County Project Manager a written explanation detailing the basis for the charges within ten Business Days of receipt of the IDR from County Project Manager. If County Project Manager does not receive a written response from Contractor within ten Business Days of the County's notice to Contractor of an IDR, then County payment will be made, less the disputed charges. None of the foregoing will preclude the County from seeking remedies from Contractor for invoice discrepancies discovered at any time during the term of this Contract.

## **6.0 ADMINISTRATION OF CONTRACT – COUNTY**

### **6.1 County's Administration**

A listing of all County Administration referenced in the following Paragraphs are designated in Exhibit C (County's Administration) to this Contract. The County will notify Contractor in writing of any changes as they occur.

### **6.2 County Project Director**

- 6.2.1 The role of County Project Director may include:
  - a. Coordinating with Contractor and ensuring Contractor's performance of this Contract; however, in no event will Contractor's obligation to fully satisfy all of the requirements of this Contract be relieved, excused or limited thereby,
  - b. Approving Contractor Project Manager, as further specified in

Paragraph 7.4 (Approval of Contractor's Staff) of this Contract,

- c. Inspecting all Work provided by or on behalf of Contractor, and
- d. Providing direction to Contractor, upon Contractor's request, in areas relating to County policy, information requirements, and procedural requirements; however, in no event, will Contractor's obligation to fully satisfy all of the requirements of this Contract be relieved, excused, or limited thereby.

6.2.2 Except as set forth in Paragraph 8.1 (Change Notices and Amendments) of this Contract, County Project Director is not authorized to make any change in any of the terms and conditions of this Contract and is not authorized to further obligate the County in any respect whatsoever.

### **6.3 County Project Manager**

6.3.1 The role of County Project Manager is authorized to include:

- a. Meeting with Contractor Project Manager on a regular basis,
- b. Inspecting any and all tasks, deliverables, goods, Services, or other Work provided by or on behalf of Contractor; however, in no event will Contractor's obligation to fully satisfy all of the requirements of this Contract be relieved, excused, or limited thereby, and
- c. Interfacing regularly with Contractor. County Project Manager will advise County Project Director as to Contractor's performance in areas relating to technical requirements and standards, County policy, information requirements, and procedural requirements.

6.3.2 County Project Manager is not authorized to make any changes in any of the terms and conditions of this Contract unless otherwise stated in this Contract, including but not limited to Paragraph 8.1 (Change Notices and Amendments) of this Contract.

### **6.4 County Supervising Contract Program Monitor**

The role of County Supervising Contract Program Monitor is to oversee County Contract Program Monitors and day-to-day activities of this Contract; however, in no event will Contractor's obligation to fully satisfy all of the requirements of this Contract be relieved, excused or limited thereby.

### **6.5 County Contract Program Monitor**

The role of County Contract Program Monitor is to oversee the day-to-day administration of this Contract; however, in no event shall Contractor's obligation to fully satisfy all of the requirements of this Contract be relieved, excused or limited thereby. County Contract Program Monitor reports to County's Supervising Contract Program Monitor.

## **7.0 ADMINISTRATION OF CONTRACT – CONTRACTOR**

### **7.1 Contractor’s Administration**

A listing of all of Contractor’s Administration referenced in the following Paragraphs is designated in Exhibit D (Contractor’s Administration) to this Contract. Contractor must notify the County in writing in accordance with Paragraph 8.1 (Change Notices and Amendments) of this Contract of any change as it occurs.

### **7.2 Contractor Project Director**

- 7.2.1 Contractor Project Director must act as a central point of contact with the County and have full authority to act on behalf of Contractor on all matters relating to the daily operation of this Contract.
- 7.2.2 Contractor Project Director is responsible for Contractor’s performance of all of the Work and ensuring Contractor’s compliance with this Contract.
- 7.2.3 Contractor Project Director must be available to meet and confer with County Project Director, in person or by phone, to review project progress and discuss project coordination, as further discussed in Paragraph 14.4 (Performance Evaluation Meetings) of Exhibit A (Statement of Work) to this Contract.
- 7.2.4 Any change to Contractor Project Director is subject to advance written approval, as further described in Paragraph 7.4 (Approval of Contractor’s Staff) of this Contract.
- 7.2.5 Any exception to the requirements listed in this Paragraph 7.2 (Contractor Project Director) must be approved in writing by County Project Director.

### **7.3 Contractor Project Manager**

- 7.3.1 Contractor Project Manager must have full authority to act on behalf of Contractor on all matters relating to the daily operation of this Contract.
- 7.3.2 Contractor Project Manager is responsible for Contractor’s day-to-day activities as related to this Contract.
- 7.3.3 Contractor Project Manager must be available to meet and confer as necessary with the County, as further described in Paragraph 14.4 (Performance Evaluation Meetings) of Exhibit A (Statement of Work) to this Contract.
- 7.3.4 Any change to Contractor Project Manager is subject to advance written approval, as further described in Paragraph 7.4 (Approval of Contractor’s Staff) below.
- 7.3.5 Any exception to the requirements listed in this Paragraph 7.3 (Contractor Project Manager) must be approved in writing by County Project Director.

### **7.4 Approval of Contractor’s Staff**

- 7.4.1 The County has the absolute right to approve or disapprove any and all of Contractor’s staff performing Work hereunder and any proposed changes

in Contractor's staff.

- 7.4.2 County Project Director or County Project Manager has the right to approve or disapprove any proposed replacement for Contractor Project Director and Contractor Project Manager. If Contractor desires to replace, or if the County, at its discretion, requires removal of, either Contractor Project Director or Contractor Project Manager, Contractor must provide the County with a resume of each such proposed replacement, and an opportunity to interview such person prior to such person's assignment to these positions.
- 7.4.3 The County will not unreasonably delay its approval of Contractor's replacement staff. Any approved changes must be processed in accordance with Paragraph 8.1 (Change Notices and Amendments) below.
- 7.4.4 During the term of this Contract, Contractor must assure continuity of Contractor personnel performing key functions under this Contract, including but not limited to: Contractor Project Director, Contractor Project Manager, IT System Administrator/Programmer, IT Assistant System Administrator/Programmer, Body Shop Supervisor, and Collision Estimator (collectively "Contractor Key Personnel").

## **7.5 Contractor's Staff Identification**

- 7.5.1 Contractor must provide, at Contractor's sole expense, all staff providing Services under this Contract at County repair locations with a County-approved identification badge.
- 7.5.2 Contractor will be responsible for all costs associated with any lost or stolen identification badge(s).

## **7.6 Background and Security Investigations**

- 7.6.1 Each of Contractor's staff performing Services under this Contract must undergo and pass a background investigation to the satisfaction of the County as a condition of beginning and continuing to perform Services under this Contract. Such background investigation will be obtained through fingerprints submitted to the California Department of Justice to include state, local, and federal-level review, which may include, but will not be limited to, criminal conviction information. The fees associated with the background investigation will be at the expense of Contractor, regardless of whether the member of Contractor's staff passes or fails the background investigation.
- 7.6.2 If a member of Contractor's staff does not pass the background investigation, the County may request that the member of Contractor's staff be removed immediately from performing Services under this Contract. Contractor must comply with the County's request at any time during the term of this Contract. The County will not provide Contractor with any information obtained through the County's background investigation.

- 7.6.3 The County, at its sole discretion, may immediately deny or terminate facility access to any member of Contractor's staff that does not pass such investigation to the satisfaction of the County or whose background or conduct is incompatible with County facility access.
- 7.6.4 Disqualification of any member of Contractor's staff pursuant to this Paragraph 7.6 (Background and Security Investigations) will not relieve Contractor of its obligation to complete all Work in accordance with the terms and conditions of this Contract.
- 7.6.5 These terms will also apply to Subcontractors of Contractor.

## **7.7 Confidentiality**

- 7.7.1 Contractor must maintain the confidentiality of all records and information in accordance with all applicable federal, state, and local laws, rules, regulations, ordinances, directives, guidelines, policies, and procedures relating to confidentiality, including, without limitation, County policies concerning information technology security and the protection of confidential records and information.
- 7.7.2 Contractor must indemnify, defend, and hold harmless the County and its elected officials, officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting, or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or Subcontractors, to comply with this Paragraph 7.7 (Confidentiality), any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by the County at its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 7.7 (Confidentiality) will be conducted by Contractor and performed by counsel selected by Contractor and approved by the County. Notwithstanding the preceding sentence, the County will have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide the County with a full and adequate defense, as determined by the County at its sole judgment, the County will be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by the County in doing so. Contractor will not have the right to enter into any settlement, agree to any injunction, or make any admission, in each case, on behalf of the County without the County's prior written approval.
- 7.7.3 Contractor must inform all of its officers, employees, agents, and Subcontractors providing Services hereunder of the confidentiality provisions of this Contract.
- 7.7.4 Contractor must sign and adhere to the provisions of Exhibit E1 (Contractor Acknowledgement and Confidentiality Agreement) to this

Contract.

7.7.5 Contractor must cause each employee performing Services covered by this Contract to sign and adhere to the provisions of Exhibit E2 (Contractor Employee Acknowledgement and Confidentiality Agreement) to this Contract.

7.7.6 Contractor must cause each non-employee performing Services covered by this Contract to sign and adhere to the provisions of Exhibit E3 (Contractor Non-Employee Acknowledgement and Confidentiality Agreement) to this Contract.

## **8.0 STANDARD TERMS AND CONDITIONS**

### **8.1 Change Notices and Amendments**

No representative or employee of the County or Contractor, including those named in this Contract, is authorized to make changes to any of the terms, obligations, or conditions of this Contract, except through the procedures set forth in this Paragraph 8.1. The County reserves the right to change any portion of the Services required under this Contract, or amend such other terms and conditions, as may become necessary. Any such revision(s) must be accomplished in the following manner:

8.1.1 For any change that does not materially affect the scope of Work, period of performance, Contract term, rates, fees, amount or schedule of payments, or any other term or condition included under this Contract, a Change Notice must be mutually agreed upon and executed by Contractor Project Manager and County Project Director.

8.1.1.1 A Change Notice must be executed by both parties for any of the following modifications to the annual price for Fixed-Price Services specified in Paragraph 1.4.3 (Fixed-Price) of Exhibit A (Statement of Work) to this Contract and/or Paragraph 5.1 (Total Contract Sum):

- a. Any increase or decrease to the Department's Vehicle Fleet in accordance with Paragraph 1.4.3.1 (Annual Fixed-Price Change Due to Change in Fleet Size Adjustment) of Exhibit A (Statement of Work) to this Contract, resulting in an adjustment to the annual price for Fixed-Price Services of \$150,000 or more within a semi-annual period, or
- b. Any increase or decrease to the minimum staffing levels in accordance with Paragraph 1.4.3.2 (Fixed-Price Adjustments for Minimum Staffing Increases or Decreases) of Exhibit A (Statement of Work) to this Contract, which increases or decreases the annual price for Fixed-Price Services.

**In the event of a County-approved adjustment to Fleet size or Staffing levels that modifies the annual price for Fixed-Price**

Services, Exhibit B (Price Sheet) to this Contract will be amended and restated via an executed Change Notice pursuant to this Paragraph 8.1.1.1.

- 8.1.2 For any change that materially affects the scope of Work, period of performance, Contract term, rates, fees, amount or schedule of payments, or any other term or condition included under this Contract, an Amendment to this Contract must be mutually agreed upon and executed by Contractor and the Board.
- 8.1.3 During the term of this Contract, the Board or Chief Executive Officer reserves the right to require the addition of and/or change to certain terms and conditions of this Contract. The County reserves the right to add and/or change such provisions as required by the Board or Chief Executive Officer. To implement such changes, an Amendment to this Contract will be prepared and executed by Contractor and the Sheriff, or his authorized designee.
- 8.1.4 Notwithstanding Paragraphs 8.1.1 and 8.1.2 above, for a) any option term extension of this Contract in accordance with Paragraph 4.0 (Term of Contract), b) any permanent reassignment of Work to another County Contractor in accordance with Paragraph 1.2.2.1 of Exhibit A (Statement of Work), c) an assignment of rights or delegation of duties by Contractor pursuant to Paragraph 8.2 (Assignment and Delegation/Mergers or Acquisitions), and d) terminate this Contract, either in whole or in part, by the provision of a 10-day written notice, an Amendment to this Contract must be prepared and executed by Contractor and the Sheriff, or his authorized designee.

## **8.2 Assignment and Delegation/Mergers or Acquisitions**

- 8.2.1 Contractor must notify the County of any pending acquisitions/mergers of its company unless otherwise legally prohibited from doing so. If Contractor is restricted from legally notifying the County of pending acquisitions/mergers, then it should notify the County of the actual acquisitions/mergers as soon as the law allows and provide to the County the legal framework that restricted it from notifying the County prior to the actual acquisitions/mergers.
- 8.2.2 Contractor must not assign, exchange, transfer, or delegate its rights or duties under this Contract, whether in whole or in part, without the prior written consent of the County, at its discretion, and any attempted assignment, delegation, or otherwise transfer of its rights or duties, without such consent will be null and void. For purposes of this Paragraph 8.2 (Assignment and Delegation/Mergers or Acquisitions), County consent will require a written Amendment to this Contract, which is formally approved and executed by the parties. Any payments by the County to any approved delegate or assignee on any claim under this Contract will be deductible, at the County's sole discretion, against the claims, which Contractor may have against the County.

8.2.3 Any assumption, assignment, delegation, or takeover of any of Contractor's duties, responsibilities, obligations, or performance of same by any person or entity other than Contractor, whether through assignment, Subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without the County's express prior written approval, will be a material breach of this Contract which may result in the termination of this Contract. In the event of such termination, the County will be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor.

### **8.3 Authorization Warranty**

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

### **8.4 Budget Reductions**

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

### **8.5 Complaints**

Contractor must develop and maintain operating procedures for receiving, investigating, and responding to complaints, which include the following requirements:

- a. Within 30 Business Days after the Contract effective date, Contractor must provide the County with Contractor's procedures for receiving, investigating, and responding to user complaints.
- b. The County will review Contractor's procedures and provide Contractor with approval of said procedures or with requested changes.
- c. If the County requests changes in Contractor's procedures, Contractor must make such changes and resubmit the procedures within ten Business Days for County approval.
- d. If, at any time, Contractor wishes to change Contractor's procedures, Contractor must submit proposed changes to the County for approval before implementation.

- e. Contractor must preliminarily investigate all complaints and notify County Project Manager of the status of the investigation within five Business Days of receiving the complaint.
- f. When complaints cannot be resolved informally, a system of follow-through will be instituted which adheres to formal plans for specific actions and strict time deadlines.
- g. Copies of all written responses must be sent to County Project Manager within five Business Days of mailing to the complainant.

## **8.6 Compliance with Applicable Laws**

- 8.6.1 In the performance of this Contract, Contractor must comply with all applicable federal, state and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.
- 8.6.2 Contractor must indemnify, defend, and hold harmless the County and its elected officials, officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by Contractor, its officers, employees, agents, or Subcontractors, to comply with this Paragraph 8.6 (Compliance with Applicable Laws), any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by the County at its sole judgment. Any legal defense pursuant to Contractor's indemnification obligations under this Paragraph 8.6 (Compliance with Applicable Laws) will be conducted by Contractor and performed by counsel selected by Contractor and approved by the County. Notwithstanding the preceding sentence, the County will have the right to participate in any such defense at its sole cost and expense, except that in the event Contractor fails to provide the County with a full and adequate defense, as determined by the County at its sole judgment, the County will be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from Contractor for all such costs and expenses incurred by the County in doing so. Contractor will not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of the County without the County's prior written approval.

## **8.7 Compliance with Civil Rights Laws**

Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person will, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise

subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. Additionally, Contractor certifies to the County:

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

## **8.8 Compliance with County's Jury Service Program**

### **8.8.1 Jury Service Program**

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

### **8.8.2 Written Employee Jury Service Policy**

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

8.8.2.2 For purposes of this Paragraph 8.8.2 (Written Employee Jury Service Policy), "Contractor" means a person, partnership, corporation, or other entity which has a Contract with the County or a Subcontract with a County contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or Subcontracts. "Employee" means any California resident who is a full-time employee of Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: a) the lesser number is a recognized industry standard as determined by the County, or b) Contractor has a long-standing practice that defines the lesser number of hours as full-time.

Full-time employees providing short-term, temporary services of 90 Days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Contractor uses any Subcontractor to perform Services for the County under this Contract, Subcontractor is also subject to the provisions of this Paragraph 8.8.2 (Written Employee Jury Service Policy). The provisions of this Paragraph 8.8.2 (Written Employee Jury Service Policy) will be inserted into any such Subcontract agreement and a copy of the Jury Service Program must be attached to the agreement.

8.8.2.3 If Contractor is not required to comply with the Jury Service Program when this Contract commences, Contractor will have a continuing obligation to review the applicability of its “exception status” from the Jury Service Program, and Contractor must immediately notify the County if Contractor at any time either comes within the Jury Service Program’s definition of “Contractor” or if Contractor no longer qualifies for an exception to the Jury Service Program. In either event, Contractor must immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during this Contract and at its sole discretion, that Contractor demonstrate, to the County’s satisfaction, that Contractor either continues to remain outside of the Jury Service Program’s definition of “Contractor” and/or that Contractor continues to qualify for an exception to the Program.

8.8.2.4 Contractor’s violation of this Paragraph 8.8.2 (Written Employee Jury Service Policy) may constitute a material breach of this Contract. In the event of such material breach, the County may, at its sole discretion, terminate this Contract and/or bar Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

## **8.9 Conflict of Interest**

8.9.1 No County employee whose position with the County enables such employee to influence the award of this Contract or any competing contract, and no spouse or economic dependent of such employee, will be employed in any capacity by Contractor or have any other direct or indirect financial interest in this Contract. No officer or employee of Contractor who may financially benefit from the performance of Work hereunder will in any way participate in the County’s approval, or ongoing evaluation, of such Work.

8.9.2 Contractor must comply with all conflict-of-interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this

Contract. Contractor warrants that it is not now aware of any facts that create a conflict of interest. If Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it must immediately make full written disclosure of such facts to the County. Full written disclosure will include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this Paragraph 8.9 (Conflict of Interest) will be a material breach of this Contract.

#### **8.10 Consideration of Hiring County Employees Targeted for Layoffs or are on a County Re-Employment List**

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

#### **8.11 Consideration of Hiring GAIN/START Participants**

8.11.1 Should Contractor require additional or replacement personnel after the effective date of this Contract, Contractor must give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or Skills and Training to Achieve Readiness for Tomorrow (START) Program who meet Contractor's minimum qualifications for the open position. For this purpose, consideration will mean that Contractor will interview qualified candidates. The County will refer GAIN/START participants by job category to Contractor. Contractors must report all job openings with job requirements to: [gainstart@dpss.lacounty.gov](mailto:gainstart@dpss.lacounty.gov) and [bservices@opportunity.lacounty.gov](mailto:bservices@opportunity.lacounty.gov) and DPSS will refer qualified GAIN/START job candidates.

8.11.2 In the event that both laid-off County employees and GAIN/START participants are available for hiring, County employees must be given first priority.

#### **8.12 Contractor Responsibility and Debarment**

##### **8.12.1 Responsible Contractor**

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

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

Contractor is hereby notified that, in accordance with [Chapter 2.202 of the County Code](#), if the County acquires information concerning the performance of Contractor on this or other contracts which indicates that Contractor is not responsible, the County may, in addition to other

remedies provided in this Contract, debar Contractor from bidding or proposing on, or being awarded, and/or performing Work on County contracts for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing contracts Contractor may have with the County.

### **8.12.3 Non-responsible Contractor**

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

### **8.12.4 Contractor Hearing Board**

- a. If there is evidence that Contractor may be subject to debarment, the Department will notify Contractor in writing of the evidence which is the basis for the proposed debarment and will advise Contractor of the scheduled date for a debarment hearing before Contractor Hearing Board.
- b. Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. Contractor and/or Contractor's representative will be given an opportunity to submit evidence at that hearing. After the hearing, Contractor Hearing Board will prepare a tentative proposed decision, which will contain a recommendation regarding whether Contractor should be debarred, and, if so, the appropriate length of time of the debarment. Contractor and the Department will be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board.
- c. After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of Contractor Hearing Board will be presented to the Board. The Board will have the right to modify, deny, or adopt the proposed decision and recommendation of Contractor Hearing Board.
- d. If a Contractor has been debarred for a period longer than five years, that Contractor may, after the debarment has been in effect for at least five years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, at its discretion, reduce the period of debarment or terminate the debarment if it finds that Contractor has

adequately demonstrated one or more of the following: i) elimination of the grounds for which the debarment was imposed; ii) a bona fide change in ownership or management; iii) material evidence discovered after debarment was imposed; or iv) any other reason that is in the best interests of the County.

- e. Contractor Hearing Board will consider a request for review of a debarment determination only where: i) Contractor has been debarred for a period longer than five years; ii) the debarment has been in effect for at least five years; and iii) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, Contractor Hearing Board will conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing will be conducted and the request for review decided by Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.
- f. Contractor Hearing Board's proposed decision will contain a recommendation on the request to reduce the period of debarment or terminate the debarment. Contractor Hearing Board will present its proposed decision and recommendation to the Board. The Board will have the right to modify, deny, or adopt the proposed decision and recommendation of Contractor Hearing Board.

#### **8.12.5 Subcontractors of Contractor**

These terms and procedures will also apply to Subcontractors, consultants and partners of Contractor performing Work under this Contract.

#### **8.13 Contractor's Acknowledgement of County's Commitment to Safely Surrendered Baby Law**

Contractor acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. Contractor must notify and provide to its employees, and will require each Subcontractor to notify and provide to its employees, a [Fact Sheet](#) regarding the Safely Surrendered Baby Law, its implementation in the County, and information on where and how to safely surrender a baby. Additionally, Contractor understands that it is the County's policy to encourage all County contractors to voluntarily post the County's "[Safely Surrendered Baby Law Poster](#)" (available in [English/Spanish/Chinese/Korean](#)) in a prominent position at Contractor's place of business. Contractor must also encourage its Subcontractors, if any, to post this poster in a prominent position in Subcontractor's place of business.

Contractor, and its Subcontractor(s), can access posters and other program material at [babysafela.org](http://babysafela.org).

## **8.14 Contractor's Warranty of Adherence to County's Child Support Compliance Program**

- 8.14.1 Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through contracts are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.
- 8.14.2 As required by the [County's Child Support Compliance Program \(County Code Chapter 2.200\)](#) and without limiting Contractor's duty under this Contract to comply with all applicable provisions of law, Contractor warrants that it is now in compliance and must, during the term of this Contract, maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and [California Unemployment Insurance Code Section 1088.5](#), and will implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

## **8.15 County's Quality Assurance Plan**

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

## **8.16 Damage to County Facilities, Buildings, or Grounds**

- 8.16.1 Contractor must repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by Contractor, or employees or agents. Such repairs must be made immediately after Contractor has become aware of such damage, but in no event later than 30 Days after the occurrence.
- 8.16.2 If Contractor fails to make timely repairs, the County may make any necessary repairs. All costs incurred by the County, as determined by the County, for such repairs will be repaid by Contractor by cash payment upon demand.

## **8.17 Employment Eligibility Verification**

- 8.17.1 Contractor and its Subcontractors warrant that they fully comply with all federal and state statutes and regulations regarding the employment of

aliens and others and that all its employees performing Work under this Contract meet the citizenship or alien status requirements set forth in federal and state statutes and regulations. Contractor must obtain from all its employees and Subcontractors performing Work hereunder, all verification and other documentation of employment eligibility status required by federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. Contractor must retain all documentation for all covered employees for the period prescribed by law.

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

## **8.18 Counterparts and Electronic Signatures and Representations**

- 8.18.1 This Contract may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same Contract. The facsimile, email, or electronic signature of the parties will be deemed to constitute original signatures, and facsimile or electronic copies hereof will be deemed to constitute duplicate originals.
- 8.18.2 The County and Contractor hereby agree to regard electronic representations of original signatures of authorized officers of each party, when appearing in appropriate places on the Amendments and Change Notice prepared pursuant to Paragraph 8.1 (Change Notices and Amendments) above and received via communications facilities (facsimile, email, or electronic signature), as legally sufficient evidence that such legally binding signatures have been affixed to Change Notices and Amendments to this Contract.

## **8.19 Fair Labor Standards**

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

## **8.20 Force Majeure**

- 8.20.1 Neither party will be liable for such party's failure to perform its obligations under and in accordance with this Contract, if such failure arises out of fires, floods, epidemics, pandemics, quarantine restrictions, other natural

occurrences, strikes, lockouts (other than a lockout by such party or any of such party's Subcontractors), civil disorders, freight embargoes, or other similar events to those described above, but in every such case the failure to perform must be totally beyond the control and without any fault or negligence of such party [such events are referred to in this Paragraph 8.20 (Force Majeure) as "force majeure events"].

- 8.20.2 Notwithstanding the foregoing, a default by a Subcontractor of Contractor will not constitute a force majeure event, unless such default arises out of causes beyond the control of both Contractor and such Subcontractor, and without any fault or negligence of either of them. In such case, Contractor will not be liable for failure to perform, unless the goods or Services to be furnished by Subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule. As used in this Paragraph 8.20 (Force Majeure), the term "Subcontractor" and "Subcontractors" mean Subcontractors at any tier.
- 8.20.3 In the event Contractor's failure to perform arises out of a force majeure event, Contractor agrees to use commercially reasonable best efforts to obtain goods or Services from other sources, if applicable, and to otherwise mitigate the damages and reduce the delay caused by such force majeure event.

## **8.21 Governing Law, Jurisdiction, and Venue**

This Contract will be governed by, and construed in accordance with, the laws of the State of California. Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder will be exclusively in the County.

## **8.22 Independent Contractor Status**

- 8.22.1 This Contract is by and between the County and Contractor and is not intended, and must not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and Contractor. The employees and agents of one party will not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.
- 8.22.2 Contractor will be solely liable and responsible for providing to, or on behalf of, all persons performing Work pursuant of this Contract any and all compensation and benefits. The County will have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, federal, state, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of Contractor.
- 8.22.3 Contractor understands and agrees that all persons performing Work pursuant to this Contract are, for purposes of Workers' Compensation

liability, solely employees of Contractor and not employees of the County. Contractor will be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any Work performed by or on behalf of Contractor pursuant to this Contract.

8.22.4 Contractor must adhere to the provisions stated in Paragraph 7.7 (Confidentiality) above.

### **8.23 Indemnification**

Contractor must indemnify, defend, and hold harmless the County, its Special Districts, elected and appointed officers, employees, agents and volunteers (County Indemnitees) from and against any and all liability, including but not limited to demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from and/or relating to this Contract, except for such loss or damage arising from the sole negligence or willful misconduct of the County Indemnitees.

### **8.24 General Provisions for all Insurance Coverage**

8.24.1 Without limiting Contractor's indemnification of the County, and in the performance of this Contract and until all of its obligations pursuant of this Contract have been met, Contractor must provide and maintain at its own expense insurance coverage satisfying the requirements specified in Paragraphs 8.24 (General Provisions for all Insurance Coverage) and 8.25 (Insurance Coverage) of this Contract. These minimum insurance coverage terms, types, and limits (the "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant of this Contract. The County in no way warrants that the Required Insurance is sufficient to protect Contractor from liabilities which may arise from or relate to this Contract.

#### **8.24.2 Evidence of Coverage and Notice to County**

8.24.2.1 Certificate(s) of insurance coverage (Certificate) satisfactory to the County, and a copy of an Additional Insured endorsement confirming the County and its Agents (defined below) has been given Insured status under Contractor's General Liability policy, must be delivered to the County at the address listed in Exhibit C (County's Administration) to this Contract and provided prior to commencing Services under this Contract.

8.24.2.2 Renewal Certificates must be provided to the County not less than ten Days prior to Contractor's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or Subcontractor insurance policies at any time.

8.24.2.3 Certificates must identify all Required Insurance coverage types and limits specified herein, reference this Contract by name or number, and be signed by an authorized

representative of the insurer(s). The Insured party named on the Certificate must match the name of Contractor identified as the contracting party in this Contract. Certificates must provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding \$50,000 and list any County-required endorsement forms.

- 8.24.2.4 Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by Contractor, its insurance broker(s) and/or insurer(s), will be construed as a waiver of any of the Required Insurance provisions.
- 8.24.2.5 Certificates and copies of any required endorsements must be sent to County's Contract Analyst identified in Exhibit C (County's Administration) to this Contract.
- 8.24.2.6 Contractor also must promptly report to the County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Contractor also must promptly notify the County of any third-party claim or suit filed against Contractor or any of its Subcontractors which arises from or relates to this Contract and could result in the filing of a claim or lawsuit against Contractor and/or the County.

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

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

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

Contractor must provide the County with, or Contractor's insurance

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

#### **8.24.5 Failure to Maintain Insurance**

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

#### **8.24.6 Insurer Financial Ratings**

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

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

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

#### **8.24.8 Waivers of Subrogation**

To the fullest extent permitted by law, Contractor hereby waives its rights and its insurer(s)' rights of recovery against the County under all the Required Insurance for any loss arising from or relating to this Contract. Contractor must require its insurers to execute any waiver of subrogation endorsements which may be necessary to effectuate such waiver.

#### **8.24.9 Subcontractor Insurance Coverage Requirements**

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

and approval of any Subcontractor request for modification of the Required Insurance.

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

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

#### **8.24.11 Claims Made Coverage**

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

#### **8.24.12 Application of Excess Liability Coverage**

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

#### **8.24.13 Separation of Insureds**

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

#### **8.24.14 Alternative Risk Financing Programs**

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

#### **8.24.15 County Review and Approval of Insurance Requirements**

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

### **8.25 Insurance Coverage**

#### **8.25.1 Commercial General Liability Insurance**

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

General Aggregate:..... \$2 million  
 Products/Completed Operations Aggregate:..... \$2 million  
 Personal and Advertising Injury: ..... \$1 million  
 Each Occurrence: ..... \$1 million

**8.25.2 Garage Insurance**

Garage Insurance (written on ISO form CA 00 05 or its equivalent) including coverages with limits of not less than the following:

a. Garage Operations – Liability Other Than Covered Autos:

General Aggregate: ..... \$4 million  
 Products/Completed Operations:..... \$2 million  
 Personal and Advertising Injury: ..... \$1 million  
 Per Accident: ..... \$2 million

b. Garage Operations – Liability for Covered Autos:

Automobile Liability for all Contractor’s “owned,” “non-owned,” and “hired” vehicles, or coverage for “any auto”: \$2 million each accident

c. Garage Keepers Liability:

Coverage must apply on a Direct Primary basis, and include Comprehensive and Collision coverages, with limits not less than \$500,000 per vehicle.

**8.25.3 Workers Compensation and Employers’ Liability Insurance**

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

**8.26 Liquidated Damages**

8.26.1 If, at the judgment of County Project Director, Contractor is deemed to be non-compliant with the terms and obligations assumed hereby, County Project Director, at his/her 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. A description of the Work not performed and the amount to be withheld or deducted from payments to Contractor from the County, will be forwarded to Contractor by County Project Director, in a written notice describing the reasons for said action.

- 8.26.2 If County Project Director determines that there are deficiencies in the performance of this Contract that County Project Director deems correctable by Contractor over a certain time span, County Project Director will provide a written notice, using Exhibit H (Contract Discrepancy Report) to this Contract, to Contractor to correct the deficiency within specified time frames. Should Contractor fail to correct deficiencies within said time frame, County Project Director may:
- a. Deduct from Contractor's payment, pro rata, those applicable portions of the Monthly Contract Sum, and/or
  - b. 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 \$100 per Day per infraction, or as specified in Attachment 10 (Performance Requirements Summary (PRS) Chart) to Exhibit A (Statement of Work) to this Contract, and that Contractor must be liable to the County for liquidated damages in said amount. Said amount will be deducted from the County's payment to Contractor, and/or
  - c. Upon giving five Days of notice to Contractor for failure to correct the deficiencies, the County may correct any and all deficiencies and the total costs incurred by the County for completion of the Work by an alternate source, whether it be County forces or separate private contractor, will be deducted and forfeited from the payment to Contractor from the County, as determined by the County.
- 8.26.3 The action noted in Paragraph 8.26.2 above must not be construed as a penalty, but as adjustment of payment to Contractor to recover the County cost due to the failure of Contractor to complete or comply with the provisions of this Contract.
- 8.26.4 This Paragraph 8.26 (Liquidated Damages) must not, in any manner, restrict or limit the County's right to damages for any breach of this Contract provided by law or as specified in Attachment 10 (Performance Requirements Summary (PRS) Chart) to Exhibit A (Statement of Work) to this Contract or Paragraph 8.26.2 above, and must not, in any manner, restrict or limit the County's right to terminate this Contract as agreed to herein.
- 8.26.5 The following liquidated damages must be automatically deducted by Contractor from monthly invoices based upon Contractor's failure to meet

the required performance standards in Exhibit A (Statement of Work) to this Contract as specified below, for “in-service” Vehicles for both Fixed-Price and Fee-for-Service categories. It is the responsibility of Contractor to calculate and take the deductions from each month’s invoices, based on the number of occurrences that met the criteria listed below during and for the previous month billed (i.e., one month in arrears). For example, liquidated damages accrued under this Paragraph 8.26.5 during the month of March must be deducted from Contractor monthly invoices for April. The liquidated damages to be automatically deducted by Contractor for the second to last, and last months’ invoices, must be calculated and deducted from the appropriate final month’s invoices. County Project Manager reserves the right to waive any or all automatic deductions specified above based on Contractor performance, extenuating circumstances, or for other reasons determined by County Project Manager.

- a. Exceeding the compliance requirement of the three Business-Day quick-fix accident repair requirement, the nine Business-Day minor accident repair requirement, the 21 Business-Day major accident repair requirement, or the 15 Business-Day complete repaint (single or multiple stage) with minor body damage repair requirement, as specified in Paragraph 5.3.7 (Accident Repair Time Requirements) of Exhibit A (Statement of Work) to this Contract, by more than three Business Days, as documented in Contractor generated reports, results in automatic deductions from the monthly accident repair billing invoice. County Contract Program Monitors may run concurrent reports, at the County’s discretion, for auditing purposes. The automatic deductions begin for the fourth and subsequent continuous Business Days and are to be calculated as part of the invoicing process each calendar month. The automatic deduction amount is \$50 per Vehicle and/or piece of equipment, per Business Day, for the number of Vehicles and/or pieces of equipment exceeding the compliance requirement by four or more Business Days.
- b. Exceeding the compliance requirement of the three or five Business-Day repair requirements set forth in Paragraph 4.12 (Specific Repair Time Requirements) of Exhibit A (Statement of Work) to this Contract for on-road patrol motorcycles by more than three Business Days, as documented in Contractor-generated reports, results in automatic deductions from the monthly Fixed-Price billing invoice. County Contract Program Monitors may run concurrent reports, at the County’s discretion, for auditing purposes. The automatic deductions begin on the fourth and subsequent continuous Business Days and are to be calculated based on the Fixed-Price or Fee-for-Service repair times, per Business Day, for the number of motorcycles exceeding the compliance requirement. The automatic deduction amount is \$50 per on-road patrol motorcycles, per Business Day, for the number of such on-road patrol motorcycles exceeding the compliance requirement by

four or more Business Days.

- c. Failure to meet minimum staffing and shift requirements for the Men's Central Jail and Century Station repair locations in accordance with Attachment 3 (Repair Locations and Minimum Staffing Requirements) to Exhibit A (Statement of Work) and Paragraph 13.2.4 (Minimum Staffing Levels at Men's Central Jail, Century Station, Eastern Avenue, and Pitchess Detention Center) of Exhibit A (Statement of Work) to this Contract, in excess of three hours. Contractor must document any minimum staffing and shift requirement shortages and deduct from the monthly Fixed-Price invoice the automatic deduction amount of \$30 for each fourth and subsequent business hour, per employee, per Business Day, per repair location. County Contract Program Monitors may also document such shortages, at the County's discretion, for auditing purposes and to ensure correct invoice billing. Contractor may request, in writing, a waiver from County Project Manager, for each Business Day there is a failure to meet the requirements of this Paragraph 8.26.5(c). County Project Manager may, at their discretion, elect to waive the automatic deduction for that Business Day per Contractor's request.
- d. Exceeding the compliance requirement of the three to 15 Business-Day repair time requirements set forth in Paragraph 4.12 (Specific Repair Time Requirements) of Exhibit A (Statement of Work) to this Contract for all Vehicles and equipment, excluding on-road patrol motorcycles, by more than ten Business Days, as documented in Contractor generated reports, results in automatic deductions from the monthly Fixed-Price billing invoice. County Contract Program Monitors may run concurrent reports, at the County's discretion, for auditing purposes. The automatic deductions begin on the eleventh and subsequent continuous Business Days and are to be calculated based on the Fixed-Price or Fee-for-Service repair times per Business Day, for the number of Vehicles and equipment exceeding the compliance requirement. The automatic deduction amount is \$50 per vehicle and/or equipment, per Business Day, for the number of such vehicles and equipment exceeding the compliance requirement by 11 or more Business Days.

### **8.27 Most Favored Public Entity**

If Contractor's prices decline, or if Contractor at any time during the term of this Contract provide the same goods or Services under similar quantity and delivery conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in this Contract, then such lower prices must be immediately extended to the County. The County will have the right, at the County's expense, to utilize a County auditor or an independent auditor to verify Contractor's compliance with this Paragraph 8.27 (Most Favored Public Entity) by review of Contractor's books and records.

## **8.28 Nondiscrimination and Affirmative Action**

- 8.28.1 Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and must be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable federal and state anti-discrimination laws and regulations.
- 8.28.2 Contractor certifies to the County each of the following:
- a. That Contractor has a written policy statement prohibiting discrimination in all phases of employment,
  - b. That Contractor periodically conducts a self-analysis or utilization analysis of its work force,
  - c. That Contractor has a system for determining if its employment practices are discriminatory against protected groups, and
  - d. Where problem areas are identified in employment practices, that Contractor has a system for taking reasonable corrective action, to include establishment of goals or timetables.
- 8.28.3 Contractor must take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable federal and state anti-discrimination laws and regulations. Such action must include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- 8.28.4 Contractor certifies and agrees that it will deal with its Subcontractors, bidders, or vendors without regard to, or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.
- 8.28.5 Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies will comply with all applicable federal and state laws and regulations to the end that no person will, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.
- 8.28.6 Contractor must allow County representatives access to Contractor's employment records during regular business hours to verify compliance with the provisions of this Paragraph 8.28 (Nondiscrimination and Affirmative Action) when requested by the County.

- 8.28.7 If the County finds that any provisions of this Paragraph 8.28 (Nondiscrimination and Affirmative Action) have been violated, such violation will constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. While the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated. In addition, a determination by the California Civil Rights Department or the Federal Equal Employment Opportunity Commission that Contractor has violated Federal or State anti-discrimination laws or regulations will constitute a finding by the County that Contractor has violated the anti-discrimination provisions of this Contract.
- 8.28.8 The parties agree that in the event Contractor violates any of the anti-discrimination provisions of this Contract, the County will, at its sole option, be entitled to the sum of \$500 for each such violation pursuant to [California Civil Code Section 1671](#) as liquidated damages in lieu of terminating or suspending this Contract.
- 8.28.9 The terms and procedures of this Paragraph 8.28 (Nondiscrimination and Affirmative Action) will also apply to Subcontractors, consultants and partners of Contractor performing Work under this Contract.

### **8.29 Non-Exclusivity**

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

### **8.30 Notice of Delays**

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

### **8.31 Notice of Disputes**

Contractor will bring to the attention of County Project Manager any dispute between the County and Contractor regarding the performance of Services as stated in this Contract. If County Project Manager is not able to resolve the dispute, the Sheriff or his designee, will resolve it.

### **8.32 Notice to Employees Regarding the Federal Earned Income Credit**

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

### **8.33 Notices**

All notices or demands required or permitted to be given or made under this Contract must be in writing and must be hand delivered with signed receipt or mailed by first class registered or certified mail, postage prepaid, addressed to the parties as identified in Exhibit C (County's Administration) and Exhibit D (Contractor's Administration) to this Contract. Addresses may be changed by either party giving ten Days prior written notice thereof to the other party. County Project Director will have the authority to issue all notices or demands required or permitted by the County under this Contract.

### **8.34 Prohibition Against Inducement or Persuasion**

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

### **8.35 Public Records Act**

8.35.1 Any documents submitted by Contractor; all information obtained in connection with the County's right to audit and inspect Contractor's documents, books, and accounting records pursuant to Paragraph 8.37 (Record Retention and Inspection-Audit Settlement) below; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the County. All such documents become a matter of public record and will be regarded as public records except for those documents determined to be non-disclosable or exempt pursuant to [California Government Code sections 7921.000](#) et seq. and which are marked "trade secret", "confidential", or "proprietary". The County will not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

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

### **8.36 Publicity**

8.36.1 Contractor will not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing Contractor's need to identify its Services and related clients to sustain itself, the County will not inhibit Contractor from publishing its role under this Contract within the following

conditions:

- a. Contractor must develop all publicity material in a professional manner, and
- b. During the term of this Contract, Contractor must not, and must not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name or any seals of the County or its departments without the prior written consent of County Project Director. The County will not unreasonably withhold consent.

8.36.2 Contractor may, without the prior written consent of the County, indicate in its proposals and sales materials that it has been awarded this Contract with the County, provided that the requirements of this Paragraph 8.36 (Publicity) will apply.

### **8.37 Record Retention and Inspection-Audit Settlement**

8.37.1 Contractor must maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. Contractor must also maintain accurate and complete employment and other records relating to its performance of this Contract. Contractor agrees that the County, or its authorized representatives, will have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Contract. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, must be kept and maintained by Contractor and must be made available to the County during the term of this Contract and for a period of five years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material must be maintained by Contractor at a location in the County, provided that if any such material is located outside the County, then, at the County's option, Contractor must pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

8.37.2 In the event that an audit of Contractor is conducted specifically regarding this Contract by any federal or state auditor, or by any auditor or accountant employed by Contractor or otherwise, then Contractor must file a copy of such audit report with the County's Auditor Controller within 30 Days of Contractor's receipt thereof, unless otherwise provided by applicable federal or state law or under this Contract. Subject to applicable law, the County will make a reasonable effort to maintain the confidentiality of such audit report(s).

8.37.3 Failure on the part of Contractor to comply with any of the provisions of

this Paragraph 8.37 (Record Retention and Inspection-Audit Settlement) will constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.

- 8.37.4 If, at any time during the term of this Contract or within five years after the expiration or termination of this Contract, representatives of the County conduct an audit of Contractor regarding the Work performed under this Contract, and if such audit finds that the County's dollar liability for any such Work is less than payments made by the County to Contractor, then the difference will be either: a) repaid by Contractor to the County by cash payment upon demand, or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to Contractor from the County, whether under this Contract or otherwise. If such audit finds that the County's dollar liability for such Work is more than the payments made by the County to Contractor, then the difference will be paid to Contractor by the County by cash payment, provided that in no event will the County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose of this Contract.
- 8.37.5 In addition to the above, Contractor agrees, should the County or its authorized representatives determine, at the County's sole discretion, that it is necessary or appropriate to review a broader scope of Contractor's records (including, certain records related to non-County contracts) to enable the County to evaluate Contractor's compliance with the County's Living Wage Program, that Contractor will promptly and without delay provide to the County, upon the written request of the County or its authorized representatives, access to and the right to examine, audit, excerpt, copy, or transcribe any and all transactions, activities, or records relating to any of its employees who have provided Services to the County under this Contract, including without limitation, records relating to Work performed by said employees on Contractor's non-County contracts. Contractor further acknowledges that the foregoing requirement in this Paragraph 8.37.5 relative to Contractor's employees who have provided Services to the County under this Contract is for the purpose of enabling the County at its discretion to verify Contractor's full compliance with and adherence to California labor laws and the County's Living Wage Program. All such materials and information, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, will be kept and maintained by Contractor and will be made available to the County during the term of this Contract and for a period of five years thereafter unless the County's written permission is given to dispose of any such materials and information prior to such time. All such materials and information will be maintained by Contractor at a location in the County, provided that if any such materials and information is located outside the County, then, at the County's option, Contractor will pay the County for travel, per diem, and other costs incurred by the County to examine, audit,

excerpt, copy, or transcribe such materials and information at such other location.

### **8.38 Recycled Bond Paper**

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

### **8.39 Subcontracting**

- 8.39.1 The requirements of this Contract may not be subcontracted by Contractor **without the advance approval of the County**. Any attempt by Contractor to Subcontract without the prior consent of the County may be deemed a material breach of this Contract.
- 8.39.2 If Contractor desires to Subcontract, Contractor must provide the following information promptly at the County's request:
  - a. A description of the Work to be performed by the Subcontractor,
  - b. A draft copy of the proposed Subcontract, and
  - c. Other pertinent information and/or certifications requested by the County.
- 8.39.3 Contractor must indemnify, defend, and hold the County harmless with respect to the activities of each and every Subcontractor in the same manner and to the same degree as if such Subcontractor(s) were Contractor employees.
- 8.39.4 Contractor must remain fully responsible for all performances required of it under this Contract, including those that Contractor has determined to Subcontract, notwithstanding the County's approval of Contractor's proposed Subcontract.
- 8.39.5 The County's consent to Subcontract will not waive the County's right to prior and continuing approval of any and all personnel, including Subcontractor employees, providing Services under this Contract. Contractor is responsible to notify its Subcontractors of this County right.
- 8.39.6 County Project Director is authorized to act for and on behalf of the County with respect to approval of any Subcontract and Subcontractor employees. After approval of the Subcontract by the County, Contractor must forward a fully executed Subcontract to the County for their files.
- 8.39.7 Contractor will be solely liable and responsible for all payments or other compensation to all Subcontractors and their officers, employees, agents, and successors in interest arising through Services performed hereunder, notwithstanding the County's consent to Subcontract.
- 8.39.8 Contractor must obtain certificates of insurance, which establish that the Subcontractor maintains all the programs of insurance required by the County from each approved Subcontractor. Before any Subcontractor

employee may perform any Work hereunder, Contractor must ensure delivery of all such documents to County Contract Analyst as designated in Exhibit C (County's Administration) to this Contract.

#### **8.40 Termination for Breach of Warranty to Maintain Compliance with County's Child Support Compliance Program**

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 8.14 (Contractor's Warranty of Adherence to County's Child Support Compliance Program) above, will constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of Contractor to cure such default within 90 Days of written notice will be grounds upon which the County may terminate this Contract pursuant to Paragraph 8.42 (Termination for Default) below, and pursue debarment of Contractor, pursuant to [County Code Chapter 2.202](#).

#### **8.41 Termination for Convenience**

8.41.1 This Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the County, at its sole discretion, to be in its best interest. Termination of Work hereunder will be effectuated by notice of termination to Contractor specifying the extent to which performance of Work is terminated and the date upon which such termination becomes effective. The date upon which such termination becomes effective will be no less than ten Days after the notice is sent.

8.41.2 After receipt of a notice of termination and except as otherwise directed by the County, Contractor must:

- a. Stop Work under this Contract on the date and to the extent specified in such notice, and
- b. Complete performance of such part of the Work, as well as Work not affected by the notice, using the same quality of Work, as if Contractor had not been terminated by such notice.

8.41.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of Contractor under this Contract must be maintained by Contractor in accordance with Paragraph 8.37 (Record Retention and Inspection-Audit Settlement) above.

#### **8.42 Termination for Default**

8.42.1 The County may, by written notice to Contractor, terminate the whole or any part of this Contract, if:

- a. Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, Service, or other Work required either under this Contract, or
- b. Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or
- c. Contractor fails to make progress as to endanger performance of this

Contract in accordance with its terms, or

- d. Contractor in performance of Work under this Contract fails to comply with the requirements of this Contract, including but not limited to Exhibit A (Statement of Work), or
- e. Contractor fails to perform or comply with any other provisions of this Contract or materially breaches this Contract; and unless a shorter cure period is expressly provided in this Contract, does not cure such failure or fails to correct such failure or breach within five Business Days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure or breach, except that Contractor must be entitled to any cure period, and the County may terminate immediately, in the event that Contractor's failure to perform or comply is not reasonably capable of being cured.

8.42.2 In the event that the County terminates this Contract in whole or in part as provided in Paragraph 8.42.1 above, the County may procure, upon such terms and in such manner as the County may deem appropriate, goods and Services similar to those so terminated. Contractor will be liable to the County for any and all excess costs incurred by the County, as determined by the County, for such similar goods and Services. Contractor will continue the performance of this Contract to the extent not terminated under the provisions of this Paragraph 8.42 (Termination for Default).

8.42.3 Except with respect to defaults of any Subcontractor, Contractor will not be liable for any such excess costs of the type identified in Paragraph 8.42.2 above, if its failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of Contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the County in either its sovereign or contractual capacity, acts of federal or state government in its sovereign capacities, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, civil disorders, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both Contractor and Subcontractor, and without the fault or negligence of either of them, Contractor will not be liable for any such excess costs for failure to perform, unless the goods or Services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required performance schedule. As used in this Paragraph, the term "Subcontractor(s)" means Subcontractor(s) at any tier.

8.42.4 If, after the County has given notice of termination under the provisions of this Paragraph 8.42 (Termination for Default), it is determined by the County that Contractor was not in default, or that the default was

excusable, the rights and obligations of the parties will be the same as if the notice of termination had been issued pursuant to Paragraph 8.41 (Termination for Convenience) above.

- 8.42.5 The rights and remedies of the County provided in this Paragraph 8.42 (Termination for Default) are not exclusive and are in addition to any other rights and remedies provided by law and/or under this Contract.

### **8.43 Termination for Improper Consideration**

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

### **8.44 Termination for Insolvency**

- 8.44.1 The County may terminate this Contract forthwith in the event of the occurrence of any of the following:
- a. Insolvency of Contractor. Contractor will be deemed to be insolvent if it has ceased to pay its debts for at least 60 Days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not Contractor is insolvent within the meaning of the Federal Bankruptcy Code,
  - b. The filing of a voluntary or involuntary petition regarding Contractor under the Federal Bankruptcy Code,
  - c. The appointment of a Receiver or Trustee for Contractor, or
  - d. The execution by Contractor of a general assignment for the benefit of creditors.
- 8.44.2 The rights and remedies of the County provided in this Paragraph 8.44 (Termination for Insolvency) will not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

#### **8.45 Termination for Non-Adherence of County Lobbyist Ordinance**

Contractor, and each County Lobbyist or County Lobbying firm (as defined in [County Code Section 2.160.010](#)) retained by Contractor, must fully comply with the County's Lobbyist Ordinance, [County Code Chapter 2.160](#). Failure on the part of Contractor or any County Lobbyist or County Lobbying firm retained by Contractor to fully comply with the County's Lobbyist Ordinance will constitute a material breach of this Contract, upon which the County may at its sole discretion, immediately terminate or suspend this Contract.

#### **8.46 Termination for Non-Appropriation of Funds**

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

#### **8.47 Validity**

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

#### **8.48 Waiver**

No waiver by the County of any breach of any provision of this Contract will constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Contract will not be construed as a waiver thereof. The rights and remedies set forth in this Paragraph 8.48 will not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

#### **8.49 Warranty Against Contingent Fees**

8.49.1 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business.

8.49.2 For breach of this warranty, the County will have the right to terminate this Contract and, at its sole discretion, deduct from this Contract price the consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

## **8.50 Warranty of Compliance with County's Defaulted Property Tax Reduction Program**

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

8.50.2 Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with [Los Angeles County Code Chapter 2.206](#).

## **8.51 Termination for Breach of Warranty to Maintain Compliance with County's Defaulted Property Tax Reduction Program**

Failure of Contractor to maintain compliance with the requirements set forth in Paragraph 8.50 (Warranty of Compliance with County's Defaulted Property Tax Reduction Program) above will constitute default under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure of Contractor to cure such default within ten Days of notice will be grounds upon which the County may terminate this Contract and/or pursue debarment of Contractor, pursuant to [County Code Chapter 2.206](#).

## **8.52 Time Off for Voting**

Contractor must notify its employees and must require each Subcontractor to notify and provide to its employees, information regarding the time off for voting law ([Elections Code Section 14000](#)). Not less than ten Days before every statewide election, every Contractor and Subcontractor must keep posted conspicuously at the place of work, if practicable, or elsewhere where it can be seen as employees come or go to their place of work, a notice setting forth the provisions of [California Elections Code Section 14000](#).

## **8.53 Compliance with County's Zero Tolerance Policy on Human Trafficking**

8.53.1 Contractor acknowledges that the County has established a Zero Tolerance Policy on Human Trafficking prohibiting Contractors from engaging in human trafficking.

8.53.2 If a Contractor or member of Contractor's staff is convicted of a human trafficking offense, the County will require that Contractor or member of Contractor's staff be removed immediately from performing Services under this Contract. The County will not be under any obligation to disclose confidential information regarding the offenses other than those required by law.

8.53.3 Disqualification of any member of Contractor's staff pursuant to this Paragraph 8.53 (Compliance with County's Zero Tolerance Policy on Human Trafficking) will not relieve Contractor of its obligation to complete all Work in accordance with the terms and conditions of this Contract.

#### **8.54 Termination Transition Services**

Contractor agrees that in the event of any termination of the Contract, including expiration, breach thereof by either party, or for any other reason, Contractor must fully cooperate with the County in the transition of Services by the County to a successor contractor prior to the termination date, which date will be solely determined by the County. The transition period will be sufficient length to ensure the Department or a successor contractor, as applicable, can perform uninterrupted delivery of Services. During the transition, Contractor must work with the successor contractor to ensure the continuation of uninterrupted Service delivery. Contractor must provide transition Services at its own expense.

#### **8.55 Compliance with Fair Chance Employment Hiring Practices**

Contractor, and its Subcontractors, must comply with fair chance employment hiring practices set forth in [California Government Code Section 12952](#) and [Chapter 8.300 of the County Code \(Fair Chance Ordinance for Employers\)](#). Contractor's violation of this Paragraph 8.55 may constitute a material breach of this Contract. In the event of such material breach, the County may, at its sole discretion, terminate this Contract.

#### **8.56 Compliance with the County Policy of Equity**

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

#### **8.57 Prohibition from Participation in Future Solicitation(s)**

A Proposer, or a Contractor, or its subsidiary or Subcontractor ("Proposer/Contractor"), is prohibited from submitting a bid or proposal in a County solicitation if the Proposer/Contractor has provided advice or consultation for the solicitation. A Proposer/Contractor is also prohibited from submitting a bid or proposal in a County solicitation if the Proposer/Contractor has assisted in developing or preparing any of the solicitation materials on behalf of the County. A violation of this provision will result in the disqualification of the Contractor/Proposer from participation in the County solicitation or the termination or cancellation of any resultant County Contract. This provision will survive the expiration or termination of this Contract.

#### **8.58 Injury and Illness Prevention Program**

Contractor will be required to comply with the State of California's OSHA

(Cal/OSHA)'s regulations. [California Code of Regulations Title 8 Section 3203](#) requires all California employers to have a written, effective Injury and Illness Prevention Program (IIPP) that addresses hazards pertaining to the particular workplace covered by the program.

## **8.59 Campaign Contribution Prohibition Following Final Decision in Contract Proceeding**

Pursuant to [Government Code Section 84308](#), Contractor and its Subcontractors are prohibited from making a contribution of more than \$500 to a County officer for 12 months after the date of the final decision in the proceeding involving this Contract. Failure to comply with the provisions of [Government Code Section 84308](#) and of this Paragraph 8.59 may be a material breach of this Contract, as determined at the sole discretion of the County.

## **9.0 UNIQUE TERMS AND CONDITIONS**

### **9.1 Compliance with County's Living Wage Program**

#### **9.1.1 Living Wage Program**

This Contract is subject to the provisions of the County's ordinance entitled [Living Wage Program as codified in Sections 2.201.010 through 2.201.100 of the County Code](#).

#### **9.1.2 Payment of Living Wage Rates**

9.1.2.1 Unless Contractor has demonstrated to the County's satisfaction either that Contractor is not an "Employer" as defined under the Program ([Section 2.201.020 of the County Code](#)) or that Contractor qualifies for an exception to the Living Wage Program ([Section 2.201.090 of the County Code](#)), Contractor must pay its employees no less than the applicable hourly living wage rate for the employees' Services provided to the County, including, without limitation, "Travel Time," as defined below.

9.1.2.2 For purposes of this Paragraph 9.1.2 (Payment of Living Wage Rates), "Contractor" includes any Subcontractor engaged by Contractor to perform Services for the County under this Contract. If Contractor uses any Subcontractor to perform Services for the County under this Contract, Subcontractor will be subject to the provisions of this Paragraph 9.1.2 (Payment of Living Wage Rates). The provisions of this Paragraph 9.1.2 (Payment of Living Wage Rates) must be inserted into any such Subcontract and a copy of the Living Wage Program must be attached to the Subcontract. "Employee" means any individual, who is an employee of Contractor under the laws of California, and who is providing full-time or part-time Services to Contractor, which are provided to the County under this Contract. "Full-time" means a minimum of 40 hours worked per

week, or a lesser number of hours, if the lesser number is a recognized-industry standard and is approved as such by the County; however, fewer than 35 hours worked per week will not, in any event, be considered full-time.

9.1.2.3 If Contractor is required to pay a living wage when this Contract commences, Contractor must continue to pay a living wage for the entire term of this Contract, including any option period.

9.1.2.4 If Contractor is not required to pay a living wage when this Contract commences, Contractor will have a continuing obligation to review the applicability of its "exemption status" from the living wage requirement. Contractor must immediately notify the County if Contractor at any time either comes within the Living Wage Program's definition of "Employer" or if Contractor no longer qualifies for the exception to the Living Wage Program. In either event, Contractor will immediately be required to commence paying the living wage and will be obligated to pay the living wage for the remaining term of this Contract, including any option period. The County may also require, at any time during this Contract and at its sole discretion, that Contractor demonstrate to the County's satisfaction that Contractor either continues to remain outside of the Living Wage Program's definition of "Employer" and/or that Contractor continues to qualify for the exception to the Living Wage Program. Unless Contractor satisfies this requirement within the time frame permitted by the County, Contractor will immediately be required to pay the living wage for the remaining term of this Contract, including any option period.

9.1.2.5 For purposes of Contractor's obligation to pay its employees the applicable hourly living wage rate under this Contract, "Travel Time" will have the following two meanings, as applicable: a) With respect to travel by an employee that is undertaken in connection with this Contract, Travel Time will mean any period during which an employee physically travels to or from a County facility if Contractor pays the employee any amount for that time or if California law requires Contractor to pay the employee any amount for that time; and b) With respect to travel by an employee between County facilities that are subject to two different Contracts between Contractor and the County (of which both Contracts are subject to the Living Wage Program), Travel Time will mean any period during which an employee physically travels to or from, or between such County facilities if Contractor pays the employee any amount for that time or if California law requires Contractor to pay the employee any amount for that time.

### **9.1.3 Contractor's Submittal of Certified Monitoring Reports**

Contractor must submit to the County certified monitoring reports at a frequency instructed by the County. The certified monitoring reports must list all of Contractor's employees during the reporting period. The certified monitoring reports must also verify the number of hours worked and the hourly wage rate paid, for each of its employees. All certified monitoring reports must be submitted on forms provided in Exhibit F (Payroll Statement of Compliance) to this Contract, or other form(s) approved by the County which contains the above information. The County reserves the right to request any additional information it may deem necessary. If the County requests additional information, Contractor must promptly provide such information. Contractor, through one of its officers, must certify under penalty of perjury that the information contained in each certified monitoring report is true and accurate.

### **9.1.4 Contractor's Ongoing Obligation to Report Labor Law-Payroll Violations and Claims**

During the term of this Contract, if Contractor becomes aware of any labor law-payroll violation or any complaint, investigation or proceeding ("claim") concerning any alleged labor law-payroll violation (including but not limited to any violation or claim pertaining to wages, hours and working conditions such as minimum wage, prevailing wage, living wage, the Fair Labor Standards Act, employment of minors, or unlawful employment discrimination), Contractor must immediately inform the County of any pertinent facts known by Contractor regarding same. This disclosure obligation is not limited to any labor law-payroll violation or claim arising out of Contractor's Contract with the County but instead applies to any labor law-payroll violation or claim arising out of any of Contractor's operations in California.

### **9.1.5 County Auditing of Contractor Records**

Upon a minimum of 24-hour written notice, the County may audit, at Contractor's place of business, any of Contractor's records pertaining to this Contract, including all documents and information relating to the certified monitoring reports. Contractor is required to maintain all such records in California until the expiration of four years from the date of final payment under this Contract. Authorized agents of the County must have access to all such records during normal business hours for the entire period that records are to be maintained.

### **9.1.6 Notifications to Employees**

Contractor must place the County-provided living wage notice at each of Contractor's places of business and locations where Contractor's employees are working. Contractor must also distribute the County-provided notice to each of its employees at least once per year. Contractor must translate the notice into any other language spoken by a significant

number of Contractor's employees.

**9.1.7 Enforcement and Remedies**

If Contractor fails to comply with the requirements of this Paragraph 9.1 (Compliance with County's Living Wage Program), the County will have the rights and remedies described in this Paragraph in addition to any rights and remedies provided by law or equity.

**a. Remedies for Submission of Late or Incomplete Certified Monitoring Reports**

If Contractor submits a certified monitoring report to the County after the date it is due or if the report submitted does not contain all of the required information or is inaccurate or is not properly certified, any such deficiency will constitute a breach of this Contract. In the event of any such breach, the County may, at its sole discretion, exercise any or all of the following rights/remedies:

**i. Withholding of Payment**

If Contractor fails to submit accurate, complete, timely and properly certified monitoring reports, the County may withhold from payment to Contractor up to the full amount of any invoice that would otherwise be due, until Contractor has satisfied the concerns of the County, which may include required submittal of revised certified monitoring reports or additional supporting documentation.

**ii. Liquidated Damages**

It is mutually understood and agreed that Contractor's failure to submit an accurate, complete, timely and properly certified monitoring report will result in damages being sustained by the County. It is also understood and agreed that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein are the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damages are not intended as a penalty or forfeiture for Contractor's breach. Therefore, in the event that a certified monitoring report is deficient, including, but not limited to, being late, inaccurate, incomplete or uncertified, it is agreed that the County may, at its sole discretion, assess against Contractor liquidated damages in the amount of \$100 per monitoring report for each day until the County has been provided with a properly prepared, complete and certified monitoring report. The County may deduct any assessed liquidated damages from any payments otherwise due to Contractor.

**iii. Termination**

Contractor's continued failure to submit accurate, complete, timely and properly certified monitoring reports may constitute a material

breach of this Contract. In the event of such material breach, the County may, at its sole discretion, terminate this Contract.

**b. Remedies for Payment of Less Than the Required Living Wage**

If Contractor fails to pay any employee at least the applicable hourly living wage rate, such deficiency will constitute a breach of this Contract. In the event of any such breach, the County may, at its sole discretion, exercise any or all of the following rights/remedies:

**i. Withholding Payment**

The County may withhold from any payment otherwise due to Contractor the aggregate difference between the living wage amounts Contractor was required to pay its employees for a given pay period and the amount actually paid to the employees for that pay period. The County may withhold this amount until Contractor has satisfied the County that any underpayment has been cured, which may include required submittal of revised certified monitoring reports or additional supporting documentation.

**ii. Liquidated Damages**

It is mutually understood and agreed that Contractor's failure to pay any of its employees at least the applicable hourly living wage rate will result in damages being sustained by the County. It is also understood and agreed that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein are the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damages are not intended as a penalty or forfeiture for Contractor's breach. Therefore, it is agreed that the County may, at its sole discretion, assess against Contractor liquidated damages of \$50 per employee per Day for each and every instance of an underpayment to an employee. The County may deduct any assessed liquidated damages from any payments otherwise due Contractor.

**iii. Termination**

Contractor's continued failure to pay any of its employees the applicable hourly living wage rate may constitute a material breach of this Contract. In the event of such material breach, the County may, at its sole discretion, terminate this Contract.

**c. Debarment**

In the event Contractor breaches a requirement of this Paragraph 9.1 (Compliance with County's Living Wage Program), the County may, at its sole discretion, bar Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach, in accordance with [County Code, Chapter 2.202](#),

Determinations of Contractor Non-Responsibility and Contractor Debarment.

**9.1.8 Use of Full-Time Employees**

Contractor must assign and use full-time employees of Contractor to provide Services under this Contract unless Contractor can demonstrate to the satisfaction of the County that it is necessary to use non-full-time employees based on staffing efficiency or County requirements for the Work to be performed under this Contract. It is understood and agreed that Contractor must not, under any circumstance, use non-full-time employees for Services provided under this Contract unless and until the County has provided written authorization for the use of same. Contractor submitted with its proposal a full-time employee staffing plan. If Contractor changes its full-time employee staffing plan, Contractor must immediately provide a copy of the new staffing plan to the County.

**9.1.9 Contractor Retaliation Prohibited**

Contractor and/or its employees must not take any adverse action which would result in the loss of any benefit of employment, any contract benefit, or any statutory benefit for any employee, person or entity who has reported a violation of the Living Wage Program to the County or to any other public or private agency, entity or person. A violation of the provisions of this Paragraph 9.1 (Compliance with County’s Living Wage Program) may constitute a material breach of this Contract. In the event of such material breach, the County may, at its sole discretion, terminate this Contract.

**9.1.10 Contractor Standards**

During the term of this Contract, Contractor must maintain business stability, integrity in employee relations and the financial ability to pay a living wage to its employees. If requested to do so by the County, Contractor must demonstrate to the satisfaction of the County that Contractor is complying with this requirement.

**9.1.11 Employee Retention Rights**

- a. Contractor must offer employment to all retention employees who are qualified for such jobs. A “retention employee” is an individual:
  - i. Who is not an exempt employee under the minimum wage and maximum hour exemptions defined in the federal Fair Labor Standards Act, and
  - ii. Who has been employed by a Contractor under a predecessor Proposition A contract or a predecessor cafeteria services contract with the County for at least six months prior to the date of this Contract, which predecessor contract was terminated by the County prior to its expiration, and
  - iii. Who is or will be terminated from their employment as a result of

the County entering into this Contract.

- b. Contractor will not be required to hire a retention employee who:
  - i. Has been convicted of a crime related to the job or his or her performance, or
  - ii. Fails to meet any other County requirement for employees of a Contractor.
- c. Contractor must not terminate a retention employee for the first 90 Days of employment under this Contract, except for cause. Thereafter, Contractor may retain a retention employee on the same terms and conditions as Contractor's other employees.

#### **9.1.12 Neutrality in Labor Relations**

Contractor must not use any consideration received under this Contract to hinder, or to further, organization of, or collective bargaining activities by or on behalf of Contractor's employees, except that this restriction will not apply to any expenditure made in the course of good faith collective bargaining, or to any expenditure pursuant to obligations incurred under a bona fide collective bargaining Contract, or which would otherwise be permitted under the provisions of the National Labor Relations Act.

### **9.2 Equitable Access to Healthcare for Controlled Employees**

On April 4, 2023, the Board passed the Equitable Access to Healthcare for Contracted Employees Motion (Motion) directing County departments, to:

Develop and implement a policy mandating that all new Proposition A Contracts require 100% employer-paid healthcare premiums for employees, who work 30 hours or more per week, at the minimum actuarial value of the ACA Gold Plan coverage

#### **9.2.1 Employer Paid Healthcare Premiums**

Contractor hereby agrees to comply with the Motion during the term of this Contract and to provide 100% employer-paid healthcare premiums for Contractor's employees, who work 30 or more hours per week providing Services under this Contract and elect to accept the healthcare benefits offered by Contractor, at the minimum actuarial value of the ACA Gold Plan at no cost to the employees.

### **9.3 Labor Peace Agreements**

- 9.3.1 Contractor must implement and must ensure that each Subcontractor implement, prior to providing any Services under this Contract, a Labor Peace Agreement, which must be maintained for the term of this Contract. As used herein, a "Labor Peace Agreement" is a written agreement between Contractor or any of its Subcontractors and a labor organization representing their employees that contains a provision prohibiting the labor organization and its members from engaging in any picketing, work stoppage, boycott or any other economic interference with the Services

provided for the County under this Contract.

- 9.3.2 Contractor, therefore, represents and warrants that a) it and each of its Subcontractors that may provide Services under this Contract must execute prior to provision of Services and maintain during the term of this Contract a Labor Peace Agreement with any labor organization representing or seeking to represent the employees of Contractor or any such Subcontractor; b) it will have submitted to the County a copy of evidence of each such executed Labor Peace Agreement; and c) such Labor Peace Agreements must prohibit during the term of this Contract labor organizations and their members from engaging in picketing, work stoppage, boycotts or any other economic interference with the business of the County, including County facilities and other Service sites services under this Contract.
- 9.3.3 Contractor acknowledges and agrees a) that failure by Contractor or any of its Subcontractors to enter into and maintain during the term of this Contract a Labor Peace Agreement will be deemed a material breach of this Contract, entitling the County to terminate this Contract for default; and b) that it would be impracticable and extremely difficult to ascertain the actual damages resulting from such breach, also entitling the County to liquidated damages in accordance with the provisions this Contract in addition to any other rights and remedies otherwise available at law or in equity.
- 9.3.4 Notwithstanding any breach of a Labor Peace Agreement by a labor organization representing or seeking to represent the employees of Contractor or any Subcontractor that may provide Services under this Contract or by any of such labor organization's members, Contractor must remain fully responsible for meeting the requirements of this Contract, including supplying sufficient personnel for provision of Services thereunder.
- 9.3.5 The requirements of this provision apply to the extent the employees of Contractor and/or any of its Subcontractors are represented by a labor organization as of the effective date or during the term of this Contract.

#### **9.4 Ownership of Materials, Software and Copyright**

- 9.4.1 The County will be the sole owner of all right, title and interest, including copyright, in and to all software, plans, diagrams, facilities, and tools (hereafter "materials") which are originated or created through Contractor's Work pursuant to this Contract. Contractor, for valuable consideration herein provided, must execute all documents necessary to assign and transfer to, and vest in the County all of Contractor's right, title and interest in and to such original materials, including any copyright, patent and trade secret rights which arise pursuant to Contractor's Work under this Contract.

- 9.4.2 During the term of this Contract and for five years thereafter, Contractor must maintain and provide security for all of Contractor's working papers prepared under this Contract. The County will have the right to inspect, copy and use at any time during and subsequent to the term of this Contract, any and all such working papers and all information contained therein.
- 9.4.3 Any and all materials, software and tools which are developed or were originally acquired by Contractor outside the scope of this Contract, which Contractor desires to use hereunder, and which Contractor considers to be proprietary or confidential, must be specifically identified by Contractor to County Project Manager as proprietary or confidential, and must be plainly and prominently marked by Contractor as "Proprietary" or "Confidential" on each appropriate page of any document containing such material.
- 9.4.4 The County will use reasonable means to ensure that Contractor's proprietary and/or confidential items are safeguarded and held in confidence. The County agrees not to reproduce, distribute or disclose to non-County entities any such proprietary and/or confidential items without the prior written consent of Contractor.
- 9.4.5 Notwithstanding any other provision of this Contract, the County will not be obligated to Contractor in any way under Paragraph 9.3.4 above for any of Contractor's proprietary and/or confidential items which are not plainly and prominently marked with restrictive legends as required by Paragraph 9.3.3 above or for any disclosure which the County is required to make under any state or federal law or order of court.

## **9.5 Patent, Copyright and Trade Secret Indemnification**

- 9.5.1 Contractor must indemnify, hold harmless and defend the County from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, for or by reason of any actual or alleged infringement of any third party's patent or copyright, or any actual or alleged unauthorized trade secret disclosure, arising from or related to the operation and utilization of Contractor's Work under this Contract. The County will inform Contractor as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure and will support Contractor's defense and settlement thereof.
- 9.5.2 In the event any equipment, part thereof, or software product becomes the subject of any complaint, claim, or proceeding alleging infringement or unauthorized disclosure, such that the County's continued use of such item is formally restrained, enjoined, or subjected to a risk of damages, Contractor, at its sole expense, and providing that the County's continued use of the system is not materially impeded, must either:
- a. Procure for the County all rights to continued use of the questioned equipment, part, or software product, or

- b. Replace the questioned equipment, part, or software product with a non-questioned item, or
  - c. Modify the questioned equipment, part, or software so that it is free of claims.
- 9.5.3 Contractor will have no liability if the alleged infringement or unauthorized disclosure is based upon a use of the questioned product, either alone or in combination with other items not supplied by Contractor, in a manner for which the questioned product was not designed nor intended.

## **9.6 Data Destruction**

- 9.6.1 Contractor(s) that have maintained, processed, or stored the County's data and/or information, implied or expressed, have the sole responsibility to certify that the data and/or information have been appropriately destroyed consistent with the National Institute of Standards and Technology (NIST) Special Publication SP 800-88 titled Guidelines for Media Sanitization as directed here:
- <http://csrc.nist.gov/publications/PubsDrafts.html#SP-800-88 Rev.%201>.
- 9.6.2 The data and/or information may be stored on purchased, leased, or rented electronic storage equipment (e.g., printers, hard drives) and electronic devices (e.g., servers, workstations) that is geographically located within the County, or outside the County's boundaries. The County must receive, within ten Business Days, a signed document from Contractor(s) that certifies and validates the data and/or information was placed in one or more of the following stored states: unusable, unreadable, and indecipherable. All such material must remain in the Continental United States.
- 9.6.3 Contractor must certify that any County data stored on purchased, leased, or rented electronic storage equipment and electronic devices, including, but not limited to: printers, hard drives, servers, and/or workstations are destroyed consistent with the current National Institute of Standard and Technology (NIST) Special Publication SP-800-88, Guidelines for Media Sanitization. Contractor must provide the County with written certification, within ten Business Days of removal of any electronic storage equipment and devices that validates that any and all County data was destroyed and is unusable, unreadable, and/or undecipherable.
- 9.6.4 Notwithstanding any other remedy in this Contract, the above penalties also apply to any business that has previously obtained proper certification, however, as a result of a change in its status, is no longer eligible for certification, and fails to notify the State and the Department of Consumer and Business Affairs of this information prior to responding to a solicitation or accepting a contract award.

## **9.7 Local Small Business Enterprise (LSBE) Preference Program**

- 9.7.1 This Contract is subject to the provisions of the County's ordinance

entitled LSBE Preference Program, as codified in [Chapter 2.204 of the County Code](#).

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

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

## **9.8 Social Enterprise (SE) Preference Program**

- 9.8.1 This Contract is subject to the provisions of the County's ordinance entitled SE Preference Program, as codified in [Chapter 2.205 of the County Code](#).
- 9.8.2 Contractor must not knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain certification as a SE.
- 9.8.3 Contractor must not willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the

certification or denial of certification of any entity as a SE.

- 9.8.4 If Contractor has obtained the County certification as a SE by reason of having furnished incorrect supporting information or by reason of having withheld information, and which knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for certification, and which by reason of such certification has been awarded this Contract to which it would not otherwise have been entitled, Contractor must:
- a. Pay to the County any difference between the Contract amount and what the County's costs would have been if this contract had been properly awarded,
  - b. In addition to the amount described in subdivision (a) above, Contractor will be assessed a penalty in an amount of not more than 10% of the amount of this Contract, and
  - c. Be subject to the provisions of [Chapter 2.202 of the County Code \(Determinations of Contractor Non-responsibility and Contractor Debarment\)](#).

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

## **9.9 Disabled Veteran Business Enterprise (DVBE) Preference Program**

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

what the County's costs would have been if this Contract had been properly awarded,

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

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

## 10.0 SURVIVAL

In addition to any terms and conditions of this Contract that expressly survive expiration or termination of this Contract by their terms, the following provisions will survive the expiration or termination of this Contract for any reason:

- Paragraph 1.0 Applicable Documents
- Paragraph 2.0 Definitions
- Paragraph 3.0 Work
- Paragraph 5.3 No Payment for Services Provided Following Expiration/Termination of Contract
- Paragraph 7.7 Confidentiality
- Paragraph 8.1 Change Notices and Amendments
- Paragraph 8.2 Assignment and Delegation/Mergers or Acquisitions
- Paragraph 8.6 Compliance with Applicable Laws
- Paragraph 8.19 Fair Labor Standards
- Paragraph 8.20 Force Majeure
- Paragraph 8.21 Governing Law, Jurisdiction, and Venue
- Paragraph 8.23 Indemnification
- Paragraph 8.24 General Provisions for all Insurance Coverage
- Paragraph 8.25 Insurance Coverage
- Paragraph 8.26 Liquidated Damages
- Paragraph 8.33 Notices
- Paragraph 8.37 Record Retention and Inspection-Audit Settlement

Paragraph 8.41	Termination for Convenience
Paragraph 8.42	Termination for Default
Paragraph 8.47	Validity
Paragraph 8.48	Waiver
Paragraph 8.57	Prohibition from Participation in Future Solicitation(s)
Paragraph 8.59	Campaign Contribution Prohibition Following Final Decision in Contract Proceeding
Paragraph 9.1	Compliance with County's Living Wage Program
Paragraph 9.4	Ownership of Materials, Software and Copyright
Paragraph 9.5	Patent, Copyright and Trade Secret Indemnification
Paragraph 10.0	Survival

IN WITNESS WHEREOF, Contractor has executed this Contract, or caused it to be duly executed, and the County of Los Angeles, by order of its Board of Supervisors, has caused this Contract to be executed on its behalf by the Chair of said Board and attested by the Executive Officer-Clerk of the Board of Supervisors thereof, the day and year first above written.

**CONTRACTOR NAME**

By

\_\_\_\_\_

Name

\_\_\_\_\_

Title

**COUNTY OF LOS ANGELES**

By

\_\_\_\_\_

Chair, Board of Supervisors

ATTEST:

EDWARD YEN

Executive Officer of the  
Board of Supervisors of the  
County of Los Angeles

By \_\_\_\_\_

APPROVED AS TO FORM:

Dawyn R. Harrison  
County Counsel

By \_\_\_\_\_

Michele Jackson  
Principal Deputy County Counsel