



County of San Diego

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September 2, 2021

COUNTY OF SAN DIEGO - REQUEST FOR PROPOSALS (RFP 11156) LAND USE AND ENVIRONMENT GROUP COMPREHENSIVE BROADBAND PLAN

The County of San Diego is seeking proposals from firms interested in providing a Comprehensive Broadband Plan (“Offerors”).

The contract term is anticipated to be an initial (base) period of Six (6) months.

The Contracting Officer for this solicitation is Veronica Ford, Procurement Contracting Officer, (Veronica.Ford@sdcountry.ca.gov)

This RFP package includes:

- This Cover Letter to the RFP
- RFP Instructions and Rules
- Evaluation Criteria
- Submittal Items
- Proposal Cover Page (PC 600 Form)
- Representations and Certifications Form
- Nondisclosure Indemnification Agreement
- DVB Requirements and Forms
- Draft Agreement, which includes drafts of the following:
 - Exhibit A - Statement of Work
 - Exhibit B - Insurance Requirements
 - Exhibit C - Payment Schedule

SCHEDULE

Below is the County’s timeline for this RFP, and is subject to change at any time. The County will issue an addendum for changes to the Pre-Proposal Conference date, Questions due date, or Proposal due date. The actual timing and sequence of events resulting from this RFP shall ultimately be determined by the County.

Event Description	Date and Time (San Diego Time)
Pre-Proposal Conference	September 10, 2021, at 10:00 a.m.
Questions due	September 10, 2021, prior to 5:00 p.m.
Proposals due	October 1, 2021, prior to 3:00 p.m.

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PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held by Video/Teleconference using the Microsoft Teams platform on the Date and Time listed in Schedule. To participate, please provide your intent to attend by 5:00 p.m. (local time) on September 9, 2021, Microsoft Teams information will be sent to Offerors that provide their intent to attend via email to Veronica.Ford@sdcounty.ca.gov. Attendance at the pre-proposal conference is encouraged but not mandatory. The County will provide an overview of the RFP process and may provide a program/technical overview and other information. Requests for clarification related to definition or interpretation of this RFP shall be submitted in writing as Questions in accordance with Section 8 (Duty to Inquire, Questions, and Explanation to Offerors). Attendance at the pre-proposal conference is encouraged but not mandatory.

PROPOSAL SUBMITTAL

Offeror must submit a complete original proposal in accordance with the format provided in this solicitation to the County of San Diego, Department of Purchasing and Contracting through electronic upload to BuyNet by the Date and Time listed in Schedule.

If Offeror is unable to submit via BuyNet for any reason, Offeror may submit via electronic files on CD/DVD or a printed proposal at the Purchasing and Contracting front desk. If delivering the RFP at the Purchasing and Contracting front desk on the due date, Offeror should plan to arrive early, as parking may be limited. When submitting via BuyNet, allow extra time to submit by an alternate method in the event of technical difficulties.

The County's decision about the timeliness or responsiveness of any submitted document shall be final, and the County has the discretion to waive or not waive any defect or nonconformance.

QUESTIONS

Questions regarding this RFP shall be submitted in writing to the Contracting Officer by the Date and Time listed in Schedule, in accordance with Section 8 (Duty to Inquire, Questions, and Explanation to Offerors). Oral explanations or responses to Questions will not be binding upon the County.

Concerns or comments regarding this solicitation should be directed to the Contracting Officer.

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RFP INSTRUCTIONS AND RULES

1. RFP PROCESS

- 1.1. RFPs shall normally be made available on the County of San Diego's BuyNet Website at <https://buynet.sdcounty.ca.gov/>. If you are unable to download this document, you may request a hard copy from Purchasing and Contracting's front desk or contact clerical support at (858) 505-6367.
- 1.2. The County reserves the right to host pre-proposal conference(s). If scheduled, the date, time, and location for the pre-proposal conference(s) will be as set forth in this RFP or as otherwise provided on BuyNet.
- 1.3. Offerors should submit all Questions by due date and time specified in the cover letter to this RFP.
- 1.4. Proposals received, including any additions, revisions, and clarifications, will be evaluated by a Source Selection Committee (SSC) appointed by a Source Selection Authority(s) (SSA).
- 1.5. If, at any point in the selection process, the County determines that a proposal will no longer be considered for award, the Contracting Officer will attempt to notify the Offeror.
- 1.6. During the selection process, the SSA may determine that an Offeror's proposal is no longer in the competitive range and that it will no longer be considered for award.
- 1.7. The County reserves the right to request clarification of and/or additional information ("Clarification") from Offerors. The Contracting Officer will determine the appropriate means of Clarification, which may include telephonic, email, letter, presentations, oral interviews, or as an addendum or revision to the proposal. The County may invite Offerors to make a presentation to, or participate in interviews with, the County at a date, time and location determined by the County. The County is not obligated to seek Clarification, so Offerors are advised to submit complete and accurate information in the proposal.
- 1.8. At any point in the selection process, the SSA may authorize discussions to be held with one or more Offerors in the competitive range. Discussions may include requests for revised proposals, Best and Final Offers (BAFOs), or addenda to the proposal and may contain additional selection factors.
- 1.9. The SSC may recommend to the SSA that award be made to one or more Offerors.
- 1.10. After receipt and approval of the SSA's decision, the Contracting Officer will post a Notice of Intent to Award.
- 1.11. Upon Posting of the Notice of Intent to Award (NOI) a contract to the Offeror(s) whose proposal(s) has been ranked highest by the County on the basis of best value to the County, the Contracting Officer will enter into contract finalization negotiations and, upon the successful completion, award a contract(s).
- 1.12. The County may rescind or modify the NOI at any time due to unsuccessful negotiations or if the County otherwise determines that it is in its best interest to do so.
- 1.13. The County may, at any time, restart evaluations, modify or replace the membership of the SSC, or correct any deficiencies in the procurement process or evaluation.
- 1.14. The timing and sequence of events resulting from this RFP shall ultimately be determined by the County.
- 1.15. In the event that an Offeror is involved in a merger, acquisition, or other change in control, the County reserves the right to award a contract to a resulting entity.

2. INSTRUCTIONS FOR SUBMITTING A PROPOSAL

- 2.1. It is the Offeror's responsibility to submit a proposal based on the most current RFP, addenda thereto, responses to Questions, any diligence material made available by the County, and any other information posted on BuyNet. Offerors must consistently check BuyNet for information and are responsible to comply with anything posted on BuyNet relating to this RFP. The County has no obligation to contact Offerors directly with any such RFP related information.
- 2.2. Offerors shall submit one original proposal prior to the date and time specified and through the means specified in the cover letter to this RFP.
 - 2.2.1. When requested, Offeror shall submit additional copies of the proposal in the manner requested. Copies should be clearly marked as copies and numbered.
 - 2.2.2. For proposals submitted electronically through BuyNet, the time on the BuyNet server shall be considered the official time for purposes of determining timely submittal.

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- 2.2.3. For proposals submitted at the Purchasing and Contracting front desk, the time stamp at the front desk shall be considered official time for purposes of determining timely submittal.
- 2.2.4. In the event of multiple submittals of an original proposal by an Offeror, the County will only consider the most recent submittal submitted by the due date and time. The County will not review or consider previous submittals, whether submitted at the front desk or through BuyNet. Offerors are strongly encouraged to submit only one original proposal and withdraw or replace any previous submittals in the event they choose to update their proposal. Proposals may be found non-conforming if the County is unable to determine which is the most recent, timely submittal.
- 2.3. All proposals shall be signed by an authorized officer or employee of the Offeror. The name, title, mailing address, email address, and phone number of the authorized officer or employee shall be included. Scanned images of pages containing original signatures are acceptable for submission of an electronic file. Electronic or digital signatures will not be accepted.
- 2.4. The proposal must be submitted in compliance with the following format, unless otherwise specified in this RFP:
 - 2.4.1. Submit electronic proposals as files in .pdf format. Separate each exhibit into one or more files. Clearly name files as to the exhibit and order. Pages requiring signatures must be scanned from an original signature. Other pages may be scanned, or converted to .pdf from other file formats. Converted and searchable formats are preferred.
 - 2.4.2. Proposals shall be formatted to print on 8-1/2" x 11" page size with no less than 1/2" margins and eleven (11) point font.
 - 2.4.3. Proposals shall be formatted as black ink on white background/paper with no shading, or otherwise suitable for black and white reproduction.
 - 2.4.4. Pages shall be consecutively numbered within the bottom or top margin of each page, including attachments.
 - 2.4.5. Each proposal shall be typed and be concise but comprehensive. Proposals shall not include unnecessarily elaborate brochures, visual or other presentations, or artwork beyond what is sufficient to present a complete and effective proposal.
- 2.5. Your proposal must be organized in accordance with this RFP. Unless otherwise specified, the proposal shall conform to the following organization:
 - 2.5.1. A completed and signed PC 600 Form shall be submitted as the cover of Offeror's proposal.
 - 2.5.2. Completed and signed Representations and Certifications form.
 - 2.5.3. Completed and signed Nondisclosure Indemnification Agreement (if applicable).
 - 2.5.4. Reserved.
 - 2.5.5. Any other required forms.
 - 2.5.6. A table of contents listing, by page number, the contents of the proposal.
 - 2.5.7. Program/Technical exhibit.
 - 2.5.8. Cost/Price exhibit.
 - 2.5.9. Confidential/Proprietary exhibit (if applicable).
- 2.6. Offerors shall submit separate exhibits in separate files for the Program/Technical; Cost/Price; and (if applicable) Confidential/Proprietary exhibit components of their proposal.
 - 2.6.1. Submit a Program/Technical exhibit
 - 2.6.1.1. Content shall be organized to correspond to the applicable question or item within Submittal Items. All forms, responses and attachments shall be sequentially numbered to correspond to the applicable question or item.
 - 2.6.1.2. No price data are to be included in the Program/Technical exhibit.
 - 2.6.1.3. No confidential/proprietary information, including PI (Personal Information), PII (Personally Identifiable Information) or PHI (Protected Health Information), is to be included in the technical exhibit. Responses that include the confidential/proprietary information shall refer to the response contained within the Confidential/Proprietary exhibit (for example: If Submittal Item #1 requires staff Social Security Numbers, the response to

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Submittal Item #1 shall reflect “see response #1 contained within Confidential/Proprietary exhibit).

- 2.6.1.4. If price or confidential/proprietary information is included in the Program/Technical exhibit, the County may, at its sole discretion, remove such information or declare the proposal non-conforming.
- 2.6.2. Submit a separate Cost/Price exhibit.
 - 2.6.2.1. All cost and pricing information must be contained within Cost/Price exhibit.
 - 2.6.2.2. If performance or payment bonds are required, the cost of providing the bond shall be included in the proposed pricing, and no additional compensation will be allowed.
- 2.6.3. Submit a separate Confidential/Proprietary exhibit (if applicable). The County is a public agency subject to the disclosure requirements of the Public Records Act, California Government Code Section 6250 and following. The County of San Diego intends to publish contracts, which may contain some or all of the successful proposal(s), to its public web site. If confidential/proprietary information is contained within the submission:
 - 2.6.3.1. It must be submitted in a separate clearly labeled exhibit with all pages marked as “CONFIDENTIAL/PROPRIETARY EXHIBIT”.
 - 2.6.3.2. Offeror must provide a signed Nondisclosure Indemnification Agreement.
 - 2.6.3.3. In accordance with the California Public Records Act, the County will not treat pricing or terms and conditions as confidential. Confidential/Proprietary exhibits will be examined prior to review, and price or terms and conditions may be removed or the County may declare a proposal non-conforming because of the inclusion of price or terms and conditions in the Confidential/Proprietary exhibit.
- 2.7. All proposals become the property of the County. An Offeror may request the return of its proposal upon withdrawal as specified in Paragraph 6, which return County may grant or deny in its sole discretion.
- 2.8. The County has the right to withhold all information regarding this procurement until after contract award, including but not limited to: the number of proposals received; identity of Offeror(s), content of proposals; the County evaluation and results; and the identity of the members of the SSC. Information releasable after award is subject to the disclosure requirements of the Public Records Act, California Government Code Section 6250 and following.
- 2.9. Reserved.

3. EVALUATION AND SELECTION

- 3.1. The County shall have the discretion, but not the obligation, to construe any submission as non-conforming and ineligible for consideration if it does not conform to the requirements of the Request for Proposals. The County shall also have the discretion to waive any irregularities or deviations from the requirements of the Request for Proposals in any submission.
- 3.2. Evaluations shall be based on the list of criteria contained in the Evaluation Criteria and Submittal Items.
- 3.3. The County may consider information known to the County in addition to the information provided in response to the RFP.
- 3.4. At any point in the evaluation process, the County may determine that a proposal is unacceptable in any area and no longer consider it for award.
- 3.5. When evaluating Offeror’s program/technical response, County may appropriately consider the Environmental Impact of the proposed products and delivery of services in accordance with Board of Supervisors Policy B-67 Environmentally Preferable Procurement. Offerors are encouraged to include such information in the proposal.
- 3.6. When evaluating an Offeror’s pricing, the County may also consider the effect of the proposal on the overall total cost to the County.
- 3.7. Local preference: The County of San Diego intends to expend federal funds for contract(s) resulting from this solicitation; therefore, in accordance with 2 CFR §200.319(b), a local preference will not be applied when evaluating offers and determining contract award.

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4. DETERMINATION OF ECONOMY AND EFFICIENCY

Pursuant to County Charter Sections 703.10 and 916, award of a contract resulting from this RFP may be subject to the County's requirement to determine that the services can be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service.

5. COUNTY COMMITMENT

5.1. This RFP does not commit the County to award, nor does it commit the County to pay any cost incurred in the submission of the proposal, or in making necessary studies or designs for the preparation thereof, nor procure or contract for services or supplies. Further, no reimbursable cost may be incurred in anticipation of a contract award.

5.2. The County reserves the right to accept or reject any or all proposals received as a result of this RFP or to separately procure the same or similar goods or services.

5.3. The County reserves the right to terminate this RFP in part or in its entirety at any time prior to contract execution.

5.4. No prior, current, or post award communication with any officer, agent, or employee of the County shall affect or modify any terms or obligations of this RFP except as explicitly provided for in this RFP.

6. LATE, MODIFIED, OR WITHDRAWN PROPOSAL

6.1. A proposal that is received, but that is not received at the office or by the electronic means designated in the solicitation by the exact time specified for receipt will not be considered unless: it is received before award is made; the County determines that it is in its best interest to accept the proposal; and

6.1.1. It was sent by mail or personal delivery, and it is determined by the County that the late receipt was due solely to mishandling by the County after receipt by the County; or

6.1.2. No timely and conforming proposal was submitted.

6.2. Proposals may not be modified after the due date, except a modification resulting from the Contracting Officer's request for a revised proposal, Best and Final Offer (BAFO), or an addendum to the proposal.

6.3. Proposals may be withdrawn by written notice signed by a duly authorized representative of Offeror if received prior to Notice of Intent to Award. Thereafter, all proposals constitute firm offers, subject to negotiation, that will remain open and cannot be revoked, withdrawn, or modified for a period of six (6) months thereafter.

7. DILIGENCE MATERIAL

County, its agents, advisors, and representatives make no representation or warranty, express or implied, as to the accuracy or completeness of any provided diligence material. Without limiting the generality of the foregoing, the diligence material may include certain statements, estimates, and projections provided by or with respect to the County. Such statements, estimates, and projections reflect various assumptions made by the County, which may or may not prove to be correct. No representations are made by the County as to the accuracy of such statements, estimates, projections, or assumptions.

8. DUTY TO INQUIRE, QUESTIONS, AND EXPLANATION TO OFFERORS

8.1. Offerors' Inquiries and County Responses – All communications from the Offeror (including its employees, agents, and representatives) to the County or its officers and employees (including consultants working on or assisting with this procurement), related to this RFP or the Offeror's proposal, must be directed in writing exclusively to the Contracting Officer, unless otherwise authorized in writing by the Contracting Officer. Any improper contact may, at County's sole discretion, cause the Offeror to be removed from consideration for contract award.

8.2. Should an Offeror find discrepancies in or omissions from, or be in doubt as to the meaning of, the RFP or related documents, Offeror shall have a duty to at once notify the County. Such notifications, or other requests for explanation regarding the RFP or related documents, shall be directed to the Contracting Officer in writing as a question ("Question"). Offeror is responsible for ensuring that Questions are received by the County. The County may choose not to respond to Questions received after the date stated in the Cover Letter.

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Offerors should not communicate with or attempt to contact any other County personnel about this solicitation, except as otherwise allowed for in this RFP

9. PROTEST PROCEDURE

County Board of Supervisors Policy A-97 sets forth the procedures for filing and resolution of protests related to this RFP. Board Policy A-97 is available from the Clerk of the Board, 1600 Pacific Highway, San Diego, CA 92101, or on the County's Web site at <http://www.SanDiegoCounty.gov/> under the Clerk of the Board's page.

All protests must be filed in accordance with Board Policy A-97, which requires among other things that a protest must be filed timely, be submitted in writing to the Contracting Officer identified in the solicitation package, and be based on a protestable action and established grounds for protest.

10. DEBRIEF AND REVIEW OF CONTRACT FILES

Offeror may request a "debriefing" from the Contracting Officer on the findings about Offeror's proposal (with no comparative information about proposals submitted by others) after Offeror has been notified by the Contracting Officer that the Offeror's proposal is no longer being considered for award.

After contract execution, the proposals, the Source Selection Committee Report, and any other releasable documents may be reviewed. Copies of any documents desired by the reviewer will be prepared at the requestor's expense in accordance with current County rates for such copies.

11. OFFEROR COMMUNICATIONS

- 11.1. If Offeror issues any public announcement or otherwise engages in communication that, in the County's sole determination, compromises the integrity of this RFP process or attempts to restrain competition, Offeror may be removed from consideration for award.
- 11.2. Audio and/or video recording of pre-proposal conferences, presentations, discussions, negotiations, debriefings, or other communications with the County regarding this RFP are prohibited, unless specifically authorized in writing by the Contracting Officer.

12. CLAIMS AGAINST THE COUNTY

Neither Offeror nor any of its representatives shall have any claims whatsoever against the County or any of its respective officials, agents, or employees arising out of or relating to this RFP or these procedures (other than those arising under a definitive contract with Offeror in accordance with the terms thereof).

13. SOLICITING EMPLOYEES

Until contract award, Offerors shall not, directly or indirectly, solicit any employee of the County to leave the County's employ in order to accept employment with the Offeror, its affiliates, actual or prospective contractors, or any person acting in concert with the Offeror, without prior written approval of the County's Contracting Officer. This paragraph does not prevent the employment by an Offeror of a County employee who has initiated contact with the Offeror.

14. PROHIBITED CONTRACTS

- 14.1. In accordance with Section 67 of the San Diego County Administrative Code, the County shall not contract with, and shall reject any bid or proposal submitted by the person or entities specified below, unless the Board of Supervisors finds that special circumstances exist which justify the approval of such contract:
 - (a) Persons employed by the County or of public agencies for which the Board of Supervisors is the governing body;
 - (b) Profit making firms or businesses in which employees described in subsection (a) serve as officers, principals, partners or major shareholders;

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- (c) Persons who, within the immediately preceding twelve (12) months, came within the provisions of subsection (a), and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the contract, or (2) participated in any way in developing the contract or its service specifications; and
 - (d) Profit making firms or businesses in which the former employees described in subsection (c) serve as officers, principals, partners or major shareholders.
- 14.2. Offeror certifies it is not a person or entity specified above and that it will promptly notify the County in the event it becomes a person or entity specified above .

15. CALIFORNIA REVENUE AND TAXATION CODE SECTION 18662

In compliance with California Revenue and Taxation code section 18662, if Offeror is a non-resident of California (out-of-state invoices) that receives California source income and has not completed FTB Form 590, there may be a backup withholding on all payments. Fifteen (15) business days prior to the first payment, new suppliers or suppliers with expired forms or forms with incorrect information must submit new forms to the County (forms are available from the Franchise Tax Board website listed below).

Under certain circumstances, Offerors may be eligible for reduced or waived nonresident withholding. If Offeror has already received a waiver or a reduced withholding response from the State of California and the response is still valid, Offeror should submit the response to the County in lieu of the forms. Failure to submit the required forms will result in withholding of payments. Offerors should to the Franchise Tax Board websites (listed below) for tax forms and information on non-resident withholding, including waivers or reductions. The County will not give Offerors any tax advice. It is recommended that Offerors speak with their tax advisers and/or the State of California for guidance. Franchise Tax Board Websites:

<https://www.ftb.ca.gov>

<https://www.ftb.ca.gov/forms/Search/Home/FormRequest/1619>

<https://www.ftb.ca.gov/forms/search/>

If selected for award, the Offeror is to submit forms to the Auditor & Controller via fax at (858) 694-2060 or mail originals to: County of San Diego, 5530 Overland Avenue, Suite 410, San Diego, CA 92123. The P.O. Number or Contract Number (if available) and “California Revenue and Taxation Code Section 18662” must appear on fax cover sheet and/or the outside of the mailing envelope.

16. W-9 FORM

If selected for award, the Offeror must complete and submit a W-9 form if a current form is not on file with the County.

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EVALUATION CRITERIA

Proposal Evaluation Criteria

The evaluation criteria listed below are in descending order of importance by paragraph, not subparagraphs, and will be considered in the evaluation of the Offeror's written and oral proposals accordingly. Proposals should give clear, concise information in sufficient detail to allow an evaluation based on these criteria.

1. Offeror and Offeror's Personnel Experience and Qualifications including:
 - The extent of Offeror's (and sub-contractors if proposed) experience providing services of a similar scope to that of the County's requirements; and the provision of references that are supportive of the stated experience and the provision of quality services.
 - The extent of Offeror's personnel (and sub-contractor personnel if proposed) experience providing services of a similar scope to that of the County's requirements for tasks assigned.
2. Technical Approach including:
 - The extent to which the Offeror provides a clear and comprehensive proposed approach that will deliver a high quality, efficient, effective, and timely broadband plan.
3. Price including:
 - Price reasonableness
 - The extent to which the offer provides reasonable, stable, comprehensive, and predictable pricing that limits pricing risk or variance to the County.
4. Terms and Conditions and Compliance including:
 - The acceptance or non-acceptance of the terms and conditions, including insurance, and the extent to which any exceptions increase risk to the County.
 - A history of compliance and ethical behavior including risk of contracting with the Offeror, which may be based on, among other things, prior, current, and potential future lawsuits, investigations, and regulatory actions as they relate to this contract and/or the Offeror's ability to deliver performance under this contract.

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SUBMITTAL ITEMS

Proposals should give clear, concise information in sufficient detail and in the order presented below to allow for a comprehensive evaluation. Any submission may be construed as non-conforming and ineligible for consideration if it does not conform to these Submittal Requirements. The County, at its sole discretion, may waive any variances from these Submittal Requirements and/or seek Clarification.

Although the Submittal Requirements below are organized by Evaluation Criteria, these headings are only for purposes of organization and clarity. The County may evaluate the information provided under any section of the Submittal Requirements for each Evaluation Criterion (e.g., when evaluating the offeror's Technical Approach, the County is not limited to reviewing the information submitted in response to the Technical Approach section below and may, for example, rely on information submitted in response to the Offeror and Offeror Personnel Experience and Qualifications section as well).

1. Offeror and Offeror Personnel Experience and Qualifications

1.1. Detail at least three (3) relevant projects of similar scope to that of the County's requirements undertaken by you or your organization within the past four (4) years. For each project example include:

1.1.1. Client Name.

1.1.2. Project Start Date/ End Date.

1.1.3. A summary description of the work that your firm performed.

1.1.3.1. For each project cited provide a summary of the services provided and a description of similarities to the County's scope.

1.2. Provide a list of all sub-contractors who are being utilized to perform services related to this agreement. For each proposed sub-contractor:

1.2.1. Describe the role/tasks to be performed.

1.2.2. Provide an overview of experience that supports their ability to perform.

1.3. Provide up to three (3) references for customers for whom your firm has provided services of similar scope to that of the County's requirements. For each reference detail:

1.3.1. Customer Name.

1.3.2. Contact details (address, phone number, and email address).

1.3.3. A Summary of the services provided and a description of similarities to the County's scope.

The County will make reasonable attempts to contact references. The County's inability to reach a reference after reasonable attempts may be treated as an unfavorable or missing reference for evaluation purposes. An unfavorable response is a response from a listed reference stating that they would not enlist the company to perform services again in the future, or comments provided that the County deems to be substantially negative or reflective of substandard service. The County also reserves the right to make its own inquiries to other sources for which services have been performed but are not listed

1.4. Provide resumes for all key personnel to be assigned to this project. Include:

1.4.1. Pertinent years of experience performing similar services as those outlined in the SOW and past project experience supporting experience relevant to the role assigned in the project.

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- 1.4.2. Education
- 1.4.3. Certifications
- 1.4.4. Additional applicable qualifications

1.5. Provide a Project Team Organizational Chart.

- 1.5.1. The project team organizational chart should list names, project titles, and company names. The chart should illustrate the team's hierarchy and relationships with employees, subcontractors, and subcontractors employees. The chart should identify one person that will be the primary point of contact between the Offeror and the County.

2. Technical Approach

- 2.1. Confirm YES/NO your agreement to Exhibit A – Statement of Work (SOW). If “NO”, provide the alternate language proposed. Describe any areas of concern where your firm may not be able to meet the SOW.
- 2.2. Provide a detailed project plan (following the format outlined in Exhibit A – Statement of Work section 5) that describes your approach to developing a comprehensive broadband plan including:
 - 2.2.1. Tasks/Activities to be performed.
 - 2.2.2. Who will be assigned to complete each task/activity?
 - 2.2.3. The estimated hours expended on each task including personnel specific expended hours.
 - 2.2.4. Identify any issues/risks related to implementation and include proposed effective risk mitigation strategies.
 - 2.2.5. Provide a project schedule showing a Work Breakdown Structure (WBS) covering the breadth of the SOW. The project schedule should be in an easily readable Gantt chart form and identify the critical path. The project schedule shall accommodate the activities and milestones provided in the Exhibit C and the SOW and shall include a timeline for the completion of the key activities/milestones of the project. The County's expectation is that project will be completed within three to six months of contract award.

3. Price

- 3.1. Based on the services expressly required and reasonably inferred from the SOW, and your proposed technical approach outlined in your response to section 2 of the submittal items, provide a firm fixed price following the deliverables chart below. The County requires that the payment schedule be structured to provide adequate security to County and incentive to the Contractor throughout the Project to timely complete the Project and each phase thereof, and to correct any problems that arise during the Project in a timely fashion. To ensure this, the County requests that an amount equal to no less than 20% of the total amount payable for delivery of all Deliverables below will be payable only upon the completion of the final deliverable.

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DELIVERABLES	DELIVERABLE DESCRIPTION	PRICE
1	Convene project team, hold kick-off meeting with sponsors and designated stakeholders. Submit Project Management Plan (PMP).	\$
2	Perform initial draft review and analysis of broadband in the unincorporated region of the County of San Diego.	\$
3	Draft final assessment and recommendations and evaluation.	\$
4	Presentation and final report.	\$
	TOTAL	\$

3.2. Provide an as-needed fully burdened hourly rate for personnel (in addition to specific personnel proposed to complete work as part of the project) who are available to provide additional services pertinent to the scope of this effort.

4. Terms and Conditions; Compliance

4.1. The County’s terms and conditions (Draft Agreement) have been provided as part of this document. The offeror should respond to these documents in accordance with the procedures and format set forth below.

4.1.1. Confirm (YES/NO) your organization’s acceptance of the Draft Agreement and insurance requirements as presented in the RFP.

Yes No

4.1.2. If NO, provide a detailed paragraph-by-paragraph, contract clause-by-contract clause description of any issues or concerns that Offeror may have with the documents listed. If Offeror objects to a particular paragraph or clause, then Offeror will need to further describe, in business terms and not in proposed language, the nature of its concern and what terms Offeror is willing to accept. The Exception List shall provide the reason or rationale supporting the item of concern and/or counter-response. Simply stating that a paragraph or clause is "Not Acceptable" or proposing alternative contract terms without describing in business language the reason or rationale may be considered acceptance of that paragraph or clause. If Offeror does not identify specific concerns with a particular paragraph or clause, the County will consider the paragraph and/or clause acceptable. The offeror shall also provide a description of the business benefit to the County for the proposed language changes. The Offeror shall provide a Redlined (track changes) copy of Terms and Conditions reflecting the proposed revisions.

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Responses that contains a minimal number of exceptions to the Draft Agreement will be scored more favorably. Should you take exception(s) to the Draft Agreement, you understand that the County may, as part of its evaluation process, conclude that exceptions are so numerous and/or material as to make an award to Offeror unacceptable.

No Standard Offeror Form Contracts – Do not provide a copy of the Offeror’s standard contract to the County. The County will be using the enclosed Draft Agreement in negotiations with the Offeror.

The Offeror will be deemed to have accepted any terms and conditions of the Draft Agreement to which it does not take exception in its proposal, and such accepted terms and conditions will not be subject to further negotiation except at the County’s sole discretion.

- 4.2. Provide the status of any lawsuits and/or pending litigation that involve failure or alleged failure to deliver performance on contracts and/or lawsuits/litigation that may directly impact this contract (e.g., non-compliance with legal requirements).
 - 4.2.1. Provide information regarding status, resolution, and, if any, penalties, fines, or other actions required.
 - 4.2.2. If there are none, state “None” in your submittal response.

- 4.3. Investigation. Provide the status of any current and/or pending investigations that involve failure or alleged failure to deliver performance on similar scope contracts and/or investigations that may directly impact this contract (e.g., non-compliance with legal requirements).
 - 4.3.1. Provide information regarding status, resolution, and, if any, penalties, fines, or other actions required.
 - 4.3.2. If there are none, state “None” in your submittal response.

4.4. Byrd Anti-Lobbying Amendment certification:

Confirm (YES/NO) Yes No

Offeror certifies that it and its subcontractors will not and have not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. List as a disclosure any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award by Offeror or Offeror’s subcontractors

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PROPOSAL COVER PAGE (PC-600)

SUBMITTAL INFORMATION

Submit this Completed Form as the Cover Page of Your Proposal

DESCRIPTION

Request for Proposals (RFP) 11156

Comprehensive Broadband Plan

OFFEROR INFORMATION (TO BE COMPLETED BY OFFEROR)

Please Type or Print Clearly

BUSINESS INFORMATION

Company/Organization Name

Address

()

Telephone Number

Website Address

()

Fax Number (optional)

County communications to Offeror regarding this RFP will be sent to the POC. If no POC is provided, such communications will be sent to the Authorized Representative.

REPRESENTATIVE AUTHORIZED TO SIGN OFFER

Authorized Representative Name

Authorized Representative Title

Authorized Representative Email Address

()

Authorized Representative Telephone Number

Authorized Representative Mailing Address

AUTHORIZED POINT OF CONTACT (POC)
(if different from Authorized Representative)

POC Name

POC Title

POC Email Address

()

POC Telephone Number

POC Mailing Address

SIGNATURE

I certify under penalty of perjury under the laws of the State of California, that I am authorized to execute and submit this proposal on behalf of the Offeror listed above; that all of the RFP instructions and rules, exhibits, addenda, explanations, and any other information provided by the County, including but not limited to, the diligence material, has been reviewed, understood and complied with; and that all information in this submission is true, correct, and in compliance with the terms of the RFP.

Authorized Representative Signature

Date

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 COMPREHENSIVE BROADBAND PLAN

County of San Diego
 Department of Purchasing and Contracting
REPRESENTATIONS AND CERTIFICATIONS

The following representations and certifications are to be completed, signed and returned with the offer (the term "offer" includes a bid, proposal, quote, statement of qualifications, or any other submission to provide goods and/or services).

1. BUSINESS TYPE

For-profit Non-profit Government

2. INTERLOCKING DIRECTORATE

In accordance with Board of Supervisors Policy A-79, if Offeror is a non-profit and will be subcontracting with a related for-profit entity where an interlocking directorate, management or ownership relationship exists, Offeror must list all such entity(ies) on an attached separate sheet, and authorization must be sought from Board of Supervisors. If Offeror is a non-profit and does not submit such a list, Offeror certifies it has not entered into a subcontract relationship with a related for-profit entity.

List Attached? Yes

3. BUSINESS REPRESENTATION

Offeror represents as a part of this offer the following information regarding the ownership, operation, and control of its business:

3.1. Are you a local business with a physical address within the County of San Diego? Yes No

3.2. Are you certified by the State of California as a:

Disabled Veteran Business Enterprise(DVBE)
 Certification #: _____

Small Business Enterprise (SBE)
 Certification #: _____

3.3. Are you certified by the U.S. Dept Of Veterans' Affairs as:

Veteran Owned Small Business (VOSB)
 Certification # _____

Service Disabled Veteran Owned Small Business (SDVOSB)
 Certification # _____

3.4. Estimated percentage of work in this offer to be performed or fulfilled locally (within the geographic boundaries of the County of San Diego): _____ %

4. DEBARMENT, SUSPENSION, AND RELATED MATTERS

4.1. Offeror certifies to the best of its knowledge that neither it nor any of its officers:

4.1.1. Are presently debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any state, local, or federal department or agency.

4.1.2. Have within a three (3) year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

4.2. Except as allowed for in Section 4.2.5, Offeror hereby certifies to the best of its knowledge that neither it nor any of its officers:

4.2.1 Are presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in paragraph 4.1.2 of this certification;

4.2.2 Have within a three (3) year period preceding this agreement had one or more public transactions (federal, state or local) terminated for cause or default;

4.2.3 Are presently the target or subject of any investigation, accusation or charges by any federal, state or local agency or law enforcement, licensing, certification, ethics, or compliance body;

4.2.4 Are proposed for debarment by any state, local, or federal department or agency.

4.2.5 If Offeror is unable to certify Sections 4.2.1, 4.2.2, 4.2.3, or 4.2.4, it certifies that it has disclosed and attached to this Representations and Certifications the reason(s) it cannot do so. The disclosure must include the Section(s), specific relevant facts including dates, contracts, individuals involved, status of actions, and any other relevant information that prevent it from making the requested certification(s). The County reserves the right to disqualify an Offeror based upon information disclosed.
 Disclosure Attached? Yes

5. RELATED WORK

Offeror certifies to the best of its knowledge that, other than as disclosed in an attached separate sheet, it and its proposed subcontractors, agents, and consultants have not previously contracted with the County to perform work on or related to this project (e.g. preparing related studies or recommendations, components of the statement of work, or plans and specifications).

Disclosure Attached? Yes

6. CURRENT COST OR PRICING

Offeror certifies to the best of its knowledge that cost and/or pricing data submitted with this offer, or specifically identified by reference if actual submission of the data is impracticable, are accurate, complete, and current as of the date signed below.

7. INDEPENDENT PRICING

Offeror certifies that in relation to this offer:

7.1. The prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with other offerors, with any competitors, or with any County employee(s) or consultant(s) involved in this or related procurements;

7.2. Unless otherwise required by law, the prices that have been quoted in this offer have not been knowingly disclosed by the Offeror and will not knowingly be disclosed by the Offeror prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other Offeror or to any competitor or with any County employee(s) or consultant(s) involved in this or related procurements; and

7.3. No attempt has been made or will be made by the Offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

8. ADDITIONAL DISCLOSURES

Offeror shall report in writing to the County Department of Purchasing and Contracting within five business days of discovering or having any reason to suspect any change in status as certified in the preceding paragraphs. Upon County's request, Offeror shall provide additional information supporting Offeror's Representations and Certifications. Offeror's obligations under this Section 8 shall continue until Offeror is no longer under consideration for award of a contract, or until termination or expiration of any resulting contract(s).

CERTIFICATION

The information furnished in Paragraphs 1 through 8 and in the accompanying offer is certified to be factual and correct as of the date submitted and this certification is made under penalty of perjury under the laws of the State of California.

Name: _____ Signature: _____

Title: _____ Date: _____

Company/Organization: _____

SUBMIT THIS FORM AS DIRECTED IN THE REQUEST FOR SOLICITATION DOCUMENTS OR WITH THE OFFER

Revised 05-02-17

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NONDISCLOSURE INDEMNIFICATION AGREEMENT

IF OFFEROR SUBMITS EXHIBIT CONFIDENTIAL/PROPRIETARY, THE FOLLOWING NONDISCLOSURE INDEMNIFICATION AGREEMENT MUST BE COMPLETED, SIGNED AND RETURNED WITH THE OFFER

This indemnification agreement is made and entered into by and between the County of San Diego

("County") and Offeror Company/Organization Name: _____

("Offeror") with reference to the following facts:

WHEREAS the County may receive a request for disclosure of Offeror's submission under the California Public Records Act, Government Code Section 6250, et seq.; and

WHEREAS, Offeror has included in its submission an exhibit entitled "*EXHIBIT – CONFIDENTIAL/PROPRIETARY*" containing records that Offeror has determined to constitute trade secrets or other proprietary information exempt from disclosure under the California Public Records Act; and

WHEREAS the County requires defense and indemnity from Offeror for the County's ongoing non-disclosure of Offeror's *EXHIBIT-CONFIDENTIAL/PROPRIETARY*;

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

1. The above recitals are incorporated herein by this reference.
2. Except as otherwise provided herein, the County will not release Offeror's *EXHIBIT-CONFIDENTIAL/PROPRIETARY* based on Offeror's representation that the records contained therein are proprietary and exempt from disclosure under the California Public Records Act and/or are trade secrets as that term is defined in Government Code Section 6250, et seq. Notwithstanding the foregoing, however, the County may release Offeror's *EXHIBIT-CONFIDENTIAL/PROPRIETARY* in the event of any of the following:
 - a. Offeror fails to comply with the terms and conditions of this indemnification agreement; or
 - b. Offeror provides the County with written notice that some or all of the records may be released; or
 - c. A court of competent jurisdiction orders the County to release the records and the County has exhausted or waived its appeal rights.
3. To the fullest extent allowed by law, the County shall not be liable for, and Offeror shall defend and indemnify County and its Board of Supervisors, officers, directors, employees and agents of County (collectively "County Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees (whether incurred by County attorneys or attorneys employed by County) and court costs (hereinafter collectively referred to as "Claims"), related to Offeror's *EXHIBIT-CONFIDENTIAL/PROPRIETARY*.
4. Offeror waives any and all claims in law or equity and hereby releases the County Parties from any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs, which arise out of or are in any way connected to Offeror's *EXHIBIT-CONFIDENTIAL/PROPRIETARY*.

TO BE COMPLETED BY AN AUTHORIZED REPRESENTATIVE OF THE OFFEROR

Offeror Company/Organization Name:	_____
Authorized Representative Name:	_____
Authorized Representative Title:	_____
Signature:	_____
Date:	_____

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DVB REQUIREMENTS AND FORMS

The County, as a matter of policy, encourages the participation of Disabled Veterans Businesses (DVB) through DVB Subcontractor Participation goals. County of San Diego, Board of Supervisors Policy B-39a Veteran Owned Business (VOB) and Disabled Veterans Business Enterprise (DVBE) Program is found at <http://www.sdcounty.ca.gov/cob/policy/index.html#>. The County DVB program recognizes the State of California DVBE certification, which may be found at <http://www.dgs.ca.gov/PD> and the federal SDVOSB certification, which may be found at <https://www.va.gov/osdbu/verification/>.

For this solicitation:

DVB Subcontractor Participation Requirements are not applicable. Offeror (Offeror) does not need to submit DVB documentation with its submittal.

DRAFT AGREEMENT

RFP 11156

COMPREHENSIVE BROADBAND PLAN

**DRAFT
AGREEMENT**

INCLUDES:

Exhibit A – Statement of Work

Exhibit B – Insurance Requirements

Exhibit C – Payment Schedule

Exhibit D – Required Federal Provisions

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DRAFT AGREEMENT

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

RECITALS

- A. Pursuant to Administrative Code section 401, the County’s Director of the Department of Purchasing and Contracting is authorized to award a contract for a Comprehensive Broadband Plan.
- B. Contractor is specially trained and possesses certain skills, experience, education and competency to perform these services.
- C. The Chief Administrative Officer made a determination that Contractor can perform the services more economically and efficiently than the County, pursuant to Section 703.10 of the County Charter.
- D. The Agreement shall consist of this document, Exhibit A Statement of Work Exhibit A-1 Contractor’s Proposal, Exhibit B Insurance Requirements Exhibit C, Payment Schedule, and Exhibit D Required Federal Provisions. In the event that any provision of the Agreement or its Exhibits, A, A-1, B, C or D, conflicts with any other term or condition, precedence shall be: First (1st) Exhibit D; Second (2nd) the Agreement; Third (3rd) Exhibit B; Fourth (4th) Exhibit A; and fifth (5th) Exhibit C, and sixth (6th) Exhibit A-1.

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

ARTICLE 1

PERFORMANCE OF WORK

- 1.1 **Standard of Performance.** Contractor shall, in good and workmanlike manner and in accordance with the highest professional standards, at its own cost and expense, furnish all of the labor, technical, administrative, professional and all other personnel, all supplies and materials, equipment, printing, transportation, training, facilities, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by County, necessary or proper to perform and complete the work and provide the services required of Contractor by this Agreement.
- 1.2 **Contractor’s Representative.** The person identified on the signature page (“Contractor’s Representative”) shall ensure that Contractor’s duties under this Agreement shall be performed on behalf of the Contractor by qualified personnel; Contractor represents and warrants that (1) Contractor has fulfilled all applicable requirements of the laws of the State of California to perform the services under this Agreement and (2) Contractor’s Representative has full authority to act for Contractor hereunder. Contractor and County recognize that the services to be provided by Contractor’s Representative pursuant to this Agreement are unique: accordingly, Contractor’s Representative shall not be changed during the Term of the Agreement without County’s written consent. County reserves the right to terminate this Agreement pursuant to Clause 7.1 “Termination for Default”, if Contractor’s Representative should leave Contractor’s employ, or if, in County’s judgment, the work hereunder is not being performed by Contractor’s Representative.
- 1.3 **Contractor as Independent Contractor.** Contractor is, for all purposes of this Agreement, an independent contractor, and neither Contractor nor Contractor’s employees or subcontractors shall be deemed to be employees of the County. Contractor shall perform its obligations under this Agreement according to the Contractor’s own means and methods of work, which shall be in the exclusive charge and under the control of the Contractor, and which shall not be subject to control or supervision by County except as to the results of the work. County hereby delegates to Contractor any and all responsibility for the safety of Contractor’s employees, which shall include inspection of property to identify potential hazards. Neither Contractor nor Contractor’s employees or subcontractors shall be entitled to any benefits to which County employees are entitled, including without limitation, overtime, retirement benefits, workers’ compensation benefits and injury leave.

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- 1.4 Contractor's Agents and Employees or Subcontractors. Contractor shall obtain, at Contractor's expense, all agents, employees, subcontractors, and consultants required for Contractor to perform its duties under this Agreement, and all such services shall be performed by Contractor's Representative, or under Contractor's Representatives' supervision, by persons authorized by law to perform such services. Retention by Contractor of any agent, employee, subcontractor, or consultant shall be at Contractor's sole cost and expense, and County shall have no obligation to pay Contractor's agents, employees subcontractors, or consultants; to support any such person's or entity's claim against the Contractor; or to defend Contractor against any such claim.

In the event any subcontractor or consultant is utilized by Contractor for any portion of the project, Contractor retains the prime responsibility for carrying out all the terms of this Agreement, including the responsibility for performance and ensuring the availability and retention of records of subcontractors and consultants in accordance with this Agreement.

1.4.1 "Related Subcontract" means an agreement to furnish, or the furnishing of, supplies, materials, equipment, or services of any kind to Contractor or any higher tier subcontractor in the performance of some or all of the work in this Agreement. Related Subcontracts includes consultant agreements, which are defined as agreements for services rendered, or the rendering of services, by persons who are members of a particular profession or possess as special skill and who are not officers or employees of the Contractor. Examples include those services acquired by Contractor or a subcontractor in order to enhance their legal, economic, financial, or technical positions. Professional and consultant services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training or direct assistance, such as studies, analyses, evaluations, liaison with government officials, or other forms or representation. Related Subcontracts shall not include agreements for ancillary goods or services, or consulting services intended to support Contractor in a general manner not specific to the work performed under this Agreement.

1.4.2 Mandated Clause: Contractor shall notify all Related Subcontractors of Contractor's relationship to County. Contractor shall include in its Related Subcontracts and ensure compliance with the Standard Terms and Conditions required of Contractor in Articles 3, 7, 8, 9, 10, 11, 12, 13, 14 and 16 herein.

1.4.3 Contractor shall provide Contracting Officer Representative with copies of all Related Subcontracts entered into by Contractor within thirty (30) days after the effective date of the Related Subcontract, or within thirty (30) days of the effective date of this Agreement if such Related Subcontract is already in existence at that time.

1.4.4 County Approval: Any Related Subcontract that is in excess of fifty thousand dollars (\$50,000) or twenty five percent (25%) of the value of this Agreement, whichever is less; or a combination of Related Subcontracts to the same individual or firm for the Agreement period, the aggregate of which exceeds fifty thousand dollars (\$50,000) or twenty five percent (25%) of the value of this Agreement, whichever is less; or any Related Subcontract for professional medical or mental health services, regardless of value, must have prior concurrence of the Contracting Officer's Representative ("COR").

- 1.5 Offshore Prohibition. Except where Contractor obtains the County's prior written approval, Contractor shall perform the work of this Agreement only from or at locations within the United States. Any County approval for the performance of work outside of the United States shall be limited to the specific instance and scope of such written approval, including the types of work and locations involved. Notwithstanding the foregoing, this Section shall not restrict the country or countries of origin of any assets purchased to provide the work hereunder; provided that when such assets are used to provide the work, such assets shall be used only from or at locations within the geographic boundaries of the United States.

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ARTICLE 2
SCOPE OF WORK

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

ARTICLE 3
DISENTANGLEMENT

3.1 **General Obligations.**

At County’s discretion, Contractor shall accomplish a complete transition of the services as set forth in Exhibit A to this Agreement (for purposes of this Article 3.1, these shall be referred to as the “Disentangled Services”) being terminated from Contractor and the Subcontractors to County, or to any replacement provider designated by County, without any interruption of or adverse impact on the Disentangled Services or any other services provided by third parties. This process shall be referred to as the Disentanglement. Contractor shall fully cooperate with County and any new service provider and otherwise promptly take all steps, including, but not limited to providing to County or any new service provider all requested information or documentation, required to assist County in effecting a complete Disentanglement. Contractor shall provide all information or documentation regarding the Disentangled Services or as otherwise needed for Disentanglement, including, but not limited to, data conversion, client files, interface specifications, training staff assuming responsibility, and related professional services.

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Contractor shall provide for the prompt and orderly conclusion of all work required under the Agreement, as County may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to County or the County's designee of the Disentangled Services. All Contractor work done as part of the Disentanglement shall be performed by Contractor and will be reimbursed by the County at no more than Contractor's costs, up to the total amount of this Agreement. Contractor shall not receive any additional or different compensation for the work otherwise required by the Agreement. Contractor's obligation to provide the Services shall not cease until the earlier of the following: 1) The Disentanglement is satisfactory to County, including the performance by Contractor of all asset-transfers and other obligations of Contractor provided in this Paragraph, has been completed to the County's reasonable satisfaction or 2) twelve (12) months after the Expiration Date of the Agreement.

3.2 Disentanglement Process.

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

3.3 Specific Obligations.

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

3.3.1 No Interruption or Adverse Impact

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

3.3.2 Third-Party Authorizations.

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

3.3.3 Licenses to Proprietary Software.

For any software programs developed for use under this Agreement, Contractor shall provide a nonexclusive, nontransferable, fully-paid, perpetual, irrevocable, royalty-free worldwide license to the County (or other service provider, as the case may be), at no charge to County, to use, copy, and modify, all Contractor Underlying Works and Contractor Derivatives that would be needed in order to allow County to continue to perform for itself, or obtain from other providers, the Services as the same might

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exist at the time of Disentanglement. Contractor shall also provide County with a copy of each such program, in such media as requested by County, together with object code, source code, and appropriate documentation. Contractor shall also offer to County the right to receive maintenance (including all enhancements and upgrades) and support with respect to such Contractor Underlying Works and Contractor Derivatives for so long as County requires, at the best rates Contractor is offering to other major customers for services of a similar nature and scope.

3.3.4 Return, Transfer and Removal of Assets.

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

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

3.3.5 Transfer of Leases, Licenses, and Agreements.

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

3.3.6 Delivery of Documentation.

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

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

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

ARTICLE 4
COMPENSATION

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

4.1 Fiscal for Fixed Pricing (Rev. 2/10/21)

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- 4.1.1 General Principles. Contractor shall, comply with generally accepted accounting principles and good business practices, including all applicable cost principles published by the Federal Office of Management and Budget (OMB), including 2 CFR 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS "The Uniform Guidance", which can be viewed at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl. Contractor shall comply with all federal, State, and other funding source requirements. Contractor shall, at its own expense, furnish all cost items associated with this Agreement except as herein otherwise specified in the budget or elsewhere to be furnished by County.
- 4.1.2 Invoices. Payment for the services performed under this Agreement shall be in accordance with Exhibit C, unless other payment methodologies are negotiated and agreed to by both Contractor and County. Contractor shall submit approved invoices monthly to the Contracting Officer's Representative ("COR") for work performed in the monthly period, accordingly. Contractor's monthly invoices shall be completed and submitted in accordance with written COR instructions and in compliance with all Agreement terms.
- 4.1.3 Payments. County agrees to pay Contractor in arrears only after receipt and approval by COR of properly submitted, detailed and itemized original invoice referencing the Agreement and a detailed listing of each pay point target, accomplishment, unit price and/or percentages, and showing the appropriate calculation for each, a progress report documenting the status and accomplishments of Contractor during the billing period pursuant to Exhibit C. Payment shall be NET 30 days from receipt and approval of invoice unless otherwise stated.
- 4.1.4 Full Compensation. Pending any adjustments by the COR, each invoice approved and paid shall constitute full and complete compensation to the Contractor for all work completed during the billing period pursuant to Exhibit A and Exhibit C. Contractor shall be entitled only to compensation, benefits, reimbursements or ancillary services specified in this Agreement. Payment shall be NET 30 days from receipt and approval of invoice unless otherwise stated.
- 4.1.5 Prompt Payment for Vendors and Subcontractors
- 4.1.5.1 Prompt payment for vendors and subcontractors.
- 4.1.5.1.1 Unless otherwise set forth in this paragraph, Contractor shall promptly pay its vendors and subcontractor(s) for satisfactory performance under its subcontract(s) to this Agreement. Such prompt payment shall be no later than thirty (30) days after Contractor receives payment for such services from County and shall be paid out of such amounts as are paid to Contractor under this Agreement.
- 4.1.5.1.2 Contractor shall include a payment clause conforming to the standards set forth in Paragraph 4.1.5.1.1 of this Agreement in each of its subcontracts, and shall require each of its subcontractors to include such a clause in their subcontracts with each lower-tier subcontractor or supplier.
- 4.1.5.2 If Contractor, after submitting a claim for payment to County but before making a payment to a vendor or subcontractor for the goods or performance covered by the claim, discovers that all or a portion of the payment otherwise due such vendor or subcontractor is subject to withholding from the vendor or subcontractor in accordance with the vendor or subcontract agreement, then the Contractor shall:
- 4.1.5.2.1 Furnish to the vendor or subcontractor and the COR within three (3) business days of withholding funds from its vendor or subcontractor a notice stating the amount to be withheld, the specific causes for the withholding under the terms of the subcontract or vendor agreement; and the remedial actions to be taken by the vendor or subcontractor in order to receive payment of the amounts withheld.
- 4.1.5.2.2 Contractor shall reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph 4.1.5.2.1 of this Agreement and Contractor may not claim from the County this amount until its subcontractor has cured the cause of Contractor withholding funds;

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

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

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

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

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

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

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

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

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

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

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

4.1.9 Disallowance. In the event the Contractor receives payment for services under this Agreement which is later disallowed by the County, Contractor shall promptly refund the disallowed amount to County on request, or at its option, County may offset the amount disallowed from any payment due or to become due to Contractor under any Agreement with the County.

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- 4.1.10 Maximum Price. During the performance period of this Agreement, the maximum price for the same or similar items and/or services shall not exceed the lowest price at which Contractor then offers the items and/or services to its most favored customer.

ARTICLE 5
AGREEMENT ADMINISTRATION

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

ARTICLE 6
CHANGES

- 6.1 Contracting Officer. The Contracting Officer may at any time, by a written order, make changes ("Changes"), within the general scope of this Agreement, in the definition of services to be performed, and the time (i.e.) hours of the day, days of the week, etc. and place of performance thereof. If any such Change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Agreement, whether changed or not changed by such an order, an equitable adjustment shall be made in the Agreement price or delivery schedule, or both, and the Agreement shall be modified in writing accordingly. Such changes may require Board of Supervisors approval.
- 6.2 Claims. Contractor must assert any claim for adjustment under this clause within thirty (30) days from the date of receipt by the Contractor of the notification of Change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this Agreement. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Agreement entitled "Disputes" (Article 15). However, nothing in this clause shall excuse the Contractor from proceeding with this Agreement as changed.

ARTICLE 7

SUSPENSION, DELAY AND TERMINATION

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

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

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

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

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

- 7.5 Termination for Convenience. The County may, by written notice stating the extent and effective date terminate this Agreement for convenience in whole or in part, at any time. The County shall pay the Contractor as full compensation for work performed in accordance with the terms of this Agreement until such termination:

7.5.1 The unit or pro rata price for any delivered and accepted portion of the work.

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- 7.5.2 A reasonable amount, as costs of termination, not otherwise recoverable from other sources by the Contractor as approved by the County, with respect to the undelivered or unaccepted portion of the order, provided compensation hereunder shall in no event exceed the total price.
- 7.5.3 In no event shall the County be liable for any loss of profits on the resulting order or portion thereof so terminated.
- 7.5.4 County's termination of this Agreement for convenience shall not preclude County from taking any action in law or equity against Contractor for:
- 7.5.4.1 Fraud, waste or abuse of Agreement funds, or
 - 7.5.4.2 Improperly submitted claims, or
 - 7.5.4.3 Any failure to perform the work in accordance with the Statement of Work, or
 - 7.5.4.4 Any breach of any term or condition of the Agreement, or
 - 7.5.4.5 Any actions under any warranty, express or implied, or
 - 7.5.4.6 Any claim of professional negligence, or
 - 7.5.4.7 Any other matter arising from or related to this Agreement, whether known, knowable or unknown before, during or after the date of termination.
- 7.6 Suspension of Work. The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this Agreement for the period of time that the Contracting Officer determines appropriate for the convenience of the Government. County reserves the right to prohibit, without prior notice, contractor or contractor's employees, directors, officers, agents, subcontractors, vendors, consultants or volunteers from 1) accessing County data systems and County owned software applications, including websites, domain names, platforms, physical files, 2) treating County's patients, clients, or facility residents, or 3) providing any other services under this Agreement.
- 7.7 Remedies Not Exclusive. The rights and remedies of County provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law, equity, or under resulting order.

ARTICLE 8
COMPLIANCE WITH LAWS AND REGULATIONS

- 8.1 Compliance with Laws and Regulations. Contractor shall at all times perform its obligations hereunder in compliance with all applicable federal, State, County, and local laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws and keep in effect any and all licenses, permits, notices and certificates as are required. Contractor shall further comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation.
- 8.2 Contractor Permits and License. Contractor certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to the County, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all existing foreign or domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of services hereunder. The County reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of any services hereunder.
- 8.3 Equal Opportunity. Contractor shall comply with the provisions of Title VII of the Civil Rights Act of 1964 in that it will not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment nor shall Contractor discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.

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- 8.4 Affirmative Action. Each Contractor of services and supplies employing fifteen (15) or more full-time permanent employees, shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at Section 84) of the San Diego County Administrative Code, which program is incorporated herein by reference. A copy of this Affirmative Action Program will be furnished upon request by COR or from the County of San Diego Internet web-site (www.co.san-diego.ca.us).
- 8.5 Non-Discrimination. Contractor shall ensure that services and facilities are provided without regard to ethnic group identification, race, color, nation origin, creed, religion, age, sex, physical or mental disability, political affiliation or marital status in accordance with applicable laws, including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C 2000d), Section 162 (a) of the Federal-Aid Highway Act of 1973 (23 U.S.C 324), Section 504 of the Rehabilitation Act of 1973, The Civil Rights Restoration Act of 1987 (P.L. 100-209), Executive Order 12898 (February 11, 1994), Executive Order 13166 (August 16, 2000), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000-e), the Age Discrimination Act of 1975 (42 U.S.C. 6101), Article 9.5, Chapter 1, Part 1, Division 2, Title 2 (Section 11135, et seq) of the California Government Code, Title 9, Division 4, Chapter 6 (Section 10800, et seq) of the CCR and California Dept of Social Services Manual of Policies and Procedures (CDSS MPP) Division 19.
- 8.6 AIDS Discrimination. Contractor shall not deny any person the full and equal enjoyment of, or impose less advantageous terms, or restrict the availability of, the use of any County facility or participation in any County funded or supported service or program on the grounds that such person has Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS) as those terms are defined in Title 3, Division 2, Chapter 8, Section 32.803, of the San Diego County Code of Regulatory Ordinances.
- 8.7 American with Disabilities Act (ADA) 1990. Contractor shall not discriminate against qualified people with disabilities in employment, public services, transportation, public accommodations and telecommunications services in compliance with the Americans with Disabilities Act (ADA) and California Administrative Code Title 24.
- 8.8 Political Activities Prohibited. None of the funds, provided directly or indirectly, under this Agreement shall be used for any political activities or to further the election or defeat of any candidate for public office. Contractor shall not utilize or allow its name to be utilized in any endorsement of any candidate for elected office. Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities, or activities for or against the election of a candidate for an elected office.
- 8.9 Lobbying. Contractor agrees to comply with the lobbying ordinances of the County and to assure that its officers and employees comply before any appearance before the County Board of Supervisors. Except as required by this Agreement, none of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before State and federal Legislatures, the Board of Supervisors of the County, or before any other local governmental entity. This provision shall not preclude Contractor from seeking necessary permits, licenses and the like necessary for it to comply with the terms of this Agreement.
- 8.9.1 Byrd Anti-Lobbying Amendment. Contractor shall file Standard Form-LLL, "Disclosure Form to Report Lobbying," to certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award by Contractor or Contractor's Subcontractors. In accordance with 31 U.S.C. 1352, Contractor shall also file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Contractor shall include this provision in all subcontracts and require each of its subcontractors to comply with the certification and disclosure requirements of this provision.

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- 8.10 Religious Activity Prohibited. There shall be no religious worship, instructions or proselytization as part of or in connection with the performance of this Agreement.
- 8.11 RESERVED
- 8.12 Board of Supervisors' Policies. Contractor represents that it is familiar, and shall use its best efforts to comply, with the following policies of the Board of Supervisors, available on the County of San Diego website:
- 8.12.1 Board Policy B-67, which encourages the County's Contractors to offer products made with recycled materials, reusable products, and products designed to be recycled to the County in response to the County's requirements; and
- 8.12.2 Board Policies B-53 and B-39a, which encourage the participation of small and veteran owned businesses in County procurements; and
- 8.12.3 Zero Tolerance for Fraudulent Conduct in County Services. Contractor shall comply with County of San Diego Board of Supervisors Policy A-120 "Zero Tolerance for Fraudulent Conduct in County Services." There shall be "Zero Tolerance" for fraud committed by contractors in the administration of County programs and the provision of County services. Upon proven instances of fraud committed by contractors in connection with their performance under the Agreement, said contractor shall be subject to corrective action up to and including termination of the Agreement; and
- 8.12.4 Interlocking Directorate. In recognition of Board Policy A-79, available on the County of San Diego Website, not-for-profit Contractors shall not subcontract with related for-profit subcontractors for which an interlocking relationship exist unless specifically authorized in writing by the Board of Supervisors; and
- 8.12.5 Drug and Alcohol-Free Workplace. The County of San Diego, in recognition of individual rights to work in a safe, healthful and productive work place, has adopted a requirement for a drug and alcohol free work place, County of San Diego Drug and Alcohol Use Policy C-25, available on the County of San Diego website. This policy provides that all County-employed Contractors and Contractor employees shall assist in meeting this requirement.
- 8.12.5.1 As a material condition of this Agreement, the Contractor agrees that the Contractor and the Contractor employees, while performing service for the County, on County property, or while using County equipment:
- 8.12.5.1.1 Shall not be in any way impaired because of being under the influence of alcohol or a drug.
- 8.12.5.1.2 Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
- 8.12.5.1.3 Shall not sell, offer, or provide alcohol or an illegal drug to another person; provided, however, that the foregoing restriction shall not be applicable to a Contractor or Contractor employee who as part of the performance of normal job duties and responsibilities prescribes or administers medically prescribed drugs.
- 8.12.5.2 Contractor shall inform all employees who are performing service for the County on County property or using County equipment of the County objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.
- 8.12.5.3 The County may terminate for default or breach this Agreement, and any other agreement the Contractor has with the County, if the Contractor, or Contractor employees are determined by the Contracting Officer not to be in compliance with the conditions listed herein
- 8.13 Cartwright Act. Following receipt of final payment under the Agreement, Contractor assigns to the County all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15

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U.S.C. Sec. 15) or under the Cartwright act (Chapter 2) (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County under this Agreement.

- 8.14 Hazardous Materials. Contractor shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices, and training. Contractor agrees that it will not store any Hazardous Materials at any County facility for periods in excess of ninety (90) days or in violation of the applicable site storage limitations imposed by Environmental Law. Contractor agrees to take, at its expense, all actions necessary to protect third parties, including, without limitation, employees and agents of the County, from any exposure to Hazardous Materials generated or utilized in its performance under this Agreement. Contractor agrees to report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify the County of it. Contractor shall not be liable to the County for the County's failure to comply with, or violation of, any Environmental Law. As used in this section, the term "Environmental Laws" means any and all federal, state or local laws or ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common law"), including, but not limited to, the Resource Conservation and Recovery Act, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions or other similar substances or conditions. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws, or (d) is any other material or substance giving rise to any liability, responsibility or duty upon the County or Lessee with respect to any third person under any Environmental Laws.
- 8.15 Clean Air Act and Federal Water Pollution Control Act.
- 8.15.1 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Contractor agrees to report each violation to the USDA and the appropriate EPA Regional Office.
- 8.15.2 Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 et seq.). Contractor agrees to report each violation to the USDA and the appropriate EPA Regional Office.
- 8.16 Debarment, Exclusion, Suspension, and Ineligibility.
- 8.16.1 Contractor certifies that, to the best of its knowledge, and except as disclosed to County and acknowledged in writing by County prior to the execution of this Agreement, Contractor, its employees, directors, officers, agents, subcontractors, vendors, consultants, and volunteers:
- 8.16.1.1 Are not presently debarred, excluded, suspended, declared ineligible, voluntarily excluded, or proposed for debarment, exclusion, suspension or ineligibility by any federal, state, or local department or agency; and
- 8.16.1.2 Have not within a 3-year period preceding this Agreement been convicted of, or had a civil or administrative judgment rendered against them for, the commission of fraud or a criminal offense or civil action in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction; violation of federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property; physical, financial or sexual abuse or misconduct with a patient or client, or medical negligence or malpractice;

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

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

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

8.16.3 Contractor invoices shall include the following language:

I certify, under penalty of perjury under the laws of the State of California, that the deliverables and/or services invoiced were delivered and/or performed specifically for this Agreement in accordance with and compliance to all terms and conditions set forth herein.

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

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

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

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

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

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

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

8.20 Compliance Program. Contractors with an agreement that exceeds more than \$250,000 in value annually shall establish, and maintain for the duration of this Agreement, a compliance program that meets the standards of Federal Sentencing Guidelines section 8B2.1 and 42 CFR 438.608, regardless of funding source or services.

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8.21 Investigations. Unless prohibited by an investigating government authority, Contractor shall cooperate and participate fully in any investigation initiated by County relative to this Agreement. Upon County's request, Contractor shall promptly provide to County any and all documents, including any and all communications or information stored digitally, and make available for interviews any employee(s) of Contractor identified by County. Contractor further agrees to immediately notify County if any employee, director, officer, agent, subcontractor, vendor, consultant or volunteer of Contractor comes under investigation by any federal, State or local government entity with law enforcement or oversight authority over the Agreement or its funding for conduct arising out of, or related to, performance under this Agreement.

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

8.22 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms. Contractor shall, in accordance with 2 CFR 200.321 - Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms, take affirmative steps to include minority business, women's business enterprises, and labor surplus area firms by:

8.22.1 Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

8.22.2 Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

8.22.3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

8.22.4 Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and

8.22.5 Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

8.23 Procurement of Recovered Materials. Contractor shall comply with 2 CFR part 200.322. Contractor shall procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000. Contractor certifies that the percentage of recovered materials to be used in the performance of this Agreement will be at least the amount required by applicable specifications or other contractual requirements. For contracts over \$100,000 in total value, Contractor shall estimate the percentage of total material utilized for the performance of the Agreement that is recovered materials and shall provide such estimate to County upon request.

8.24 Reserved.

ARTICLE 9
CONFLICTS OF INTEREST; CONTRACTOR'S CONDUCT

9.1 Conflicts of Interest. Contractor presently has no interest, including but not limited to other projects or independent agreements, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor shall not employ any person having any such interest in the performance of this Agreement. Contractor shall not hire County's employees to perform any portion of the work or services provided for herein including secretarial, clerical and similar incidental services except upon the written approval of County. Without such written approval, performance of services under this Agreement by associates or employees of County shall not relieve Contractor from any responsibility under this Agreement.

9.1.1 California Political Reform Act and Government Code Section 1090 Et Seq. Contractor acknowledges that the California Political Reform Act ("Act"), Government Code section 81000 et seq., provides that

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Contractors hired by a public agency, such as County, may be deemed to be a “public official” subject to the Act if the Contractor advises the agency on decisions or actions to be taken by the agency. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified “conflicts of interest” relating to the decision. To the extent the Act applies to Contractor, Contractor shall abide by the Act. In addition, Contractor acknowledges and shall abide by the conflict of interest restrictions imposed on public officials by Government Code section 1090 et seq.

9.2 Conduct of Contractor.

- 9.2.1 Contractor shall inform the County of all Contractor's interests, if any, that are, or that Contractor believes to be, incompatible with any interests of the County.
- 9.2.2 Contractor shall not, under circumstances that might reasonably be interpreted as an attempt to influence the recipient in the conduct of his duties, accept any gratuity or special favor from individuals or organizations with whom the Contractor is doing business or proposing to do business, in accomplishing the work under this Agreement.
- 9.2.3 Contractor shall not use for personal gain or make other improper use of confidential information acquired in connection with this Agreement. In this connection, the term "confidential information" includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of individuals; anticipated materials requirements or pricing actions; and knowledge of selections of Contractors or subcontractors in advance of official announcement.
- 9.2.4 Contractor, its employees, directors, officers, agents, subcontractors, vendors, consultants, and volunteers shall not offer, directly or indirectly, any unlawful gift, gratuity, favor, entertainment, or other item(s) of monetary value to an employee or official of the County.
- 9.2.5 Referrals. Contractor further covenants that no referrals of clients through Contractor’s intake or referral process shall be made to the private practice of any person(s) employed by the Contractor.

9.3 Prohibited Agreements. As required by Section 67 of the San Diego County Administrative Code, Contractor certifies that it is not in violation of the provisions of Section 67, and that Contractor is not, and will not subcontract with, any of the following:

- 9.3.1. Persons employed by County or of public agencies for which the Board of Supervisors is the governing body;
- 9.3.2. Profit-making firms or businesses in which employees described in sub-section 9.3.1, above, serve as officers, principals, partners, or major shareholders;
- 9.3.3. Persons who, within the immediately preceding twelve (12) months came within the provisions of the above sub-sections and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the Agreement, or (2) participated in any way in developing the Agreement or its service specifications; and
- 9.3.4. Profit-making firms or businesses, in which the former employees described in sub-section 9.3.3 above, serve as officers, principals, partners, or major shareholders.

9.4 Limitation of Future Agreements or Grants. It is agreed by the parties to the Agreement that Contractor shall be restricted in its future contracting with the County to the manner described below. Except as specifically provided in this clause, Contractor shall be free to compete for business on an equal basis with other companies.

- 9.4.1 If Contractor, under the terms of the Agreement, or through the performance of tasks pursuant to this Agreement, is required to develop specifications or statements of work and such specifications or statements of work are to be incorporated into a solicitation, Contractor shall be ineligible to perform the work described within that solicitation as a prime or subcontractor under an ensuing County agreement. It

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is further agreed, however, that County will not, as additional work, unilaterally require Contractor to prepare such specifications or statements of work under this Agreement.

9.4.2 Contractor may not apply for nor accept additional payments for the same services contained in the Statement of Work.

ARTICLE 10
INDEMNITY AND INSURANCE

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

ARTICLE 11
AUDIT AND INSPECTION OF RECORDS

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

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

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

If any services performed hereunder are not in conformity with the specifications and requirements of this Agreement, County shall have the right to require the Contractor to perform the services in conformity with said specifications and requirements at no additional increase in total Agreement amount. When the services to be performed are of such nature that the difference cannot be corrected, County shall have the right to (1) require Contractor immediately to take all necessary steps to ensure future performance of the services in conformity with requirements of the Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services performed. In the event Contractor fails to perform the services promptly or to take necessary steps to ensure future performance of the service in conformity with the specifications and requirements of the Agreement, County shall have the right to either (1) by agreement or to otherwise have the services performed in conformity with the Agreement specifications and charge to Contractor any cost occasioned to County that is directly related

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to the performance of such services, or (2) terminate this Agreement for default as provided in the Termination clause.

11.2 External Audits. Contractors will provide the following to the COR:

11.2.1 Contractor shall provide COR a copy of all notifications of audits or pending audits by federal or State representatives regarding contracted services identified in this Agreement no later than three (3) business days of Contractor receiving notice of the audit.

11.2.2 Contractor shall provide COR with a copy of the draft and final State or federal audit reports within twenty four (24) hours of receiving them (Health and Human Services Agency (HHS) Contractors shall also provide electronic copies to Agency Contract Support (ACS) at ACS.HHSA@sdcounty.ca.gov).

11.2.3 Contractor shall provide COR a copy of the contractor's response to the draft and final State or federal audit reports at the same time as response provided to the State or federal representatives.

11.2.4 Unless prohibited by the government agency conducting the audit, Contractor shall provide COR a copy of all responses made by the federal or State audit representative to the contractors' audit response no later than three (3) business days of receiving it. This will continue until the federal or State auditors have accepted and closed the audit.

11.3 Cost or Pricing Data. If the Contractor submitted cost or pricing data in connection with the pricing of this Agreement or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities of the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the County or its agent shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation pricing or performance of such Agreement, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted.

11.4 Availability. The materials described above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit or reproduction, until the expiration of three (3) years from the date of final payment under this Agreement, or by section 11.4.1 and 11.4.2, below:

11.4.1 If this Agreement is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.

11.4.2 Record that relate to appeals under the "Disputes" clause of this Agreement, or litigation or the settlement of claims arising out of the performance of this Agreement, shall be made available until such appeals, litigation, or claims have been disposed of, or three years after Agreement completion, whichever is longer. County shall keep the materials described above confidential unless otherwise required by law.

11.5 Subcontract. The Contractor shall insert a clause containing all the provisions of this Article 11 in all subcontracts hereunder except altered as necessary for proper identification of the contracting parties and the contracting officer.

ARTICLE 12
INSPECTION OF SERVICE

12.1 Subject to Inspection. All performance (including services, materials, supplies and equipment furnished or utilized in the performance of this Agreement, and workmanship in the performance of services) shall be subject to inspection and test by the County at all times during the term of this Agreement. Contractor shall cooperate with any inspector assigned by the County to permit the inspector to determine whether Contractor's performance conforms to the requirements of this Agreement. County shall perform such inspection in a manner as not to unduly interfere with Contractor's performance.

12.2 Specification and Requirements. If any services performed by Contractor do not conform to the specifications and requirements of this Agreement, County may require Contractor to re-perform the services until they conform to said specifications and requirements, at no additional cost, and County may withhold payment for such services

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until Contractor correctly performs them. When the services to be performed are of such a nature that Contractor's cannot correct its performance, the County shall have the right to (1) require the Contractor to immediately take all necessary steps to ensure future performance of services conforms to the requirements of this Agreement, and (2) reduce the Agreement price to reflect the reduced value of the services received by County. In the event Contractor fails to promptly re-perform the services or to take necessary steps to ensure that future performance of the service conforms to the specifications and requirements of this Agreement, the County shall have the right to either (1) without terminating this Agreement, have the services performed, by agreement or otherwise, in conformance with the specifications of this Agreement, and charge Contractor, and/or withhold from payments due to Contractor, any costs incurred by County that are directly related to the performance of such services, or (2) terminate this Agreement for default.

ARTICLE 13
USE OF DOCUMENTS AND REPORTS

- 13.1 Findings Confidential. Any reports, information, data, etc., given to or prepared or assembled by Contractor under this Agreement that the County requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.
- 13.2 Ownership, Publication, Reproduction and Use of Material. All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other material or properties produced under this Agreement shall be the sole and exclusive property of County. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. County shall have unrestricted authority to publish, disclose, distribute and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.
- 13.3 Confidentiality. Contractor agrees to maintain the confidentiality of and take industry appropriate and legally required measures to prevent the unlawful disclosure of any information that is legally required to be kept confidential. Except as otherwise allowed by local, State or federal law or regulation and pursuant to this Section 13.3, Contractor agrees to only disclose confidential records where the holder of the privilege, whether the County, or a third party, provides written permission authorizing the disclosure.
- 13.4 Public Records Act. The California Public Records Act ("CPRA") requires County to disclose "public records" in its actual or constructive possession unless a statutory exemption applies. This generally includes contracts and related documents. If County receives a CPRA request for records relating to the Agreement, County may, at its sole discretion, either determine its response to the request without notifying Contractor or notify Contractor of the request. If County determines its response to the request without notifying Contractor, Contractor shall hold County harmless for such determination. If County notifies Contractor of the request, Contractor may request that County withhold or redact records responsive to the request by submitting to County a written request within five (5) business days after receipt of the County's notice. Contractor's request must identify specific records to be withheld or redacted and applicable exemptions. Upon timely receipt of Contractor's request, County will review the request and at its sole discretion withhold and/or redact the records identified by Contractor. Contractor shall hold County harmless for County's decision whether to withhold and/or redact pursuant to Contractor's written request. Contractor further agrees that its defense and indemnification obligations set forth in Section 10.1 of this Agreement extend to any Claim (as defined in Section 10.1) against the County Parties (as defined in Section 10.1) arising out of County's withholding and/or redacting of records pursuant to Contractor's request. Nothing in this section shall preclude Contractor from bringing a "reverse CPRA action" to prevent disclosure of records. Nothing in this section shall prevent the County or its agents or any other governmental entity from accessing any records for the purpose of audits or program reviews if that access is legally permissible under the applicable local, State or federal laws or regulations. Similarly, County or its agent or designee may take possession of the record(s) where legally authorized to do so.
- 13.5 Maintenance of Records. Contractor shall maintain all records relating to its performance under this Agreement, including all records of costs charged to this Agreement, and shall make them available within San Diego County

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for a minimum of five (5) years from the ending date of this Agreement, or longer where required by funding source or while under dispute under the terms of this Agreement, unless County agrees in writing to an earlier disposition. Contractor shall provide any requested records to County within two (2) business days of request.

13.6 Custody of Records. County, at its option, may take custody of Contractor's client records upon Agreement, termination, expiration, or at such other time as County may deem necessary. County agrees that such custody will conform to applicable confidentiality provisions of State and federal law. Said records shall be kept by County in an accessible location within San Diego County and shall be available to Contractor for examination and inspection. Notwithstanding the foregoing, Contractor may maintain custody of records where legally required.

13.7 Audit Requirement.

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

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

13.8 Reports. Contractor shall submit reports required in Exhibit A and additional reports as may be requested by the COR and agreed to by the Contractor. Format for the content of such reports may be developed by County. The timely submission of these reports is a necessary and material term and condition of this Agreement and Contractor agrees that failure to meet specified deadlines will be sufficient cause to withhold payment. Contractor shall submit to County within thirty (30) days of the termination of this Agreement a report detailing all work done pursuant to this Agreement by Contractor.

13.9 Evaluation Studies. Contractor shall participate as requested by the County in research and/or evaluative studies designed to show the effectiveness and/or efficiency of Contractor services or to provide information about Contractor's project.

**ARTICLE 14
(RESERVED)**

**ARTICLE 15
DISPUTES**

Notwithstanding any provision of this Agreement to the contrary, the Contracting Officer shall decide any dispute concerning a question of fact arising out of this Agreement that is not otherwise disposed of by the parties within a reasonable period of time. The decision of the Contracting Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Contractor shall proceed diligently with its performance hereunder pending resolution by the Contracting Officer of any such dispute. Nothing herein shall be construed as granting the Contracting Officer or any

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other administrative official, representative or board authority to decide questions of law, or issues regarding the medical necessity of treatment or to pre-empt any medical practitioners' judgment regarding the medical necessity of treatment of patients in their care. The foregoing does not change the County's ability to refuse to pay for services rendered if County disputes the medical necessity of care.

ARTICLE 16
GENERAL PROVISIONS

- 16.1 Assignment and Subcontracting. Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the County; County's consent shall not be unreasonably withheld. The Contractor shall make no agreement with any party for furnishing any of the work or services herein contained without the prior written consent of the COR, pursuant to Paragraph 1.4.
- 16.2 Contingency. This Agreement shall bind the County only following its approval by the Board of Supervisors or when signed by the Purchasing and Contracting Director.
- 16.3 Entire Agreement. This Agreement, together with all Exhibits attached hereto and other agreements expressly referred to herein, constitute the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, including any proposals from Contractor and requests for proposals from County, are superseded.
- 16.4 Sections and Exhibits. All sections and exhibits referred to herein are attached hereto and incorporated by reference.
- 16.5 Further Assurances. Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.
- 16.6 Governing Law. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.
- 16.7 Headings. The Article captions, Clause and Section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the construction or interpretation of any term or provision hereof.
- 16.8 Modification Waiver. Except as otherwise provided in Article 6, "Changes," above, no modification, waiver, amendment or discharge of this Agreement shall be valid unless the same is in writing and signed by both parties.
- 16.9 Neither Party Considered Drafter. Despite the possibility that one party may have prepared the initial draft of this Agreement or played the greater role in the physical preparation of subsequent drafts, neither party shall be deemed the drafter of this Agreement and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one party on the ground that such provision was drafted by the other.
- 16.10 No Other Inducement. The making, execution and delivery of this Agreement by the parties hereto has been induced by no representations, statements, warranties or agreements other than those expressed herein.
- 16.11 Notices. Notice to either party shall be in writing and personally delivered; sent by certified mail, postage prepaid, return receipt requested; or emailed to the County's or Contractor's designated representative (or such party's authorized representative). Any such notice shall be deemed received by the party (or such party's authorized representative) on the earliest of the date of personal delivery, three (3) business days after deposit in the U.S. Mail, or upon sending of an email from which an acknowledgement of receipt has been received other than an out of office, unavailable, or undeliverable reply.
- 16.12 Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement

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shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

- 16.13 Successors. Subject to the limitations on assignment set forth in Clause 16.1 above, all terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
- 16.14 Time. Time is of the essence for each provision of this Agreement.
- 16.15 Time Period Computation. All periods of time referred to in this Agreement shall be calendar days, unless the period of time specifies business days. Calendar days shall include all days of the week, including holidays. Business days shall be Monday through Friday, excluding County observed holidays.
- 16.16 Waiver. The waiver by one party of the performance of any term, provision, covenant or condition shall not invalidate this Agreement, nor shall it be considered as a waiver by such party of any other term, provision, covenant or condition. Delay by any party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant or condition shall not prevent such party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.
- 16.17 Third Party Beneficiaries Excluded. This Agreement is intended solely for the benefit of the County and its Contractor. Any benefit to any third party is incidental and does not confer on any third party to this Agreement any rights whatsoever regarding the performance of this Agreement. Any attempt to enforce provisions of this Agreement by third parties is specifically prohibited.
- 16.18 Publicity Announcements and Materials. All public announcements, including those issued on Contractor letterhead, and materials distributed to the community shall identify the County of San Diego as the funding source for contracted programs identified in this Agreement. Copies of publicity materials related to contracted programs identified in this Agreement shall be filed with the COR. County shall be advised at least twenty four (24) hours in advance of all locally generated press releases and media events regarding contracted services identified in this Agreement. Alcohol and Drug Prevention Services Contractors shall notify COR or designee at least five (5) business days in advance of all Contractor generated media releases and media events regarding contracted services identified in this Agreement.
- 16.19 Critical Incidents. Contractor shall have written plans or protocols and provide employee training for handling critical incidents involving: external or internal instances of violence or threat of violence directed toward staff or clients; loss, theft or unlawful accessing of confidential client, patient or facility resident Personal Information (PI), Personally Identifiable Information (PII) and/or Personal Health Information (PHI); fraud, waste and/or abuse of Agreement funds; unethical conduct; or violation of any portion of San Diego County Board of Supervisors Policy C-25 “Drug & Alcohol Use” while performing under this Agreement. Contractor shall report all such incidents to the COR within one business day of their occurrence. However, if this Agreement includes Article 14, Contractor must adhere to the timelines and processes contained in Article 14.
- 16.20 Responsiveness to Community Concerns. Unless prohibited by applicable State or federal law, Contractor shall notify County within one business day of receipt of any material complaints including but not limited to complaints referring to issues of abuse or quality of care, submitted to Contractor orally or in writing, regarding the operation of Contractor’s program or facility under this Agreement. Contractor shall take appropriate steps to acknowledge receipt of said complaint(s) from individuals or organizations. Contractor shall take appropriate steps to utilize appropriate forums to address or resolve any such complaints received. Nothing in this provision shall be interpreted to preclude Contractor from engaging in any legally authorized use of its facility, property or business as approved, permitted or licensed by the applicable authority.
- 16.21 Criminal Background Check Requirements. Contractor shall ensure that criminal background checks are required and completed prior to employment or placement of any employee, director, officer, agent, subcontractor, consultant or volunteer who will be providing any services, accessing County or client data, or receiving compensation under this Agreement. Background checks shall be in compliance with any licensing, certification, funding, or Agreement requirements, including the Statement of Work, which may be higher than the minimum

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standards described herein. Furthermore, for any individuals identified above who will be assigned to sensitive positions funded by this Agreement, background checks shall be in compliance with Board of Supervisors Policy C-28, available on the County of San Diego website. Sensitive positions are those that: (1) physically supervise minors or vulnerable adults; (2) have unsupervised physical contact with minors or vulnerable adults; and/or (3) have a fiduciary responsibility to any County client, or direct access to, or control over, bank accounts or accounts with financial institutions of any client. If this Agreement includes Article 14, Contractor must also adhere to requirements contained in Article 14.

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

16.21.1 Contractor shall utilize a subsequent arrest notification service or perform a criminal background check annually during the term of this Agreement for any employee, director, officer, agent, subcontractor, consultant or volunteer who will be providing any services under this Agreement. Contractor shall keep the documentation of their review and consideration of the individual's criminal history on file in accordance with paragraph 13.4 "Maintenance of Records."

16.21.2 Definitions

- A. Minor: Individuals under the age of eighteen (18) years old.
- B. Vulnerable Adult: (1) Individuals age eighteen (18) years or older, who require assistance with activities of daily living and who may be put at risk of abuse during service provision; (2) Individuals age eighteen (18) years or older who have a permanent or temporary limited physical and/or mental capacity that may put them at risk of abuse during service provision because it renders them: unable to make decisions for themselves, unable to physically defend themselves, or unaware of physical abuse or other harm that could be perpetrated against them. Activities of daily living are defined as the basic tasks of everyday life, such as eating, bathing, dressing, toileting, and transferring.
- C. Volunteer: A person who performs a service willingly and without pay.

16.22 Reserved.

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

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SIGNATURE PAGE

AGREEMENT TERM. This Agreement shall begin the ____ day of ____ 20__ and end upon completion and County acceptance of all deliverables under this Agreement.

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

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

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

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

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

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

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

COUNTY OF SAN DIEGO

[#CONTRACTOR NAME]

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

By: _____
[#Name and Title]

Date: _____

Date: _____

EXHIBIT A – STATEMENT OF WORK

1. Scope of Work/Purpose

The County of San Diego, Land Use and Environment Group is seeking proposals for the development of a comprehensive infrastructure plan for deploying robust, resilient broadband infrastructure for the unincorporated region of San Diego County. Federal Government American Rescue Plan Act (ARPA) funds are anticipated to be used for this contract in accordance with the Catalog of Federal Domestic Assistance CFDA number 21.027.

2. Background Information

The COVID-19 pandemic demonstrated significant limitations and reach of high-speed broadband throughout the unincorporated region of San Diego County. Existing infrastructure was impacted due to the increased demands for digital learning, remote work, telehealth, and e-commerce.

Acting on the June 8th, 2021 County of San Diego Board of Supervisors meeting recommendation to use American Rescue Plan Act funding, the County of San Diego is seeking proposals for the development of a comprehensive infrastructure plan for deploying robust, resilient broadband infrastructure for the unincorporated area of the County of San Diego. The impetus for this plan is the needs of unincorporated residents. The recent passage of the Federal Government American Rescue Plan Act will assist in achieving this goal. This federal initiative provides significant sums of funding for broadband which the County of San Diego can utilize to enhance broadband infrastructure. This plan will be used to plan and implement broadband infrastructure to allow for reasonably priced universal access, enhanced network capacity, and speed to meet the needs of the next decade of digital expansion and improve the resiliency of the network.

3. Goals and Outcomes

3.1. Goals: The goal of the proposed comprehensive plan is to provide a comprehensive plan for developing robust broadband infrastructure that:

- 3.1.1. Ensures equitable, reasonably priced access for all unincorporated area residents regardless of location and socio-economic factors.
- 3.1.2. Supports digital literacy for K-12 and higher education as well as online/digital up-skilling, re-skilling, and online certification.
- 3.1.3. Supports remote work providing greater opportunities and improvement to livelihood for County of San Diego residents regardless of their physical location.
- 3.1.4. Provides widespread access to telehealth options.
- 3.1.5. Promotes digital economy.
- 3.1.6. Enhances digital infrastructure to improve safety, mobility, and the quality of life for the County including intelligent transportation system (ITS) improvements that add resilience, redundancy, and remote control to the County's emergency and fire response and evacuation management system.
- 3.1.7. Serves as the foundation for "smart counties" applications.
- 3.1.8. Supports the County's Climate Action Goals by providing remote access to virtual services.

4. Target Population and Geographic Area

4.1. Target Population: Residents of the unincorporated region.

4.2. Geographical/Regional Service Area(s): The unincorporated communities of the region.

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5. Specific Requirements for Service Delivery

- 5.1. Comprehensive Plan. The comprehensive plan will develop a tactical implementation plan that addresses the modernization and expansion of the County of San Diego's unincorporated area broadband infrastructure. The comprehensive plan shall encompass the following:
- 5.1.1. The current status of the unincorporated region's broadband infrastructure inclusive of a community level assessment regarding universal access, pricing, network speed and bandwidth, resiliency, reliability, and stability.
 - 5.1.2. Definition of the overall broadband objectives in terms of universal access, pricing, network speed and bandwidth, resiliency, reliability, and stability. This includes defining:
 - 5.1.2.1. Current internet access by: (1) DSL – digital subscriber line (existing telephone lines), (2) Coaxial Cable – copper cable wiring, (3) fiber optic cable, (4) wireless internet (Verizon, AT&T, T-Mobile, etc.), WiFi, 5G, satellite, other.
 - 5.1.2.2. Upload and download speeds.
 - 5.1.2.3. Transmission distance.
 - 5.1.2.4. Overall capacity, speed, local or other control, resiliency.
 - 5.1.2.5. Security and privacy.
 - 5.1.2.6. Natural disaster resiliency.
 - 5.1.2.7. Pricing to consumers.
 - 5.1.3. Gaps identified, inclusive of County level assessment, regarding universal access, pricing, network speed and bandwidth, resiliency, reliability, and stability including recommendations to close the identified gaps, including infrastructure changes and related costs and resource/time and effort necessary. Where possible, identify and quantify the economic and social impact of gaps identified.
 - 5.1.4. Infrastructure development model options, in terms of choices that would optimize the meeting of the broadband objectives at the most favorable cost level.
 - 5.1.5. Included within the gap analysis shall be feedback from the community in terms of need, support, usage, satisfaction with speed and bandwidth, choice and options, current rating of providers, and recommendations.
 - 5.1.6. An overall plan to identify key broadband strategic infrastructure and potential public-private partnerships that would ensure a robust, resilient connectivity throughout the unincorporated region of San Diego County.
 - 5.1.7. Analysis of barriers to the private sector from expanding into areas not currently supported by broadband, including the cost of permitting, installation, and ongoing maintenance.
 - 5.1.8. Consideration for carrier neutral cable landings, cable landing stations, terrestrial backhaul to key locations, middle mile options to connect communities, and alternative last mile infrastructure including wireless and community networks.
 - 5.1.9. Identification of key routes in the region that connect anchor institutions, data centers, economic clusters, co-working hubs, including rural communities to foster remote work, distance learning, telehealth and digitally enabled societal systems. Routes should include but not be limited to:
 - 5.1.9.1. Survey of existing fiber routes.
 - 5.1.9.2. Federal Govt. routes (e.g., Judiciary, etc.).
 - 5.1.9.3. DOD, Military routes.
 - 5.1.9.4. State routes (e.g., Cal State/UC).
 - 5.1.9.5. Incorporated municipality routes.
 - 5.1.9.6. Utility routes (e.g., SDG&E/Sempra).

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- 5.1.9.7. Franchise holder routes.
- 5.1.9.8. Private property crossings, rights of way.
- 5.1.10. The plan shall include:
 - 5.1.10.1. Details on route, method of installation, i.e., conduit, pole attachment, trenching, and rights of way.
 - 5.1.10.2. Research permitting process for Right of Way (ROW) infrastructure builds.
 - 5.1.10.3. Identification of required ROW lease agreements.
 - 5.1.10.4. Identification of private easements.
 - 5.1.10.5. Identification of special management areas and culturally sensitive areas for construction.
 - 5.1.10.6. Identification of the types of land use and building permits required for ROW and private easements along the backbone.
 - 5.1.10.7. Research of the permitting process for ROW infrastructure builds.
 - 5.1.10.8. Research of other permitting required outside ROW, including other land use permits such as major use permits on private property.
- 5.1.11. The plan shall assume fiber deployment, but where it is not feasible, wireless solutions are acceptable. Consideration should include but not be limited to:
 - 5.1.11.1. Research of the best construction methods for the ROW and/or Gov't Roads.
 - 5.1.11.2. If open trenching is cost prohibitive.
 - 5.1.11.3. If Micro Trenching may be the least invasive.
- 5.1.12. The Plan shall include the soliciting of broadband stakeholder input to determine and prioritize an immediate (5-year) window including but not limited to:
 - 5.1.12.1. Wireless and wireline providers.
 - 5.1.12.2. Independent CLECs (competitive local exchange carriers).
 - 5.1.12.3. Electric Utilities.
- 5.1.13. The Plan shall identify potential sources of data for these projects which include but are not limited to:
 - 5.1.13.1. Input from Engineering companies that have worked on Gov't ROW projects.
 - 5.1.13.2. Use of Topographic maps and profile drawings that will expedite infrastructure construction.
 - 5.1.13.3. Use of ground penetrating radar (GPR) to survey streets where records are lacking
 - 5.1.13.4. Engagement of local engineers that have access to local utility underground conduit records.
 - 5.1.13.5. Survey of existing conduits to assess current conditions and usability of conduits to determine the backbone routes for current and future capacity.
 - 5.1.13.6. Survey of existing conduits to assess current conditions and usability of conduits to accommodate current and future routes for capacity.
- 5.1.14. Solicit market feedback and conduct market assessments, including supply and demand for broadband in the County of San Diego.
- 5.1.15. Broadband Models. There are different broadband infrastructure models that various states and municipalities have opted for. Some use government owned fiber, others depend upon utilities, others private entities, some parts of each. The comprehensive plan will provide options and recommendations on broadband models including but not limited to:
 - 5.1.15.1. Government Owned Broadband – owns and operates network and is service provider of network.
 - 5.1.15.2. Private Sector Entity Owns and Operates – builds and maintains network and may have open access,

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- 5.1.15.3. Utility Owned Broadband – own and operates network and is service provider,
- 5.1.15.4. Dark Fiber – open access is a model where the government builds infrastructure to the curb and the subscriber then selects an Internet Service Provider (ISP) which finishes the connection.
- 5.1.15.5. Automated or Manual Open Access – allow switching of provider in real time, or by network operator making changes, respectively.
- 5.1.16. Network Design. The plan shall explore:
 - 5.1.16.1. The different design options and provide recommendations on the best path forward
 - 5.1.16.2. Switched Ethernet versus Passive Optical Network design,
- 5.1.17. Network Segments, including drop (street to premise), common (fiber from street to network hub), backbone (network hub to network operating center), middle-mile (third-party fiber running from network operating center to Internet Exchange Point).
- 5.1.18. Cost Analysis. The plan shall include:
 - 5.1.18.1. A high-level estimated cost analysis of the different models and network designs,
 - 5.1.18.2. Recommendations as to the optimal method for various broadband segments.
 - 5.1.18.3. Inclusion of infrastructure cost, network maintenance and operations, and services.
- 5.1.19. The plan shall identify potential sources of funding for these projects.
- 5.1.20. The plan shall incorporate developing public-private partnerships structures for key projects, including operating revenue, and financing models, and assisting the County of San Diego in determining the optimal structure. Additionally, the plan shall:
 - 5.1.20.1. Advise the County on areas of industry-specific knowledge that affect the financing and marketing of the County’s infrastructure.
 - 5.1.20.2. Research ownership and/or operation of fiber network.
 - 5.1.20.3. Solicit input from the large CLEC fiber companies in the U.S.
 - 5.1.20.4. Solicit input from county, municipalities, state, federal gov’t/ military.
 - 5.1.20.5. Solicit input from Wireless Carriers in combination with the CLECs could provide the funds for the middle mile for the last segment to 5G nodes (e.g. street lights).
- 5.1.21. The plan shall incorporate prioritizing deployment based on data and community input from stakeholders.
- 5.1.22. The Contractor shall prepare and deliver presentations designed to facilitate an understanding of the comprehensive plan and its implications.
- 5.1.23. The Contractor shall advise and assist the County of San Diego with legislation and policy changes (if necessary) that encourage the deployment of broadband infrastructure.
- 5.1.24. The Contract shall cooperate and collaborate with the San Diego Association of Governments (SANDAG) and its consultants and contractors in SANDAG’s efforts with regard to broadband in the San Diego region.

6. Aligning Funding Sources and Opportunities

The comprehensive plan will incorporate information on available funding through federal, state, and private sources that are available at the time of authoring the plan that aligns with the specific action items identified in the scoping process. The comprehensive plan will also consider the types and sources of funding for the recommended actions, including ongoing maintenance. This ensures that ongoing sustainability and equity to all communities throughout the unincorporated County of San Diego remain a priority throughout the implementation of this plan. For example, sources of funding that require subscription or increase consumer costs to ensure sustainability should be carefully evaluated to ensure that funding specific action items does not increase the digital divide and/or inadvertently increase digital inequity or social-economic disparity throughout unincorporated communities.

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7. Data Collection and Reporting Requirements

The comprehensive plan will incorporate timelines for achieving the actions identified in the scoping process. All timelines shall be reasonable given the availability of resources and must be aligned in logical, pragmatic, prioritized processes that will achieve the maximum benefit for ensuring the overall purpose of this project as identified in this scope. This project is anticipated to be completed in three (3) months. During this period, the contractor will provide three (3) monthly updates including draft/version updates of their written plan as well as weekly progress reports. These monthly updates may include narratives of comprehensive plan drafts, written or other exhibits, attachments, appendixes, etc. The contractor will then aggregate these monthly updates into a final product to be presented as follows:

- 7.1.1. Ten (10) printed copies of the comprehensive plan including any and all attachments, exhibits, appendixes, etc.
- 7.1.2. An electronic copy of the comprehensive plan will be submitted in an editable Word format (docx) and Excel (xlsx) including any and all attachments, exhibits, appendixes, etc.
- 7.1.3. An electronic copy of the comprehensive plan will be submitted in .pdf format to document the completion of the project.

EXHIBIT B – INSURANCE REQUIREMENTS

Service Contract - Includes Professional Liability Exposure

INSURANCE REQUIREMENTS FOR CONTRACTORS

Without limiting Contractor's indemnification obligations to County, Contractor shall provide at its sole expense and maintain for the duration of this contract, or as may be further required herein, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of the work by the Contractor, his agents, representatives, employees or subcontractors.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services Office form CG0001.
- B. Automobile Liability covering all owned, non owned, hired auto Insurance Services Office form CA0001.
- C. Workers' Compensation, as required by State of California and Employer's Liability Insurance.
- D. Professional Liability (Errors & Omissions) appropriate to the professional services provided by Contractor under this contract.

2. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, and Independent Contractors Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$4,000,000.
- B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage.
- C. Employer's Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of County of San Diego.
5. D. Professional Liability (Errors & Omissions): \$2,000,000 per occurrence or claim with an aggregate limit of not less than \$4,000,000. Coverage shall include contractual liability. This coverage shall be maintained for a minimum of three years following termination or completion of Contractor's work pursuant to the Contract.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. As a requirement of this contract, any available insurance proceeds in excess of the specified minimum limits and coverage stated above, shall also be available to the County of San Diego.

6.

3. Self-Insured Retentions

Any self-insured retention must be declared to and approved by County Risk Management. At the option of the County, either: the insurer shall reduce or eliminate such self-insured retentions as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

4. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- A. Additional Insured Endorsement
8. The County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively are to be covered as additional insureds on the General Liability policy with respect to liability arising out of work or operations performed by or on behalf of

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the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed by or on behalf of the Contractor. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO from CG 2010 11 85 or **both** CG 2010, CG 2026, CG 2033, or CG 2038; **and** CG 2037 forms if later revisions used).

B. Primary Insurance Endorsement

For any claims related to this project, the Contractor's insurance coverage, including any excess liability policies, shall be primary insurance at least as broad as ISO CG 2001 04 13 as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, its officers, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

C. Notice of Cancellation

Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

D. Severability of Interest Clause

Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.

General Provisions

5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County Risk Management.

6. Evidence of Insurance

Prior to commencement of this Contract, but in no event later than the effective date of the Contract, Contractor shall furnish the County with a copy of the policy declaration and endorsement pages along with the certificates of insurance and amendatory endorsements effecting coverage required by this clause. Policy declaration and endorsement pages shall be included with renewal certificates and amendatory endorsements submissions and shall be furnished to County within thirty days of the expiration of the term of any required policy. Contractor shall permit County at all reasonable times to inspect any required policies of insurance.

7. Failure to Obtain or Maintain Insurance; County's Remedies

Contractor's failure to provide insurance specified or failure to furnish certificates of insurance and amendatory endorsements or failure to make premium payments required by such insurance shall constitute a material breach of the Contract, and County may, at its option, terminate the Contract for any such default by Contractor.

8. No Limitation of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to the Contract, including, but not limited to, the provisions concerning indemnification.

9. Review of Coverage

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County retains the right at any time to review the coverage, form and amount of insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. Self-Insurance

Contractor may, with the prior written consent of County Risk Management, fulfill some or all of the insurance requirements contained in this Contract under a plan of self-insurance. Contractor shall only be permitted to utilize such self-insurance if in the opinion of County Risk Management, Contractor's (i) net worth, and (ii) reserves for payment of claims of liability against Contractor, are sufficient to adequately compensate for the lack of other insurance coverage required by this Contract. Contractor's utilization of self-insurance shall not in any way limit liabilities assumed by Contractor under the Contract.

11. Claims Made Coverage

If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

- A. The policy retroactive date coincides with or precedes Contractor's commencement of work under the Contract (including subsequent policies purchased as renewals or replacements).
- B. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Contract.
- C. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least three years to report claims arising in connection with the Contract.
- D. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

12. Subcontractors' Insurance

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors. Such Additional Insured endorsement shall be attached to the certificate of insurance in order to be valid and on a form at least as broad as ISO from CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038; and CG 2037 forms if later revisions used. If any sub contractor's coverage does not comply with the foregoing provisions, Contractor shall defend and indemnify the County from any damage, loss, cost, or expense, including attorneys' fees, incurred by County as a result of subcontractor's failure to maintain required coverage.

13. Waiver of Subrogation

Contractor hereby grants to County a waiver of their rights of subrogation which any insurer of Contractor may acquire against County by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the County for all work performed by the Contractor, its employees, agents and subcontractors.

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EXHIBIT C –PAYMENT SCHEDULE

To be inserted upon award.

EXHIBIT D –REQUIRED FEDERAL PROVISIONS

REQUIRED FEDERAL PROVISIONS

1. Reserved.
2. Reserved.
3. Reserved.
4. Reserved.
5. Clean Air Act and The Federal Water Pollution Control Act
 - (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
 - (b) The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the appropriate federal agency, and the appropriate Environmental Protection Agency Regional Office.
 - (c) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.
 - (d) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
 - (e) The Contractor agrees to report each violation to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the appropriate federal agency, and the appropriate Environmental Protection Agency Regional Office.
 - (f) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.
6. Reserved.
7. Reserved.
8. Procurement of Recovered Materials.
 - (a) In the performance of this Agreement, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
 - i. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - ii. Meeting contract performance requirements; or
 - iii. At a reasonable price.
 - (b) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.
 - (c) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.
9. Domestic Preferences. In accordance with 2 CFR part 200.322, as appropriate and to the extent consistent with law, Contractor shall, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This requirement shall be included in all subcontracts under this Agreement.

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- (a) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, must occur in the United States.
 - (b) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
10. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. In accordance with 2 CFR part 200.216, Contractor and its subcontractors are prohibited from expending funds under this Agreement to:
- (a) Procure or obtain;
 - (b) Extend or renew a contract to procure or obtain; or
 - (c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
11. Reserved.
12. Reserved.
13. Reserved.
14. Reserved.

FEMA REQUIRED PROVISIONS

1. Access to Records. The following access to records requirements apply to this Agreement:
- (a) The Contractor agrees to provide County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts, and transcriptions.
 - (b) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
 - (c) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement.
 - (d) In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.
2. DHS Seal, Logo, and Flags. The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

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3. Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance may be used to fund all or a portion of the Agreement. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.
4. No Obligation by Federal Government. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, Contractor, or any other party pertaining to any matter resulting from the Agreement.
5. Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.
6. Reserved.