

SOC 2 AND NIST 800-53 AUDITING SERVICES AGREEMENT

BETWEEN

CALSAWS CONSORTIUM

AND

CONTRACTOR

SOC 2 AND NIST 800-53 AUDITING SERVICES AGREEMENT

This Agreement (the “Agreement”) is entered into as of the 24th day of June 2021 (the “Execution Date”), by and between the California Statewide Automated Welfare System Consortium (“CONSORTIUM”), and any successor entity, and Mayer Hoffman McCann P.C. (“CONTRACTOR”) (collectively, “Parties”).

RECITALS

WHEREAS, the four (4) counties of Merced, Riverside, San Bernardino, and Stanislaus contractually joined together in December 1998 to create the California Statewide Automated Welfare System Consortium IV Joint Powers Authority (C-IV Consortium) that developed and implemented a system for the administration of certain public assistance programs; and

WHEREAS, the thirty-five (35) counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Modoc, Mono, Monterey, Napa, Nevada, Plumas, San Benito, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Tuolumne, and Yuba joined the C-IV Consortium in June 2007; and

WHEREAS, the thirty-nine (39) C-IV counties administered certain public assistance programs through the California Automated Consortium Eligibility System (C IV System); and

WHEREAS, Los Angeles County administered certain public assistance programs through a separate system known as the Los Angeles Eligibility, Automation Determination, Evaluation and Reporting (LEADER) Replacement System (LRS); and

WHEREAS, Los Angeles County and the thirty-nine (39) C-IV counties joined together in September 2017 to form the California Automated Consortium Eligibility System (CalACES) Consortium in compliance with California Assembly Bill ABX1 16 (2011); and

WHEREAS, the remaining eighteen (18) counties in California, consisting of Alameda, Contra Costa, Fresno, Placer, Orange, Sacramento, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Tulare, Ventura and Yolo, formed the Welfare Client Data Systems (WCDS) Consortium to administer certain public assistance programs in those counties through a separate system, the CalWORKs Information Network (CalWIN) System; and

WHEREAS, the counties of the WCDS Consortium joined the CalACES Consortium on June 28, 2019 to form the CONSORTIUM to represent the interest of the fifty-eight (58) counties of California in governing the automation and delivery of public assistance programs; and

WHEREAS, the CONSORTIUM has been established to oversee the consolidation of the three (3) current automated welfare systems (LRS, C-IV, and CalWIN systems) for the purpose of implementing a single California Statewide Automated Welfare System (CalSAWS) in all fifty-eight (58) California counties; and

WHEREAS, the LRS is being leveraged as the foundation for the CalSAWS; and

WHEREAS, the County of San Bernardino Auditor-Controller/Treasurer/Tax Collector's Office (hereafter "County") serves as the Fiscal Agent for the CONSORTIUM; and

WHEREAS, the CONSORTIUM desires to enter into a contract with a qualified firm to provide auditing services for Service Organization Control (SOC) 2 Reports and National Institute of Standards and Technology (NIST) 800-53 Security Controls; and

WHEREAS, on March 26, 2021, the CONSORTIUM, through the County, released a Request for Proposal (RFP) to solicit proposals from qualified firms to provide SOC 2 and NIST 800-53 auditing services for a five-year contract term; and

WHEREAS, on April 30, 2021, the CONTRACTOR submitted its response to the RFP, which is incorporated herein by reference; and

WHEREAS, the CONSORTIUM finds Mayer Hoffman McCann P.C. ("CONTRACTOR") is qualified to provide SOC 2 and NIST 800-53 auditing services as described in the RFP; and

NOW THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants as set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

A. LOCATION OF WORK

The work is to be performed, completed, and managed at the following CONSORTIUM locations:

1. 11290 Pyrites Way, Rancho Cordova, CA 95670
2. 620 Roseville Parkway, Roseville, CA 95747
3. 12440 Imperial Highway, Norwalk, CA 90650
4. Virtual meeting platform

B. SCOPE OF WORK

1. CONTRACTOR shall provide SOC 2 Type 1 report services for the C-IV, CalWIN, and LRS/CalSAWS systems for a point in time following the fiscal year ending June

30, 2021, in accordance with Statement on Standards for Attestation Engagements (SSAE) No.18 as outlined in Appendix A, SOC 2 Engagement Letter, the terms of which are incorporated herein by reference.

2. CONTRACTOR shall provide SOC 2 Type 2 report services for the CalWIN and CalSAWS systems for fiscal years ending June 30, 2022, June 30, 2023, June 30, 2024, and June 30, 2025 (excluding the CalWIN system for fiscal year ending June 30, 2025) in accordance with Statement on Standards for Attestation Engagements (SSAE) No.18 as outlined in Appendix A, SOC 2 Engagement Letter, the terms of which are incorporated herein by reference.
3. CONTRACTOR shall provide technical audit services for the CalWIN and LRS/CalSAWS systems as outlined in Appendix B, NIST 800-53 Auditing Services Engagement Letter, the terms of which are incorporated herein by reference, to be conducted annually for fiscal years 2020-21, 2021-22, 2022-23, 2023-24, and 2024-25 (excluding the CalWIN system in fiscal years 2024-25) based on the NIST Special Publication (SP) 800-53, revision 4. Following SP 800-53, CONSORTIUM places emphasis such that:
 - a. The implementation of each control is documented with evidence to prove compliance to the control.
 - b. All technical systems properly implement the security control according to the Center for Internet Security Controls (CIS) benchmark standard for the appropriate technology.
 - c. Non-technical controls are properly implemented according to the process documented in compliance with NIST and CalSAWS security control baselines.
 - d. Known deficiencies are properly documented with Plan of Actions and Milestones (POAMs) created to track their remediation.
4. CONSORTIUM may elect an option for CONTRACTOR to provide SOC 2 readiness assessments for the C-IV, CalWIN, and LRS/CalSAWS systems as outlined in Appendix C, SOC 2 Readiness Engagement Letter, the terms of which are incorporated herein by reference.

C. DEADLINES

The SOC 2 Type 1 audits for fiscal year ending June 30, 2021 must be completed and the reports received by the CONSORTIUM and the County within 90 days of the “as of date” which will be determined following the completion of the SOC 2 Readiness engagement. The SOC 2 Type 2 audits for fiscal years ending June 30, 2022, June 30, 2023, June 30, 2024, and June 30, 2025 must be completed and the reports received by the CONSORTIUM and the County by December 15 following the fiscal year end. The timing of the NIST 800-53 audit will align with the timeline and deadlines

as established for the SOC 2 Type 2 audits for the fiscal years 2022-23, 2023-24, and 2024-25 (excluding the CalWIN system in fiscal years 2024-25). The NIST 800-53 audit for the fiscal year 2020-2021 will precede the SOC 2 Type 1 audit for the fiscal year ended June 30, 2021 in alignment with the overall project schedule.

D. TERM OF CONTRACT

This Agreement is effective as of June 24, 2021 and expires June 30, 2026 but may be terminated earlier in accordance with provisions of this Agreement.

CONSORTIUM and CONTRACTOR each reserve the right to terminate the Agreement, for any reason, with a thirty (30) day written notice of termination pursuant to Section 35 of this Agreement. Such termination may include all or part of the services described herein.

E. FISCAL PROVISIONS

1. The maximum amount of reimbursement/payment under this Agreement shall not exceed \$1,271,481 and shall be subject to availability of funds to CONSORTIUM/County. The consideration to be paid to CONTRACTOR, as provided herein, shall be in full payment for all CONTRACTOR's Services and expenses incurred in the performance hereof, including travel and per diem.
2. The compensation to the CONTRACTOR for services outlined in Section B (Scope of Work) shall not exceed the following amounts:
 - a. Up to \$87,000 based on standard hourly rates of Shareholder \$375, Manager \$275, Senior Associate \$185, Associate \$165 for SOC 2 readiness assessments for C-IV, CalWIN, and LRS/CalSAWS systems (if CONSORTIUM elects such option)
 - b. \$53,600 for SOC 2 reports for C-IV
 - c. \$53,600 for SOC 2 reports for LRS/CalSAWS
 - d. \$302,625 for SOC 2 reports for CalWIN
 - e. \$335,375 for SOC 2 reports for CalSAWS
 - f. \$439,281 for NIST 800-53 reports for LRS/CalSAWS and CalWIN
3. CONTRACTOR shall provide CONSORTIUM/County itemized monthly invoices, in arrears, and in a format acceptable to CONSORTIUM/County for Services performed under this Agreement within twenty (20) days of the end of the previous month. CONSORTIUM/County shall make payment to CONTRACTOR within sixty (60) working days after receipt of invoice or the resolution of any billing dispute.

4. CONTRACTOR shall accept all payments from CONSORTIUM/County via electronic fund transfer (EFT) directly deposited into the CONTRACTOR's designated checking or other bank account. CONTRACTOR shall promptly comply with directions and accurately complete forms provided by CONSORTIUM/County required to process EFT payments.
5. CONSORTIUM/County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on CONTRACTOR or on any taxes levied on employee wages. CONSORTIUM/County shall only pay for any State or local sales or use taxes on the Services rendered or equipment and/or parts supplied to CONSORTIUM/County pursuant to the Agreement.
6. Costs for Services under the terms of this Agreement shall be incurred during the term of the contract except as approved by CONSORTIUM/County. CONTRACTOR shall not use current year funds to pay prior or future year obligations.

F. GENERAL

1. Contract Amendments

CONTRACTOR agrees any alterations, variations, modifications, or waivers of the provisions of the Agreement, shall be valid only when reduced to writing, executed and attached to the original Agreement and approved by the person(s) authorized to do so on behalf of CONTRACTOR and CONSORTIUM.

2. Contract Assignability

Without the prior written consent of CONSORTIUM, the Agreement is not assignable by CONTRACTOR either in whole or in part.

3. Contract Exclusivity

This Agreement is not an exclusive contract. CONSORTIUM reserves the right to enter into a contract with other contractors for the same or similar Services. CONSORTIUM does not guarantee or represent that the CONTRACTOR will be permitted to perform any minimum amount of work, or receive compensation other than on a per order basis, under the terms of this Agreement.

4. Attorney Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This

paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under the Indemnification and Insurance Requirements.

5. Background Checks for Contractor Personnel

CONTRACTOR shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (b) do not use legal or illegal substances in any manner which will impact their ability to provide Services to CONSORTIUM/County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by CONSORTIUM/County and not in violation of applicable law, CONTRACTOR shall conduct a background check, at CONTRACTOR's sole expense, on all its personnel providing. If requested by CONSORTIUM/County, CONTRACTOR shall provide the results of the background check of each individual to verify that the individual meets CONTRACTOR's standards for employment. Such background check shall be in the form generally used by CONTRACTOR in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process but must, at a minimum, have been performed within the preceding 12-month period. CONTRACTOR personnel who do not meet CONSORTIUM/County's hiring criteria, in CONSORTIUM/County's sole discretion, shall not be assigned to work on CONSORTIUM/County property or Services, and CONSORTIUM/County shall have the right, at its sole option, to refuse access to any CONTRACTOR personnel to any CONSORTIUM or County facility.

6. Change of Address

CONTRACTOR shall notify CONSORTIUM and the County in writing of any change in mailing address within ten (10) business days of the change.

7. Choice of Law; Forum Selection

This Agreement shall be governed by and construed according to the laws of the State of California, excluding its conflict of laws provisions. Any action brought to resolve a dispute arising out of, or related to, this Agreement shall be filed in the Superior Court of the State of California in and for the County of San Bernardino, San Bernardino District.

8. Compliance with County Policy

In performing the Services and while at any CONSORTIUM or County facilities, CONTRACTOR personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the

County regarding health and safety, and personal, professional and ethical conduct; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all additions and modifications to each of subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to CONTRACTOR or CONTRACTOR personnel or may be made available to CONTRACTOR or CONTRACTOR personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. CONTRACTOR shall be responsible for the promulgation and distribution of County Policies to CONTRACTOR personnel to the extent necessary and appropriate.

CONSORTIUM/County shall have the right to require CONTRACTOR's employees, agents, representatives and subcontractors to exhibit identification credentials issued by CONSORTIUM/County in order to exercise any right of access under this Agreement.

9. Confidentiality

CONTRACTOR shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving Services pursuant to this Agreement, except for statistical information not identifying any participant. CONTRACTOR shall not use or disclose any identifying information for any other purpose other than carrying out the CONTRACTOR's obligations under this Agreement, except as may be otherwise required by law. This provision will remain in force even after the termination of the Agreement.

10. Primary Point of Contact

CONTRACTOR will designate an individual to serve as the primary point of contact for the Agreement. CONTRACTOR or designee must respond to CONSORTIUM/County inquiries within two (2) business days. CONTRACTOR shall not change the primary contact without written acknowledgement to the CONSORTIUM and the County. CONTRACTOR will also designate a back-up point of contact in the event the primary contact is not available.

11. CONSORTIUM and/or County Representative

The CalSAWS Executive Director or his/her designee and/or the County shall represent CONSORTIUM/County in all matters pertaining to the Services to be

rendered under this Agreement, including termination and assignment of this Agreement, and shall be the final authority in all matters pertaining to the Services/Scope of Work by CONTRACTOR. If this Agreement was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Agreement.

12. Damage to CONSORTIUM and/or County Property

CONTRACTOR shall repair, or cause to be repaired, at its own cost, all damage to CONSORTIUM/County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of CONTRACTOR or employees or agents of the CONTRACTOR. Such repairs shall be made immediately after CONTRACTOR becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the CONTRACTOR fails to make timely repairs, CONSORTIUM/County may make any necessary repairs. For such repairs, the CONTRACTOR, shall repay all costs incurred by CONSORTIUM/County, by cash payment upon demand or CONSORTIUM/County may deduct such costs from any amounts due to the CONTRACTOR from CONSORTIUM/County, as determined at CONSORTIUM/County's sole discretion.

13. Debarment and Suspension

The CONTRACTOR certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). CONTRACTOR further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

14. Drug and Alcohol-Free Workplace

In recognition of individual rights to work in a safe, healthful and productive workplace, as a material condition of this Agreement, CONTRACTOR agrees that the CONTRACTOR and the CONTRACTOR's employees, while performing service for CONSORTIUM/County, on CONSORTIUM/County property, or while using CONSORTIUM/County equipment:

- a. Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.

- b. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- c. Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where CONTRACTOR or CONTRACTOR's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

CONTRACTOR shall inform all employees that are performing service for CONSORTIUM/County on CONSORTIUM/County property, or using CONSORTIUM/County equipment, of CONSORTIUM/County's objective of a safe, healthful and productive workplace and the prohibition of drug or alcohol use or impairment from same while performing such service for CONSORTIUM/County.

CONSORTIUM/County may terminate for default or breach of this Agreement and any other contract the CONTRACTOR has with CONSORTIUM/County, if the CONTRACTOR or CONTRACTOR's employees are determined by CONSORTIUM/County not to be in compliance with above.

15. Duration of Terms

This Agreement, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Agreement.

16. Employment Discrimination

During the term of the Agreement, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. CONTRACTOR shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

17. Environmental Requirements

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally

preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires CONTRACTOR to use recycled paper for any printed or photocopied material created as a result of this Agreement. CONTRACTOR is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the County in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), CONTRACTOR must be able to annually report the County's environmentally preferable purchases. CONTRACTOR must also be able to report on environmentally preferable goods used in the provision of Services to the County, utilizing a County approved form.

18. Improper Influence

CONTRACTOR shall make all reasonable efforts to ensure that no CONSORTIUM/County officer or employee, whose position in CONSORTIUM/County enables him/her to influence any award of this Agreement or any competing offer, shall have any direct or indirect financial interest resulting from the award of this Agreement or shall have any relationship to the CONTRACTOR or officer or employee of the CONTRACTOR.

19. Improper Consideration

CONTRACTOR shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of CONSORTIUM/County in an attempt to secure favorable treatment regarding this Agreement.

CONSORTIUM/County, by written notice, may immediately terminate any contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of CONSORTIUM/County with respect to the Proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

CONTRACTOR shall immediately report any attempt by a CONSORTIUM/County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from CONTRACTOR. The report shall be made to the supervisor or manager charged with supervision of the employee or to CONSORTIUM or to the County Administrative Office. In the event of a termination under this provision, CONSORTIUM/County is entitled to pursue any available legal remedies.

20. Informal Dispute Resolution

In the event CONSORTIUM/County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

21. Legality and Severability

The parties' actions under the Agreement shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Agreement are specifically made severable. If a provision of the Agreement is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

22. Licenses, Permits, and/or Certifications

CONTRACTOR shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County, and municipal laws, ordinances, rules and regulations. The CONTRACTOR shall maintain these licenses, permits, and/or certifications in effect for the duration of this Agreement. CONTRACTOR will notify CONSORTIUM/County immediately of loss or suspension of any such licenses, permits, and/or certifications. Failure to maintain required licenses, permits, and certifications may result in immediate termination of this Agreement.

23. Material Misstatement/Misrepresentation

If during the course of the administration of this Agreement, CONSORTIUM/County determines that CONTRACTOR has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to CONSORTIUM/County, this Agreement may be immediately terminated. If this Agreement is terminated according to this provision, CONSORTIUM/County is entitled to pursue any available legal remedies.

24. Mutual Covenants

The parties to this Agreement mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

25. Nondisclosure

CONTRACTOR shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by CONSORTIUM/County to CONTRACTOR or an agent of CONTRACTOR or otherwise made available to CONTRACTOR or CONTRACTOR's agent in connection with this Agreement; or, (2) acquired, obtained, or learned by CONTRACTOR or an agent of CONTRACTOR in the performance of this Agreement. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to: technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

26. Notice of Delays

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within twenty-four (24) hours, give notice thereof, including all relevant information with respect thereto, to the other party.

27. Ownership of Documents

Pursuant to California law, CONTRACTOR shall maintain all audit documentation (as defined at California Business and Professions Code section 5097) for the period of time required by the referenced statute and/or by any regulations adopted pursuant to said statute. In addition, CONTRACTOR shall adopt and maintain an audit documentation retention policy applicable to audit documentation prepared pursuant to this Agreement and shall provide CONSORTIUM with a copy of that policy. CONTRACTOR shall not destroy any audit documentation prepared under this Agreement until providing CONSORTIUM with reasonable notice of its intention to do so. Finally, CONTRACTOR shall make available for inspection and copying all audit documentation prepared pursuant to this Agreement upon reasonable notice from CONSORTIUM. The requirements of this Section 27 of this Agreement shall survive the termination and/or expiration of this Agreement.

28. Air, Water Pollution Control, Safety and Health

CONTRACTOR shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Agreement.

29. Relationship of the Parties

Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

30. Release of Information

No news releases, advertisements, public announcements or photographs arising out of this Agreement or CONTRACTOR's relationship with CONSORTIUM/County may be made or used without prior written approval of CONSORTIUM/County.

31. Representation of CONSORTIUM/County

In the performance of the Agreement, CONTRACTOR, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of CONSORTIUM/County.

32. Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

33. Subcontracting

CONTRACTOR agrees not to enter into any subcontracting Contracts for work contemplated under the Agreement without first obtaining written approval from the CONSORTIUM and the County. Any subcontractor shall be subject to the same terms and conditions as CONTRACTOR. CONTRACTOR shall be fully responsible for the performance and payments of any subcontractor's contract.

CONTRACTOR shall obtain CONSORTIUM's and the County's written consent, which CONSORTIUM/County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the Services to CONSORTIUM/County. At CONSORTIUM/County's request, CONTRACTOR shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by CONSORTIUM/County, resumes of proposed subcontractor personnel.

CONTRACTOR shall remain directly responsible to CONSORTIUM/County for its subcontractors and shall indemnify CONSORTIUM/County for the actions or omissions of its subcontractors under the terms and conditions specified in Section G (Indemnification and Insurance Requirements). All approved subcontractors shall be subject to the provision of this Agreement applicable to CONTRACTOR Personnel, including removal pursuant to Subsection F.5 (Background Checks for Contractor Personnel).

For any subcontractor, CONTRACTOR shall:

- a. Be responsible for subcontractor compliance with the Agreement and the subcontract terms and conditions; and
- b. Ensure that the subcontractor follows CONSORTIUM/County's reporting formats and procedures as specified by CONSORTIUM/County.

Upon expiration or termination of this Agreement for any reason, CONSORTIUM/County will have the right to enter into direct Contracts with any of the subcontractors. CONTRACTOR agrees that its arrangements with subcontractors will not prohibit or restrict such subcontractors from entering into direct Contracts with CONSORTIUM/County.

34. Subpoena

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Agreement is served upon CONTRACTOR or CONSORTIUM/County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. CONTRACTOR and CONSORTIUM/County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by CONTRACTOR for CONSORTIUM/County.

35. Termination for Convenience

CONSORTIUM/County and the CONTRACTOR each reserve the right to terminate the Agreement, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the CONTRACTOR for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice CONTRACTOR shall promptly discontinue services unless the

notice directs otherwise. CONTRACTOR shall deliver promptly to CONSORTIUM/County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

36. Time of the Essence

Time is of the essence in performance of this Agreement and of each of its provisions.

37. Venue

The parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California.

38. Copyright

CONSORTIUM/County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Agreement including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Agreement shall acknowledge CONSORTIUM/County as the funding agency and CONTRACTOR as the creator of the publication. 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 CONSORTIUM/County. Copies of all educational and training materials, curricula, audio/visual aids, printed material, and periodicals, assembled pursuant to this Agreement must be filed with CONSORTIUM/County prior to publication.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

1. Indemnification

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by CONSORTIUM and County) and hold harmless CONSORTIUM and County and their authorized officers, employees, agents and volunteers (Indemnitees) from any and all claims, actions, losses, damages and/or liability arising out of, or related to, any acts and/or omissions committed by CONTRACTOR, its personnel, and/or any subcontractor retained by CONTRACTOR to perform work under this Agreement.

2. Additional Insured

All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain additional endorsements naming CONSORTIUM, County and their respective officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of Services hereunder. The additional insured endorsements shall not limit the scope of coverage for CONSORTIUM and County to vicarious liability but shall allow coverage for CONSORTIUM and County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

3. Waiver of Subrogation Rights

The CONTRACTOR shall require the carriers of the required coverages to waive all rights of subrogation against CONSORTIUM and County, its officers, employees, agents, volunteers, contractors, and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the CONTRACTOR and CONTRACTOR's employees or agents from waiving the right of subrogation prior to a loss or claim. The CONTRACTOR hereby waives all rights of subrogation against CONSORTIUM and County.

4. Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by CONSORTIUM and County.

5. Severability of Interests

CONTRACTOR agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross-liability exclusions that preclude coverage for suits between the CONTRACTOR and CONSORTIUM and County or between CONSORTIUM, County, and any other insured or additional insured under the policy.

6. Proof of Coverage

CONTRACTOR shall furnish Certificates of Insurance to CONSORTIUM/County evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of Services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to

CONSORTIUM/County, and CONTRACTOR shall maintain such insurance from the time CONTRACTOR commences performance of Services hereunder until the completion of such Services. Within fifteen (15) days of the commencement of this Agreement, CONTRACTOR shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

7. Acceptability of Insurance Carrier

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".

8. Deductibles and Self-Insured Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to Risk Management.

9. Failure to Procure Coverage

In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, CONSORTIUM/County has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by CONSORTIUM/County will be promptly reimbursed by the CONTRACTOR or CONSORTIUM/County payments to the CONTRACTOR will be reduced to pay for CONSORTIUM/County purchased insurance.

10. Insurance Review

Insurance requirements are subject to periodic review by CONSORTIUM/County. The County Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interest of CONSORTIUM/County. In addition, if Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change these insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against CONSORTIUM/County, inflation, or any other item reasonably related to CONSORTIUM/County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of CONSORTIUM/County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of CONSORTIUM/County.

11. Insurance Specifications

CONTRACTOR agrees to provide insurance set forth in accordance with the requirements herein. If CONTRACTOR uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the CONTRACTOR agrees to amend, supplement or endorse the existing coverage to do so.

Without in any way affecting the indemnity herein provided and in addition thereto, the CONTRACTOR shall secure and maintain throughout the term of this Agreement the following types of insurance with limits as shown:

12. Workers' Compensation/Employers Liability

A program of Workers' Compensation insurance or a State-approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with two hundred and fifty thousand dollar (\$250,000) limits, covering all persons, including volunteers, providing Services on behalf of the CONTRACTOR and all risks to such persons under this Agreement.

If CONTRACTOR has no employees, it may certify or warrant to CONSORTIUM/County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

13. Commercial/General Liability Insurance

CONTRACTOR shall carry General Liability Insurance covering all operations performed by or on behalf of CONTRACTOR providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations)
- d. Explosion, collapse and underground hazards.
- e. Personal Injury
- f. Contractual liability
- g. \$2,000,000 general aggregate limit

14. Automobile Liability Insurance

Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If CONTRACTOR is transporting one or more non-employee passengers in performance of Services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If CONTRACTOR owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

15. Umbrella Liability Insurance

An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

16. Professional Services Requirements

Professional Liability Insurance or Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits.

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of work under this Agreement. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after completion of the Agreement.

17. Cyber Liability Insurance

Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved CONSORTIUM/County entities and cover breach response cost as well as regulatory fines and penalties.

H. RIGHT TO MONITOR AND AUDIT

1. Right to Monitor

CONSORTIUM and the County, State and Federal governments shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have the absolute right to monitor the performance of CONTRACTOR in the delivery of Services provided under this Agreement. CONTRACTOR shall give full cooperation, in any auditing or monitoring conducted. CONTRACTOR shall cooperate with the CONSORTIUM/County in the implementation, monitoring and evaluation of this Agreement and comply with any and all reporting requirements established by CONSORTIUM/County. CONTRACTOR shall repay to CONSORTIUM/County within thirty (30) days of receipt of audit findings any reimbursements made by CONSORTIUM/County to CONTRACTOR that are determined by subsequent audit to be unallowable pursuant to the terms of this Agreement or by law.

2. Records

CONTRACTOR shall maintain all records and books pertaining to the delivery of Services under this Agreement and demonstrate accountability for contract

performance. All records shall be complete and current and comply with all contract requirements under this Agreement. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Agreement.

All records relating to the CONTRACTOR's personnel, contractors, subcontractors, Service/Scope of Work and expenses pertaining to this Agreement shall be kept in generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars which state the administrative requirements, cost principles and other standards for accountancy.

All records pertaining to Services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by CONSORTIUM/County representatives for a period of three years after final payment under the Agreement or until all pending County, State and Federal audits are completed, whichever is later.

I. CORRECTION OF PERFORMANCE DEFICIENCIES

1. In the event of a problem or potential problem that could impact the quality or quantity of work, Services, or the level of performance under this Agreement, CONTRACTOR shall notify CONSORTIUM/County within one (1) working day, in writing and by telephone.
2. Failure by CONTRACTOR to comply with any of the provisions, covenants, requirements or conditions of this Agreement shall be a material breach of this Agreement.
3. CONTRACTOR's Primary Contact and CONSORTIUM/County Representative shall attempt in good faith to promptly resolve any dispute, controversy or claim arising out of this Agreement. If these representatives are unable to resolve a dispute, controversy or claim with ten (10) days after the initial request for a meeting, then the dispute shall be submitted to an executive-level performance review.

If the Primary Contact and CONSORTIUM/County Representative are not successful in resolving the dispute, negotiations shall be conducted by the Chief Executive Officer, or designee and the highest-level executive for CONTRACTOR. If these representatives are unable to resolve the dispute within ten (10) days after the representatives have commenced negotiations, or 20 days have passed since the

initial request for negotiations at this level, the Parties may agree in writing to submit the dispute to mediation.

4. In the event of a non-cured breach, CONSORTIUM/County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement:
 - a. Afford CONTRACTOR thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of CONSORTIUM/County;
 - b. Withhold funds pending duration of the breach;
 - c. Discontinue reimbursement to CONTRACTOR for and during the period in which CONTRACTOR is in breach, which reimbursement shall not be entitled to later recovery;
 - d. Offset against any monies billed by CONTRACTOR but yet unpaid by CONSORTIUM/County; and/or
 - e. Terminate this Agreement immediately and be relieved of the payment of any consideration to CONTRACTOR. In the event of such termination, CONSORTIUM/County may proceed with the work in any manner deemed proper by CONSORTIUM/County. The cost to CONSORTIUM/County shall be deducted from any sum due to the CONTRACTOR under this Agreement and the balance, if any, shall be paid by the CONTRACTOR upon demand.
5. Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Agreement is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be hereunto subscribed by their respective proper officers thereunto duly authorized.

Mayer Hoffman McCann P.C.

Dated: _____

By: _____

Name: _____

Title: _____

CalSAWS Consortium

Dated: _____

By: _____
Consortium Chair

By: _____
Kronick Moskowitz Tiedemann & Girard,
Consortium Legal Counsel

By: _____
John Boule, Consortium Executive Director