

REQUEST FOR PROPOSAL
#2009- 01
PLANNING CONSULTANT SERVICES

ATTACHMENT 4
AGREEMENT

**ATTACHMENT 4 –
AGREEMENT**

AGREEMENT

BETWEEN

**THE CALIFORNIA STATEWIDE AUTOMATED WELFARE SYSTEM
CONSORTIUM IV JOINT POWERS AUTHORITY**

AND

PLANNING CONSULTANT

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Exhibit A Financial Matters

Exhibit B Guaranty

AGREEMENT

This Agreement (the "Agreement") is entered into as of the __ day of _____, 2009 (the "Execution Date"), by and between the California Statewide Automated Welfare System ("SAWS") Consortium IV Joint Powers Authority ("Consortium") and _____, a _____ **[corporation]** ("Planning Consultant").

RECITALS

Consortium currently receives design, development, implementation, maintenance and operations ("M&O") services for its integrated public assistance and employment services system (the "System" as defined further below) from Accenture, LLP (the "M&O Contractor");

The current agreements under which the M&O Contractor provides services (the Amended and Restated Revised System Agreement (the "System Agreement") and the Agreement (the "Implementation Agreement")) terminate on October 31, 2011 and, as a result, C-IV is conducting a competitive procurement for M&O services to transition to another vendor or remain with the M&O Contractor by November 1, 2011.

Consortium has the need for professional consulting and planning services to assist Consortium in developing and implementing the procurement process of a new agreement for a contractor to provide M&O services for the System after November 1, 2011 (the "Procurement Project");

Consortium issued a request for proposal ("RFP") to obtain such consulting and planning services and associated products, which was dated _____, 2009 and which is incorporated into this Agreement by this reference;

Planning Consultant submitted a proposal in response to the RFP, which is dated _____, 2009 (the "Proposal" as defined further below) and which is incorporated herein by this reference;

Consortium evaluated the Proposal and identified Planning Consultant as the apparently successful contractor that can provide the services and products requested in the RFP;

Planning Consultant is trained, experienced, and competent to provide Consortium with products and services in accordance with the terms of this Agreement;

Planning Consultant acknowledges that Consortium is relying on Planning Consultant's expertise in planning and project management support services; and

Planning Consultant and Consortium (individually "Party" and collectively the "Parties") agree they will perform their respective obligations as described below in this Agreement, subject to approval by Federal government and State of California (the "State") agencies of this Agreement.

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

1. DEFINITIONS.

“Acceptance”: A Notice from Consortium to Planning Consultant that a Deliverable or a Service has met Consortium’s reasonable satisfaction and applicable Specifications.

“Agreement”: This Agreement, the Exhibits attached hereto, which are incorporated in this Agreement by this reference, and other documents incorporated by reference herein. Unless otherwise provided, all section and Exhibit references refer to this Agreement.

“Change Order”: A written form that is used by Planning Consultant and Consortium to modify, delete or add to the Deliverables or Services, in whole or in part, and that is made in accordance with the terms of Section 9.

“Charge(s)”: The amount(s) to be paid for the Facility authorized under this Agreement, in whole or in part, as described in Exhibit A.

“C-IV Procurement Manager”: The person designated by the Consortium to be responsible for representing the Project to all Project stakeholders and to provide oversight of all Planning Consultant activities.

“C-IV Procurement Project Work Plan”: The work plan included in the Proposal and updated as provided in Section 3.2.

“C-IV Project Director”: The person designated by the Consortium to be responsible for financial and contractual matters regarding the Agreement, including but not limited to the person to whom the Consortium signature authority has been delegated in writing except to the extent described in the Agreement. The term includes, except as otherwise provided in the Agreement, an authorized representative of the Consortium Project Director acting within the limits of his or her authority.

“Confidential Information”: Subject to applicable Federal, State and County laws and regulations, trade secrets and confidential information of Consortium, Planning Consultant, Planning Consultant’s licensors and Subcontractors, and Consortium’s contractors and Counties including, without limitation the following: all proprietary and confidential information of Consortium, such as the Data, Consortium trade secrets, designs, drawings, specifications, computer programs, support materials and other records concerning Consortium and its finances, citizens, contracts, services or personnel; the Documentation and the other Specifications; the Deliverables and Services; any information or documentation concerning Consortium’s plans or business that is learned by Planning Consultant during the performance of this Agreement including, without limitation, client and employee information, technical data, proprietary processes or designs; information Consortium desires to protect against unrestricted disclosure or competitive use; Planning Consultant’s proprietary software development methodology (if any); proprietary and confidential information of the third party contractors of Consortium and their subcontractors and vendors; and information designated as confidential by Consortium.

“Consortium Staff”: Employees and contractors of the Consortium and the Counties other than Planning Consultant or its Staff.

“Cost Proposal”: The Cost Proposal as discussed in Section ___ of the RFP and Proposal and attached as Attachment ___ to the Proposal.

“Counties”: All of the California counties in the Consortium.

“County”: One of the California counties in the Consortium.

“Data”: Consortium’s and Counties’ records, employee information, files, forms, data and other information that will be processed by the System.

“Days”: Calendar days, unless otherwise indicated.

“DED”: A Deliverable Expectation Document for a Deliverable.

“Deficiency”: A failure of a Deliverable or an omission, defect or deficiency in a Deliverable, which causes it not to conform to its Specifications or meet Consortium’s reasonable satisfaction.

“Deliverables”: Planning Consultant’s products that are described as deliverables or sub-deliverables in the RFP, Proposal, C-IV Procurement Project Work Plan, and Exhibit A or that result from the Services, as well as all written designs, documents, structures, materials and models, developed in the course of rendering the Services.

“Delivery Date(s)”: The dates described in the C-IV Procurement Project Work Plan for the delivery of the Deliverables and Services to Consortium.

“Documentation”: All definitions, descriptions of methodology, standards, design, tests, operations, technical and user manuals that are used in conjunction with the Deliverables and Services, in whole and in part.

“Facility”: The building(s) and resources (e.g., desks, chairs, equipment, and supplies) that will be provided by Planning Consultant, as described in Section 4.3.1 of the RFP and Proposal.

“Initial Term”: The initial period of time during which this Agreement shall be effective, beginning on the Execution Date and continuing until April 29, 2011.

“Key Milestone(s)”: The event(s) listed in Section 13.1.3.

“Key Staff”: The positions of Planning Consultant Staff identified as Key Staff in Exhibit A.

“Maximum Amount”: The maximum amount payable by Consortium to Planning Consultant under this Agreement as described in Exhibit A.

"Milestone(s)": Events which occur on the Project and which are described as such in the RFP and Proposal.

"Notice": A written document given by a Party to the other in accordance with Section 17.26.

"Price(s)": The amounts which are identified in Exhibit A for the Deliverables.

"Project": The planned undertaking regarding the subject matter of this Agreement and the activities of all parties related thereto.

"Schedule": The dates described in the C-IV Procurement Project Work Plan for deadlines for performance of Services, delivery of Deliverables, and other Project events and activities.

"Services": The tasks and professional services to be performed by Planning Consultant as part of the Project, as described in this Agreement.

"Specifications": The Documentation; all applicable County, State and Federal policies, laws, codes, regulations and guidelines; the RFP; the Proposal; Project Management Body of Knowledge standards; and other specifications and requirements, if any, described in Exhibit A. The Specifications are, by this reference, incorporated into this Agreement, as though completely set forth herein.

"Staff": Planning Consultant's employees, Subcontractors, independent contractors, and agents who will provide the Services on behalf of Planning Consultant.

"Subcontractor": A person, partnership or company not in the employment of or owned by Planning Consultant, that is performing Services under this Agreement under a separate agreement with or on behalf of Planning Consultant.

"System": The Consortium computer system that is used by the Counties to provide welfare eligibility and other services to their clients.

"Term": The combined Initial Term and Term Extension(s).

"Term Extension(s)": Each six-month time period during which this Agreement shall be effective beyond the Initial Term, as described further in Section 2.2.

2. TERM

2.1 Initial Term. The Agreement shall be effective for the Initial Term, unless terminated earlier as provided in this Agreement.

2.2 Term Extension. At Consortium's option and Consortium's receipt of State and Federal approval and funding therefor, Consortium may elect to extend the term of this Agreement for up to three additional Term Extensions.

3. DELIVERABLES AND SERVICES.

3.1 General.

3.1.1 Planning Consultant shall provide Consortium with the Deliverables and Services as described in this Agreement, and in accordance with the C-IV Procurement Project Work Plan and Specifications. Planning Consultant shall utilize the RFP, the Proposal, the C-IV Procurement Project Work Plan, the Deliverables and Services for which Consortium has previously granted Acceptance, Change Orders agreed to by the Consortium and Planning Consultant, the DEDs, Planning Consultant's expert knowledge, and the rest of this Agreement as the basis of Deliverables and Services.

3.1.2 Planning Consultant shall ensure that the Deliverables, Services, and other documents and materials provided or presented to or developed for Consortium by Planning Consultant are consistent with planning industry standards, easily understandable and logically organized, accurate and complete in their data, and provide the appropriate level of detail for their respective purposes. Planning Consultant shall retain backup copies in writing and on electronic media of all Deliverables and shall provide Consortium on its request with a copy thereof for up to two years following termination or expiration of the Agreement.

3.2 C-IV Procurement Project Work Plan.

3.2.1 The initial C-IV Procurement Project Work Plan shall comprise Planning Consultant's C-IV Procurement Project Work Plan in the Proposal, as revised by Planning Consultant with assistance of Consortium, to reflect Project changes since Planning Consultant's initial submission. The C-IV Procurement Project Work Plan shall provide detailed information, in a Microsoft Project document, including tasks, Deliverables, Schedule, task dependencies, identification of resource requirements, and payment schedule. The C-IV Procurement Project Work Plan will be inclusive of the mutual expectations and work to be performed by Consortium and Planning Consultant in order to complete the Project successfully.

3.2.2 Planning Consultant shall deliver a revised C-IV Procurement Project Work Plan to the C-IV Procurement Manager for Consortium's review not later than 30 Days after the Execution Date. In the event of failure of the Parties to agree upon this C-IV Procurement Project Work Plan and/or of Consortium to give its Acceptance thereof within 45 Days after the Execution Date, Consortium may invoke its right to terminate this Agreement. Neither Party shall be liable to the other for termination due to their failure to agree upon a C-IV Procurement Project Work Plan and Consortium's failure to give its Acceptance therefor, except that Planning Consultant shall retain its liability accrued hereunder, if any, for its acts and omissions which accrued prior to such termination and which are not related to the failure to agree on the C-IV Procurement Project Work Plan or Consortium's failing to give Acceptance therefor, and as otherwise provided in Section 17.34.

3.2.3 The Schedule shall not change as a result of time required by Planning Consultant to correct Deficiencies, unless otherwise agreed beforehand in writing by Consortium. However, the Schedule shall be extended on a day-to-day basis to the extent that

Consortium's review of a Deliverable and review of corrections of Deficiencies in accordance with the Acceptance process and Acceptance Test Plan is longer than described in the Schedule.

3.2.4 Planning Consultant shall update the C-IV Procurement Project Work Plan regularly (no less than monthly) and as otherwise necessary throughout the Project to accurately reflect the status of activities, tasks, events, Services, and projected Schedule therefor. Any such update changes must be agreed upon in writing by Consortium prior to their final incorporation into the C-IV Procurement Project Work Plan. However, unless otherwise specifically agreed to in writing, Consortium's agreement on a change to the C-IV Procurement Project Work Plan will not relieve Planning Consultant of liability for liquidated and actual damages, if any, arising from such failures to perform its obligations as required in this Agreement.

3.3 Deliverables.

3.3.1 Planning Consultant shall be responsible for drafting, completing and delivering to Consortium its Deliverables in accordance with the applicable DEDs and the C-IV Procurement Project Work Plan. Planning Consultant shall deliver all Deliverables pursuant to this Agreement to the C-IV Procurement Manager or designee. The Deliverables shall be delivered in one hard copy form and on electronic media and in formats approved by Consortium.

3.3.2 Consortium shall give Acceptance when it determines that each Deliverable conforms to its applicable DTD, and has no Deficiencies.

3.3.3 If a Deficiency is found in a Deliverable, Consortium shall promptly give Planning Consultant Notice of its non-acceptance, with such Notice delineating Deficiencies used as the grounds for Consortium's decision. Planning Consultant shall promptly, as applicable, correct Deficiencies described in any Notice(s) of non-acceptance from Consortium. After Planning Consultant has corrected such Deficiencies, Consortium shall verify whether the Deliverable lacks Deficiencies and in writing shall either accept or not accept it following such review. If Planning Consultant corrects all Deficiencies in the Deliverable, which then is found by Consortium to lack Deficiencies, Consortium shall give Planning Consultant its Acceptance therefor.

3.3.4 If Planning Consultant is unable to correct all Deficiencies in a Deliverable within the number of days indicated in the C-IV Procurement Project Work Plan following the Deliverable's Delivery Date, Consortium may, at its option: (a) continue reviewing the Deliverable and require Planning Consultant to continue until Deficiencies are corrected or eliminated; (b) request Planning Consultant to provide, at its expense, a replacement Deliverable for further review; (c) set-off from the Purchase Price to the extent Consortium determines the Deficiencies for the Deliverable have not been corrected and provide Acceptance for the applicable Deliverable; or (d) terminate this Agreement as described in Section 16.2. Consortium's options under this Section 3 shall remain in effect until Acceptance of all of the Deliverables.

3.3.5 Planning Consultant shall continuously protect all Deliverables and backups therefor from damage, destruction or loss caused by the acts or omissions of Planning Consultant and its Staff. During the period Deliverables are in transit and in possession of Planning Consultant, its carriers or Consortium prior to their Acceptance, Planning Consultant and its insurers, if any, shall bear the risk of loss or damage thereto, unless such loss or damage is caused by the negligence or intentional misconduct of Consortium. After Consortium provides Acceptance for a Deliverable, the risk of loss or damage shall be borne by Consortium, except loss or damage attributable to the acts or omissions of the Staff.

3.4 Representation. By submitting a Deliverable, Planning Consultant represents that, to the best of its knowledge, it has met the Specifications in this Agreement. By unconditionally giving Acceptance for a Deliverable, Consortium represents only that it has reviewed the Deliverable and detected no Deficiencies of sufficient gravity to defeat or substantially threaten the attainment of those objectives and to warrant the withholding of Acceptance for the work completed. Consortium's Acceptance of a Deliverable does not discharge any of Planning Consultant's responsibilities for comprehensiveness, effectiveness or conformance of the Deliverables and Services, as a whole, to the Specifications.

4. SERVICES.

Planning Consultant shall perform its Services for the Initial Term and any extensions as described in Section 2.2. Planning Consultant shall provide Consortium with the Services as described in this Agreement, the C-IV Procurement Project Work Plan and the Specifications. The Parties agree that time is of the essence with respect to Planning Consultant's performance under the Agreement.

5. CONSORTIUM PROPERTY AND FACILITY.

5.1 Ownership. Title to all personal property furnished by Planning Consultant shall remain in Planning Consultant.

5.2 Use of Property. Any personal property furnished by Planning Consultant shall be used only for the performance of its obligations under and subject to the terms of this Agreement.

5.3 Facility. Planning Consultant shall provide Consortium with use of and access to the Facility as described in Section 4.3.1 of the RFP and Proposal.

6. FINANCIAL MATTERS.

6.1 Payment. Except as otherwise provided in this Agreement, and subject to Consortium's receipt of correct invoices, to the exercise of Consortium's remedies, and to Planning Consultant's performance of its obligations hereunder, Consortium shall pay Planning Consultant the Prices for Deliverables and Charges for use of the Facility. Each month, Consortium shall pay the Price for each Deliverable which has received Acceptance and all then-

payable Charges for the Facility as described in Exhibit A. These Prices and Charges must conform to the current approved Consortium Project budget for each applicable State fiscal year.

6.2 No Increases. Planning Consultant shall not increase Prices or Charges during the Term, except as mutually agreed to by the Parties in writing and pursuant to Section 17.3.

6.3 Transportation and Insurance Costs. The costs associated with transportation, delivery and insurance for each Deliverable and Services shall be paid for by Planning Consultant.

6.4 Taxes. Planning Consultant shall pay for any taxes on the Services rendered, or Deliverables and Facility provided to the Consortium in accordance with this Agreement.

6.5 Planning Consultant Expenses. Unless otherwise provided in a subsequent Change Order, Planning Consultant shall pay and shall be solely responsible for Planning Consultant's travel expenses and out-of-pocket expenses incurred in connection with providing the Services. Planning Consultant shall be responsible for payment of all expenses related to salaries, benefits, employment taxes, and insurance for its Staff.

6.6 Invoices. Planning Consultant shall submit detailed, correct invoices in accordance with Consortium's standard invoicing requirements to Consortium's C-IV Procurement Manager for all Charges, Prices and other amounts to be paid by Consortium hereunder. Planning Consultant shall submit invoices for its Prices and Charges as described in Section 6.1 for Deliverables which receive Acceptance in the previous month, Services provided in the prior month, and the Facility use in the prior month in accordance with the terms of the Agreement. All invoices submitted must meet with the approval of the C-IV Procurement Manager or her or his designee prior to payment. Invoices shall include all information reasonably requested in writing by Consortium, including, without limitation, this Agreement name and reference number, Federal Tax Identification Number, itemization of each Deliverable or Service provided for which payment is requested, and total amount due. Consortium shall have the right to dispute any invoices submitted for payment by Planning Consultant.

6.7 Funding.

6.7.1 Lack of Funding; Conditions Subsequent. The Parties acknowledge and agree that this Project is dependent upon the availability of County, State and Federal funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the State legislature or the Federal government for the Project, or is not allocated or allotted to Consortium by the State Department of Finance for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of Consortium to make payments after the effective date of such non-allocation or non-funding, as provided in the notice, will cease and terminate.

6.7.2 Delayed or Reduced Funding; Conditions Subsequent. If funding, to make payments in accordance with the provisions of this Agreement, is delayed or is reduced from the State or the Federal government for the Project, or is not allocated or allotted in full to Consortium by the State Department of Finance for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of Consortium to make payments will be

delayed or be reduced accordingly. If such funding is reduced, Consortium, in its sole discretion shall determine which aspects of the Project shall proceed and which Services shall be performed, with Planning Consultant's costs related to such Services and associated Deliverables determined in accordance with those in the Cost Proposal. In this situation, Consortium shall pay Planning Consultant for Services and Deliverables in accordance with the terms of Section 16.7 and Section 16.5.2. Any obligation to pay by Consortium will not extend beyond the end of Consortium's then-current funding period.

6.7.3 No Damages. Consortium will exercise reasonable efforts to obtain the necessary funding to pay Planning Consultant in accordance with this Agreement and all its terms. Planning Consultant expressly agrees, however, that no penalty or damages shall be applied to, or shall accrue to, Consortium or to any of the Counties or the State in the event that the necessary funding to pay under the terms of this Agreement is not available, not allocated, not allotted, delayed or reduced.

6.8 Overpayments to Planning Consultant. Planning Consultant shall promptly, but in all cases within 30 Days, pay to Consortium the full amount of any erroneous payment or overpayment upon notice of an erroneous payment or overpayment to which Planning Consultant is not entitled.

6.9 Advance Payments Prohibited. No advance payment shall be made for Deliverables or Services furnished by Planning Consultant pursuant to this Agreement. No compensation or payments of any nature will be made in advance of the receipt of an invoice for Services performed or goods provided pursuant to this Agreement.

6.10 Credits. Any credits due Consortium under this Agreement may be applied against Planning Consultant's invoices with appropriate information attached, upon giving of prior notice required herein, if any, by Consortium to Planning Consultant.

6.11 No Additional Consideration. Except as expressly provided in Exhibit A or elsewhere in this Agreement, Planning Consultant shall not be entitled to nor receive from Consortium any additional consideration, compensation, salary, wages, or any other type of remuneration for Services rendered under this Agreement. Specifically, Planning Consultant shall not be entitled by virtue of this Agreement to consideration in the form of overtime, health insurance benefits, retirement benefits, disability retirement benefits, sick leave, vacation time, paid holidays, or other paid leaves of absence of any type or kind whatsoever.

7. PROJECT MANAGEMENT.

7.1 Overall Responsibility. Planning Consultant shall assist the C-IV Procurement Manager in providing planning Services as described in the RFP and Proposal. Planning Consultant shall provide such resources needed and perform its obligations as required herein to provide the Deliverables, Services, and Facility as described in the C-IV Procurement Project Work Plan.

7.2 Reporting Requirements. During the Term, Planning Consultant shall produce planning monthly status reports, and the Parties shall participate in the meetings as provided in the C-IV Procurement Project Work Plan, the RFP and the Proposal, or as otherwise requested by the C-IV Procurement Manager or C-IV Project Director.

7.3 Planning Consultant Project Manager.

7.3.1 Planning Consultant agrees and represents that its Planning Consultant Project Manager will be fully qualified to perform the tasks required of that position under this Agreement. The Planning Consultant Project Manager shall function as Planning Consultant's authorized representative for all management and administrative matters consistent with the provisions contained herein. The Planning Consultant Project Manager shall be able to make binding decisions pursuant to this Agreement for Planning Consultant. The Planning Consultant Project Manager or other substitute Project management personnel for Planning Consultant shall be on-site or otherwise reasonably available to provide immediate responses to Consortium full time during the Project.

7.3.2 The Planning Consultant Project Manager shall be responsible for acting as a liaison with Consortium's C-IV Procurement Manager. The Planning Consultant Project Manager shall be responsible and accountable for the Project to Consortium's C-IV Procurement Manager or designee.

7.3.3 If the Planning Consultant Project Manager is removed or replaced, Planning Consultant shall promptly provide Notice to Consortium, submit a resume, and obtain approval of the replacement Planning Consultant Project Manager from Consortium prior to his or her beginning work under this Agreement. Planning Consultant shall use its best efforts to find the replacement Planning Consultant Project Manager and have such replacement Planning Consultant Project Manager begin work before the incumbent Planning Consultant Project Manager departs.

7.4 Planning Consultant Project Staff.

7.4.1 Planning Consultant's organization chart of Planning Consultant's Project team and the names of mutually agreed-to Key Staff must be provided to the C-IV Procurement Manager. Any such Key Staff shall be subject to the C-IV Procurement Manager's approval. Key Staff positions shall not be modified or removed except upon the express written approval of the C-IV Procurement Manager.

7.4.2 Planning Consultant agrees to make available to Consortium a matrix of all Staff providing Services under this Agreement and their experience as described in Section of the RFP, and to maintain that matrix for changes as they occur. This matrix shall include all full or part-time staff names, working Project titles, a brief description of each position, and the average monthly hours worked or to be worked. Planning Consultant shall also provide to Consortium resumés and three references for all Staff prior to commencing Services.

7.4.3 During the Term, Consortium reserves the right to approve or disapprove Planning Consultant's Staff, to approve or disapprove any proposed changes in such Staff, or to

require the removal or reassignment of any Planning Consultant or Subcontractor Staff found unacceptable by Consortium, to the extent permitted by law.

7.4.4 All Staff proposed by Planning Consultant as replacements for other Staff shall have comparable or greater skills to perform the Project activities as were performed by the Staff being replaced.

7.4.5 Planning Consultant shall not remove from the Project the Key Staff, nor temporarily reassign or reduce the time of the Key Staff to the Project except in the event of: illness; retirement; disability; termination of employment; completion of assignments as defined in the C-IV Procurement Project Work Plan; otherwise leaving Planning Consultant's employment; or by mutual agreement of the Parties. Planning Consultant shall not rehire any such personnel as a consultant or contractor to Planning Consultant.

7.5 C-IV Procurement Manager. The Planning Consultant Project Manager's primary point of contact in matters of Project management shall be the C-IV Procurement Manager. The C-IV Procurement Manager or his or her designee shall be responsible for applicable Consortium tasks identified in the C-IV Procurement Project Work Plan for Consortium, and for the daily administration of this Agreement, including the review of Deliverables submitted and Services rendered by Planning Consultant, and the provision of Acceptance or non-acceptance with respect thereto.

7.6 Dispute Resolution Process.

7.6.1 The Parties shall use their best efforts to resolve disputes and problems that arise in connection with this Agreement. When a dispute arises between Consortium and Planning Consultant, both Parties shall attempt to resolve the dispute as provided in Section 7.6 and shall continue without delay to carry out all their respective responsibilities under this Agreement during the dispute resolution process.

7.6.2 Consortium and Planning Consultant shall use their best efforts to resolve disputes arising in the normal course of business at the lowest organizational level between each Party's staff designated by such Party to resolve such disputes. When a dispute arises between Consortium and Planning Consultant which cannot be resolved in the normal course of business, the C-IV Procurement Manager and Planning Consultant Project Manager shall each notify the other of the dispute, with the Notice specifying the disputed issues. The C-IV Procurement Manager and Planning Consultant Project Manager shall use their best efforts to resolve the dispute within five business days after submission by either Party to the other of such dispute Notice.

7.6.3 If the C-IV Procurement Manager and Planning Consultant Project Manager are unable to resolve the dispute within such five business days, they shall immediately escalate the matter to Planning Consultant's President and the C-IV Project Director, who shall have ten business days to resolve the dispute. If these representatives are unable to resolve the dispute within such period, either Party may pursue its available legal and equitable remedies.

7.7 Subcontractors.

7.7.1 Planning Consultant may, with prior written consent from Consortium, enter into subcontracts with third parties for the performance of any part of Planning Consultant's duties and obligations. Any such consent may be rescinded in Consortium's sole discretion. Consortium reserves the right to reject any proposed Subcontractor at its own discretion.

7.7.2 Planning Consultant is responsible and liable for the proper performance of and the quality of any work performed by any and all Subcontractors. In addition, Planning Consultant's use of any Subcontractor shall not cause the loss of any warranty from Planning Consultant.

7.7.3 Consortium reserves the right to reject or refuse admission to any Planning Consultant or Subcontractor personnel whose workmanship, in the reasonable judgment of Consortium, is deemed to be substandard. In no event shall the existence of a subcontract operate to release or reduce the liability of Planning Consultant to Consortium for any breach in the performance of Planning Consultant's duties.

7.7.4 All Federal and State laws and regulations pertaining to service agreements shall also apply to subcontracts of any tier under such agreements. All subcontracts will be made in writing and copies provided to Consortium upon request. Consortium has the right to refuse reimbursement for obligations incurred under any subcontract that does not comply with the terms and conditions of this Agreement or such laws or regulations. Planning Consultant shall include in each subcontract all provisions that are required by Consortium, and all Federal and State laws, including but not limited to those in Sections 7.8 – 7.10.

7.8 Accounting Requirements.

7.8.1 Planning Consultant shall establish and maintain an accounting system with procedures and practices in accordance with generally accepted accounting principles. The accounting system shall maintain records pertaining to the Deliverables and Services and all other costs and expenditures made under this Agreement, and the costs properly applicable to the Agreement shall be readily ascertainable therefrom.

7.8.2 Accounting records and procedures are subject to Consortium and State approval. Accounting procedures, policies, and records shall be open and available to Consortium, Counties, State, or federal audit at any time during the Term and for five years thereafter and, as applicable, during the period described in Section 7.9.3.

7.9 Records Retention and Access Requirements.

7.9.1 Subject to confidentiality privileges provided by law, Planning Consultant shall agree to the conditions of all applicable Federal and State laws and regulations, which are incorporated herein by this reference, regarding retention and access requirements relating to all financial and programmatic records, supporting documents, statistical records, and other records of this Agreement. In addition, Planning Consultant shall agree to the following terms regarding retention of records and access for Consortium, State and Federal government officials.

7.9.2 Planning Consultant shall prepare, maintain and preserve all Deliverables and all writings, documents, and records prepared or compiled by Planning Consultant and its Subcontractors in connection with the performance of this Agreement for a minimum of five years from the termination or completion of this Agreement, or until such records and their supporting documentation are released due to closure of a Consortium, State, or Federal audit, whichever is longer. These writings include any handwriting, typewriting, printing, photostatic, photographing, and every other hard copy and electronic means of recording, any form of communication or representation including letters, words, pictures, sounds, or symbols, or any combination thereof.

7.9.3 Records involving matters in litigation related to this Agreement shall be kept for one year following the termination of litigation, including all appeals if the litigation has not terminated within five years.

7.9.4 Planning Consultant agrees that Federal, State, County and Consortium representatives shall have access to and the right to examine, audit, inspect and copy the records, documents, billings and other items described in Sections 7.8 and 7.9, including without limitation those of any Subcontractor, during the Term and during the five-year period thereafter. Consortium shall pay copy expenses associated with these activities. During the Term, the access to these items will be provided at Planning Consultant's Facility in Sacramento, California at all reasonable times. During the Term and the five-year period after the term, delivery of and access to the listed items will be at no cost to Consortium. Consortium's personnel in connection with this Agreement shall be accompanied by Planning Consultant personnel at all times during any such examination, inspection, review or audit.

7.9.5 Planning Consultant shall work with any Consortium appointed or retained auditor to provide the information necessary for its independent assessment of Planning Consultant's compliance with the Agreement. Planning Consultant agrees to make internal records, personnel, project control systems and other support information available on a reasonable basis as requested by such auditor on behalf of Consortium.

7.9.6 Planning Consultant agrees that its financial records shall contain itemized records of all costs and be available for inspection by Consortium within three working days after the request by Consortium, County, State, or Federal agencies.

7.10 Inspections. The Deliverables and Services being provided by Planning Consultant and its Subcontractors, if any, pursuant to this Agreement shall be available for inspection and review at any reasonable time by representatives of Consortium, Counties, State (including independent validation and verification representatives) and Federal agencies, who shall, at all reasonable times, have the right to enter Planning Consultant's facilities, premises or such other places where duties under the Agreement are being provided to inspect, monitor, or otherwise evaluate the Deliverables and Services. Planning Consultant and all Subcontractors must provide reasonable access to all facilities and assistance to Consortium, County, State and Federal Government authorized representatives. All inspections and evaluations shall be performed in such a manner as will not unduly delay work.

7.11 Staff Checks. Due to the confidential nature of the information and materials which will be accessible to Planning Consultant, Planning Consultant shall perform reference checks and criminal background checks on Planning Consultant Staff proposed to be used to provide the Services. In addition, Consortium shall conduct reference checks on Planning Consultant Staff proposed to be used to provide the Services, and Consortium reserves the right in its sole discretion to reject any proposed Staff as a result of information produced by such checks or additional sources of information.

7.12 Supplemental Contracts. Consortium may undertake or award supplemental contracts for work related to this Agreement, or any portion thereof. Planning Consultant shall cooperate with such other contractors and Consortium in all such cases. Planning Consultant shall ensure that all Subcontractors shall abide by this provision. Planning Consultant shall not be responsible for the acts or failures to act of any such other contractors or for any delays which may be caused by any such other contractors, except that Planning Consultant shall be responsible for delays of, or acts or failures to act of, such other contractors to the extent such delays, or acts or failures to act are caused by or due to the fault of Planning Consultant or its failure to mitigate the effect of such delays caused by such other contractors.

8. ADDITIONAL WARRANTIES.

8.1 Services. Planning Consultant represents and warrants that Planning Consultant shall perform the Services as described in this Agreement, including without limitation the C-IV Procurement Project Work Plan, that Planning Consultant shall give high priority to the performance of the Services, and that Planning Consultant shall perform all Services required pursuant to this Agreement in accordance with high professional standards but at least in accordance with the standards described in the applicable Specifications. Planning Consultant shall promptly re-perform any Services that do not meet the requirements of this Section 8.1 without charge to Consortium.

8.2 Deliverables. Planning Consultant represents and warrants that it shall deliver the Deliverables in accordance with the C-IV Procurement Project Work Plan and that each Deliverable shall meet its requirements and Specifications as provided herein this Agreement following its Acceptance. Planning Consultant shall promptly repair or replace a Deliverable or any portion thereof, without charge, which does not meet its Specifications as provided in this Agreement.

8.3 Power and Authority. Planning Consultant represents and warrants that it has the full power and authority to grant to Consortium the rights described in this Agreement, that the person executing this Agreement for Planning Consultant has actual authority to bind Planning Consultant to each and every term, condition, and obligation of this Agreement and that all requirements of Planning Consultant have been fulfilled to provide such actual authority.

8.4 No Conflicts of Interest. Planning Consultant warrants that it has no interest and shall not acquire any direct or indirect interest that would conflict in any manner or degree with the performance of the work and Services under this Agreement.

8.5 Intellectual Property Rights. Planning Consultant represents and warrants that:

8.5.1 Planning Consultant is the owner of the Deliverables that are to be transferred and assigned to Consortium in accordance with Section 12.1 or otherwise has the right to grant to Consortium the licenses described herein without violating any rights of any third party;

8.5.2 As of the Execution Date of this Agreement, there is no actual or any threatened suit by any such third party based on an alleged violation of the rights granted or licensed by Planning Consultant to Consortium under this Agreement;

8.5.3 The Deliverables shall not infringe or misappropriate any right of, and will be free of any claim of, any third person or entity based on patent, copyright, trade secret, unfair trade practice, or other intellectual property right; and

8.5.4 Consortium shall peacefully and quietly have, hold, possess, and enjoy each Deliverable without suit or interruption.

8.6 Disclaimers. EXCEPT FOR EXPRESS WARRANTIES SPECIFIED IN THIS AGREEMENT, CONTRACTOR GRANTS NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

9. CHANGE ORDERS.

9.1 Issuance of Change Orders. Consortium may, at any time by a written Change Order, make changes within the scope of the Agreement. Such changes may include, without limitation, revisions or additions to Deliverables and Services. All Change Orders shall be subject to requirements and limitations in applicable Federal, State and County law.

9.2 Planning Consultant Proposal. Planning Consultant shall respond in writing to a Change Order request within 10 Days after receipt or as otherwise agreed to by the Parties, advising Consortium of any cost and schedule impacts. Consortium will not pay for Planning Consultant's efforts in responding to a Change Order request. When there is a cost impact, *i.e.*, increase or decrease in Charges, Planning Consultant shall advise Consortium in writing of the increase or decrease involved, including a breakdown of the number of staff hours and/or additional requirements by level of personnel needed to effect this change.

9.3 Details. Each Change Order shall consist of a detailed statement of the purpose, objective, or goals to be undertaken by Planning Consultant, the job classification or approximate skill level of the personnel to be made available by Planning Consultant, an identification of all material and Deliverables to be developed by Planning Consultant and delivered to Consortium, a time schedule for the provision of these Services by Planning Consultant, completion criteria for the work to be performed, the name and identification of Planning Consultant personnel to be assigned, Planning Consultant's work hours required to accomplish the purpose, objective, or goals, Planning Consultant's billing rates per work hour, and Planning Consultant's total cost for the Change Order.

9.4 Agreement on Change Order. The Planning Consultant Project Manager and C-IV Procurement Manager shall negotiate in good faith and in a timely manner as to the price and the impact on the Schedule of any Change Orders. If the Parties reach an agreement in writing the C-IV Procurement Manager shall submit the written Change Orders for review and evaluation by the Consortium Board of Directors, except that the C-IV Project Director shall have the authority to approve written Change Orders that do not result in an increase in the Maximum Amount if and to the extent authorized in writing by the Consortium Board of Directors. Upon the express written approval of the Consortium Board of Directors pursuant to Section 17.3 or the C-IV Project Director pursuant to this Section 9.4, as applicable, the Change Order will be incorporated into this Agreement, and Planning Consultant shall begin to work on the Change Order. Such Change Orders shall in no way constitute an agreement other than as provided pursuant to this Agreement nor in any way amend or supersede any of the other provisions of this Agreement.

9.5 Disagreement on Change Order. If the Parties are unable to reach an agreement in writing within 15 Days after Planning Consultant's response to a Change Order, the C-IV Project Director if and to the extent authorized by the Consortium Board of Directors pursuant to Section 17.3 may make a determination of the revised price and Schedule, and Planning Consultant shall proceed with the work according to such price and Schedule, subject to Planning Consultant's right to appeal the C-IV Project Director's determination of the price and/or Schedule pursuant to Section 7.6. Nothing in this Section 9.5 shall in any manner excuse Planning Consultant from proceeding diligently with performing its obligations under this Agreement as changed by the Change Order.

9.6 Termination and/or Use of Third Party. If Planning Consultant fails or refuses to perform the Services or provide a Deliverable pursuant to a Change Order, or if Planning Consultant has appealed Consortium's determination that Planning Consultant should proceed with performing its obligations under this Agreement as charged by the Change Order, and the Parties have been unable to resolve the dispute in accordance with the procedures in Section 7.6.3, Consortium shall have the right to immediately terminate this Agreement for such a refusal, which shall be deemed a termination for Planning Consultant's material breach. In addition, Consortium may engage the services of a third party to perform the Change Order if Planning Consultant fails or refuses to perform its Services or provide a Deliverable pursuant to a Change Order, or if the Parties are unable to agree on the terms of the Change Order.

10. INSURANCE.

10.1 Liability and Auto Insurance. Planning Consultant shall, at its sole cost and expense, obtain, and, during the Term, maintain, in full force and effect, the insurance coverage described in this Section 10. Planning Consultant shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the State of California and approved by the Consortium. Planning Consultant shall include Consortium, its boards, agencies, contractors, offices, employees, agents and volunteers as named insured parties in Planning Consultant's insurance policy obtained under this Agreement. If Planning Consultant fails to buy and maintain the insurance coverage described in Section 10, Consortium may terminate this Agreement under Section 16.1 (Termination for Material Breach). The minimum acceptable limits shall be as indicated below with no deductible except as indicated below:

10.1.1 Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

10.1.2 Business Automobile Liability (owned, hired, or nonowned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident/\$2 million general aggregate;

10.1.3 Employers Liability insurance covering the risks of Planning Consultant's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee/\$2 million general aggregate for bodily injury by disease;

10.1.4 Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;

10.1.5 Professional Liability Errors and Omissions, with a deductible not to exceed \$25,000 and coverage of not less than \$1 million per occurrence/\$2 million general aggregate; and

10.1.6 Crime Coverage with a deductible not to exceed \$1 million and coverage of not less than \$5 million single limit per occurrence and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.

10.2 Worker's Compensation Coverage. Prior to providing Services under this Agreement, Planning Consultant shall, in full compliance with State law, provide or purchase worker's compensation coverage for its employees and Employer's Liability in the minimum amount of \$1 million during the course of this Agreement. Consortium will not be responsible for payment of premiums or for any other claim or benefit for Planning Consultant, or any Subcontractor or employee of Planning Consultant, which might arise under applicable laws during the performance of duties and Services under this Agreement. However, should Planning Consultant fail to secure insurance coverage or fail to pay premiums on behalf of its employees, Consortium may deduct the amount of premiums owing from the amounts payable to Planning Consultant under this Agreement and transmit the same to the responsible State agency.

10.3 Subcontractors. Planning Consultant shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Planning Consultant's liability or responsibility.

10.4 Premiums. Premiums on all insurance policies shall be paid by Planning Consultant or its Subcontractors. Such insurance policies provided for Consortium pursuant to this Section shall expressly provide therein that Consortium be named as additional insured, and

that it shall not be revoked by the insurer until 30 days Notice of intended revocation thereof shall have first been given to Consortium by such insurer.

10.5 Cancellation. Planning Consultant's insurance policies shall not be canceled or nonrenewed in scope of coverage without provision for equivalent substitute insurance and such cancellation or nonrenewal shall not take place or reduced in scope of coverage until five business days' written Notice has been given to Consortium, attention C-IV Procurement Manager, and Planning Consultant has replacement insurance polic(ies) in place that satisfy the requirements set forth in this Section 10. Planning Consultant's insurance policies shall not be reduced in scope without Consortium's prior written consent.

10.6 Insurance Documents. Planning Consultant shall furnish to Consortium copies of certificates of all required insurance prior to the Effective Date, and copies of renewal certificates of all required insurance within 30 days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this Section. Failure to provide these documents shall be grounds for immediate termination or suspension of this Agreement by Consortium for material breach.

10.7 Increased Coverage. Planning Consultant shall promptly notify Consortium if any aggregate insurance limit is exceeded. In such event, Planning Consultant must purchase additional coverage to meet these requirements.

10.8 Cross-Liability. All insurance provided by Planning Consultant shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the Consortium and shall include a severability of interests (cross-liability) provision.

11. CONFIDENTIAL INFORMATION.

11.1 Access and Protection.

11.1.1 Planning Consultant and Consortium will have access to and become acquainted with each Party's, Consortium's third party contractors' and the Counties' Confidential Information. Consortium and Planning Consultant, and each of their officers, employees, contractors and agents, shall maintain all Confidential Information of the other Party, Consortium's third party contractors and the Counties in strict confidence and shall not at any time use, publish, reproduce or disclose any Confidential Information, except to authorized employees, contractors, and agents, and the Counties (and their authorized employees, contractors and agents) requiring such information under confidentiality requirements no less restrictive than this Section 11, as authorized in writing by the other Party, as otherwise specifically permitted in this Agreement, or to perform its obligations as authorized under this Agreement.

11.1.2 Both Parties shall take all steps necessary, including without limitation oral and written instructions to all employees, Subcontractors and Staff, and instructions by Consortium to the Counties or, to safeguard the other Party's Confidential Information against unauthorized disclosure, reproduction, publication or use, and to satisfy their obligations under this Agreement.

11.1.3 Any portions of Confidential Information of a Party made available hereunder including copies thereof shall be returned to that Party or destroyed and such destruction certified in writing upon that Party's written request at the election of the receiving Party, unless such Confidential Information is licensed hereunder to the other Party.

11.1.4 In addition to the requirements expressly stated in this Section 11.1, Planning Consultant and its Subcontractors shall comply with any applicable policy, rule, or reasonable requirement of the Counties, the State and the federal government that relates to the safeguarding or disclosure of information relating to applicants and recipients of Consortium's services, or the Services performed by Planning Consultant under this Agreement, including without limitation the terms of Exhibit D which is incorporated herein by this reference.

11.2 Compliance with State Requirements.

11.2.1 As part of its nondisclosure obligations, Planning Consultant shall comply and require its officers and employees to comply with the provisions of section 10850 and 18909 of the Welfare and Institutions Code, Division 19 of the California Department of Social Services Manual of Policies and Procedures, and all other laws relating to privacy and confidentiality.

11.2.2 Planning Consultant will keep confidential and not open to examination, for any purpose not directly connected with the administration of public social services, any applications and records concerning any individual made or kept by a public officer or agency in connection with the administration of the provision of the Welfare and Institutions Code relating to any form of public social services.

11.2.3 Planning Consultant shall inform all of its employees, agents, subcontractors and partners of the above provision and that any person knowingly and intentionally violating the provisions of this State law is guilty of misdemeanor.

11.3 Security Requirements. Each Party, and its officers, employees, contractors, and Subcontractors shall at all times comply with all security standards, practices, and procedures which are equal to or exceed those of Consortium and which the other Party may establish and communicate in writing to the other Party from time-to-time, with respect to information and materials which come into each Party's possession and to which such Party gains access under this Agreement. Such information and materials include without limitation all Confidential Information and other information and materials identified as being subject to such security requirements.

11.4 Injunctive Relief and Indemnity.

11.4.1 Planning Consultant shall immediately report to Consortium any and all unauthorized disclosures or uses of Consortium's or any County's Confidential Information of which it or its Staff is aware or has knowledge and shall pursue reasonable measures to obtain the immediate return of Consortium's or any County's Confidential Information. Planning Consultant acknowledges that any publication or disclosure of Consortium's or any County's

Confidential Information to others may cause immediate and irreparable harm to Consortium. If Planning Consultant publishes or discloses such Confidential Information to others without authorization, Consortium or a County shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period as described in Section 16.1.

11.4.2 Consortium will immediately report to Planning Consultant any and all unauthorized disclosures or uses of Planning Consultant's Confidential Information of which Consortium is aware or has knowledge and shall pursue reasonable measures to obtain the immediate return of Planning Consultant's Confidential Information. Consortium acknowledges that any publication or disclosure of Planning Consultant's Confidential Information to others may cause immediate and irreparable harm to Planning Consultant. If Consortium publishes or discloses such Confidential Information to others without authorization, Planning Consultant shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period as described in Section 16.1.

11.4.3 The following information shall not be considered Confidential Information for the purposes of this Agreement: information previously known when received from the other Party; information lawfully obtainable by the general public; information which now is or hereafter becomes publicly known by other than a breach hereof; information which is developed by one Party independently of any disclosures made by the other Party of such information; or information which is disclosed by a Party pursuant to subpoena or other legal process and which as a result becomes lawfully obtainable by the public.

11.5 Written Staff Agreements. Planning Consultant agrees to have Staff to whom Planning Consultant makes available (as permitted by this Agreement) Consortium's, Counties' and the State's Confidential Information agree in writing to observe and perform all provisions of this Section 11 applicable to such Staff.

11.6 Subpoena. In the event that a subpoena or other legal process concerning, in any way, Consortium's or any County's Confidential Information is served upon Planning Consultant, then Planning Consultant agrees to notify Consortium promptly following receipt of such subpoena or other legal process and to cooperate with Consortium in any lawful effort by Consortium or any County to contest the legal validity of such subpoena or other legal process.

11.7 Public Records.

11.7.1 Notwithstanding the above, Planning Consultant acknowledges that this Agreement shall be a public record under State law. Any specific information that is claimed by Planning Consultant to be Confidential Information must be clearly identified as such by Planning Consultant. To the extent consistent with State law, Consortium will maintain the confidentiality of all such information marked Confidential Information.

11.7.2 If a request is made to view Planning Consultant's Confidential Information, Consortium will notify Planning Consultant of the request and of the date that any such records will be released to the requester unless Planning Consultant obtains a court order enjoining that disclosure. If Planning Consultant disagrees with disclosure of Planning

Consultant's Confidential Information by the Consortium, Planning Consultant shall have the right to contest its disclosure in accordance with State law. If Planning Consultant fails to obtain a court order enjoining disclosure, the State will release the identified requested information on the date specified.

11.8 Survival. The provisions of this Section 11 shall remain in effect following the termination or expiration of this Agreement.

12. OWNERSHIP AND LICENSES.

12.1 Consortium Ownership Rights.

12.1.1 Consortium shall own all right, title and interest in and to its Confidential Information and the Deliverables, including without limitation the Specifications, the C-IV Procurement Project Work Plan in whatever stage of completion as may exist from time to time, including without limitation all copyright, trademark, patent, trade secret and other intellectual property and proprietary rights therein. Planning Consultant shall take all actions necessary and transfer ownership of the Deliverables to Consortium.

12.1.2 All Deliverables, in whole and in part, shall be deemed works made for hire of Consortium for all purposes of copyright law, and all right, title and interest in and to copyright rights therein shall belong solely to Consortium. To the extent that any Deliverable does not qualify as a work for hire under applicable law and to the extent that the Deliverable includes materials subject to patent, trade secret, trademark or other proprietary right protection, Planning Consultant agrees to assign, and hereby assigns, all right, title and interest in and to Deliverables, including without limitation all copyrights, inventions, patents, trade secrets, trademarks and other intellectual property and proprietary rights therein (including registrations in any U.S. or foreign jurisdiction and any renewals thereof) to Consortium. Planning Consultant shall, at the expense of Consortium, assist Consortium or its nominees to obtain and register copyrights, trademarks, or patents for all Deliverables in the United States and any other countries.

12.1.3 Planning Consultant agrees to execute all papers and to give all facts known to it necessary to register and secure United States or foreign country copyrights and patents, and to transfer or cause to transfer to Consortium all the right, title and interest in and to Deliverables. Planning Consultant also agrees not to assert any moral rights under applicable law with regard to Deliverables.

12.2 Planning Consultant. Planning Consultant shall own all right, title and interest in and to its Confidential Information. Notwithstanding Consortium's ownership rights as described in Section 12.1, Consortium acknowledges and agrees that: (a) Planning Consultant shall be free to use its general knowledge, skills and experience; and (b) Planning Consultant retains ownership of any and all of its intellectual property rights that Planning Consultant can demonstrate by documentary evidence existed prior to the execution of this Agreement, including but not limited to, methods, concepts, designs, reports, programs and templates.

12.3 State and Federal Governments. All appropriate State and Federal agencies (including, without limitation, the Federal government agencies providing Federal financial participation) shall have a royalty-free, nonexclusive and irrevocable license to reproduce, publish, translate or otherwise use and to authorize others to use for Federal government purposes all software and other materials designed, developed, or installed with Federal financial participation.

12.4 Notices. Planning Consultant will reproduce and include the copyright and other proprietary notices and product identifications provided by Planning Consultant on such copies, in whole or in part, or on any form of the Deliverables.

13. ADDITIONAL RIGHTS AND REMEDIES.

13.1 Liquidated Damages.

13.1.1 Delays or Failures. Consortium and Planning Consultant agree that failed, delayed, and/or other performance not in compliance with the terms of this Agreement by Planning Consultant will cause damages to Consortium which may be uncertain and would be impractical or difficult to ascertain; and Consortium may assess, and if assessed, Planning Consultant promises to pay Consortium in the event of such failed, delayed, and/or other performance not in accordance with the terms of this Agreement the amounts described below as liquidated damages and not as penalties. The schedule of liquidated damages represents damages in conformity with California Civil Code Section 1671, incurred in case of failed, delayed, or other performance not in accordance with the terms of this Agreement.

13.1.2 Key Staff. In the event that Planning Consultant fails to provide all Key Staff in accordance with the mutually agreed Key Staff and subject to Section 7.4.5, Consortium, at its option, may reduce amounts owed by \$1,000 for each workday and for each Key Staff member not working under this Agreement until the earliest of: (a) the assignment or reassignment of such Key Staff member(s) to the Project; or (b) the C-IV Procurement Manager’s written approval of a replacement for or the diversion of such Key Staff member(s).

13.1.3 Failure to Meet Key Milestones. Planning Consultant shall pay liquidated damages as follows for Planning Consultant’s failure to timely perform the Services or provide the Deliverables following the dates specified in the C-IV Procurement Project Work Plan, subject to Section 3.2, for the following Key Milestone events.

Key Milestones	Amount of Liquidated Damages Per Day
C-IV Procurement Project Work Plan Acceptance	\$1,000
Facility Acceptance	\$1,000
_____ Plan Acceptance	\$1,000

_____ Plan Acceptance	\$1,000
_____ Plan Acceptance	\$1,000
_____ Plan Acceptance	\$1,000
_____ Plan Acceptance	\$1,000
_____ Plan Acceptance	\$1,000

13.1.4 Available Remedies. The assessment of liquidated damages shall not constitute a waiver or release of any other remedy Consortium may have under this Agreement for Planning Consultant’s breach of this Agreement, including without limitation, Consortium’s right to withhold payment to Planning Consultant for defective or untimely Deliverables or Consortium’s right to terminate this Agreement, and Consortium shall be entitled in its discretion to recover actual damages caused by Planning Consultant’s failure to perform its obligations under this Agreement. However, Consortium will reduce such actual damages by the amounts of liquidated damages received for the same events causing the actual damages.

13.1.5 Payments. Amounts due Consortium as liquidated damages may be deducted by Consortium from any money payable to Planning Consultant under this Agreement, or Consortium may bill Planning Consultant as a separate item therefor and Planning Consultant shall promptly make payments on such bills.

13.2 Withholding Payments. Consortium shall have the right to withhold payments to Planning Consultant, in whole or in part, to the extent Planning Consultant fails to perform its obligations set forth in this Agreement.

13.3 Reductions in Payments Due. Amounts due Consortium by Planning Consultant, including but not limited to liquidated or other damages, or claims for damages, may be deducted or set-off by Consortium from any money payable to Planning Consultant pursuant to this Agreement.

13.4 Cover. If, in the reasonable judgment of Consortium, a default by Planning Consultant is not so substantial as to require termination, reasonable efforts to induce Planning Consultant to cure the default are unavailing, and the default is capable of being cured by Consortium or by another resource without unduly interfering with continued performance by Planning Consultant, Consortium may provide or procure the deliverables or services reasonably necessary to cure the default, in which event Planning Consultant shall reimburse Consortium an amount equal to the difference between Planning Consultant’s charges for such Deliverables or Services and the reasonable cost of the deliverables or services. In addition, Planning Consultant must cooperate with these resources in allowing access to the Deliverables and Facility.

13.5 Suspension Due to Breach. In the event Consortium determines that a breach of this Agreement has occurred on the part of Planning Consultant under this Agreement, and the situation is deemed by Consortium to merit corrective action, the following sequential suspension procedure may be implemented by Consortium:

13.5.1 Consortium shall send a Notice to Planning Consultant in writing by certified mail or other hand deliveries to Planning Consultant's Notice address below the signatures to the Agreement with a return receipt to Consortium of a perceived compliance breach describing Consortium's concerns;

13.5.2 Planning Consultant shall respond to Consortium's concerns by letter describing proposed corrective actions and proposing completion dates for bringing the Agreement into compliance. Such response will be sent by registered mail or other hand delivery with evidence of receipt acknowledged and delivered to Consortium within ten Days after the date of receipt of Consortium's letter;

13.5.3 Consortium shall notify Planning Consultant in writing by certified mail or other hand delivery with evidence of receipt acknowledged to Planning Consultant's Notice address with a return receipt to Consortium as to Consortium's final disposition of Consortium's concerns; and

13.5.4 Upon receipt of notice of final disposition by Planning Consultant, Consortium reserves the right to suspend all, or part of, the Agreement, and to withhold further payments, or to prohibit Planning Consultant from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action, if necessary, by Planning Consultant or a decision by Consortium to terminate the Agreement in accordance with Section 16.1 below.

13.6 Suspension for Convenience.

13.6.1 Consortium shall have the right at any time during the term to order the Deliverables, Services or any part thereof, of Planning Consultant or any of its Subcontractors or suppliers fully or partially stopped for its own convenience for a period not to exceed 30 Days within any six month period.

13.6.2 Within 30 Days after issuance of such a stop work order, Consortium shall either cancel the stop work order, terminate the Agreement or modify the Agreement as may be agreed to in writing by the Parties pursuant to Section 17.3. Planning Consultant shall receive notice of the reasons for such an order.

13.6.3 The Schedule shall be delayed on a day-for-day basis if Consortium has issued a stop work order to Planning Consultant and such stop work order is causing delays in completing Services and Deliverables in accordance with the Schedule.

13.6.4 To the extent that stop work orders are issued under this Section, 30 Days have passed since issuance of the stop order, and Planning Consultant cannot redirect Staff and mitigate the effect of such stop work orders, then an adjustment, if any, to the Charges and/or Schedule shall be made pursuant to Section 9 (Change Orders), if appropriate, based on the C-IV

Procurement Manager's reasonable consideration of relevant factors and circumstances, including but not limited to Planning Consultant's opportunity and efforts to mitigate the effect of the stop work orders. Planning Consultant shall have the right to submit claims in accordance with the terms of Section 17.7, as a result of stop work orders issued under this Section.

13.7 Guaranty. Within 10 Days after the Execution Date, Planning Consultant shall provide Consortium with a Guaranty in the form of Exhibit B, which is attached hereto and incorporated by this reference, executed by its parent company, _____. Consortium may invoke the Guaranty in addition to all other remedies available under this Agreement, in law or equity. Failure to timely provide the Guaranty shall be a material breach of the Agreement.

14. INDEMNIFICATIONS.

14.1 General. Planning Consultant shall, at its expense, defend, indemnify and hold harmless Consortium, the Counties, and their employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from: (i) any claim or action, including without limitation for property damage, bodily injury or death, which is caused by or arises from the negligent acts or omissions or willful misconduct of Contractor, its officers, employees, agents, or Subcontractors; (ii) a breach of its obligations in Section 11; or (iii) any and all claims that may be made against Consortium based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

14.2 Intellectual Property.

14.2.1 Planning Consultant shall, at its expense, defend, indemnify, and hold harmless Consortium, the Counties, and their employees, officers, directors, contractors and agents from and against any losses, liabilities, damages, penalties, costs, fees, including without limitation reasonable attorneys' fees, and expenses from any claim or action against Consortium or a County which is based on a claim that Consortium's or a County's use of or rights to the Deliverables, or any one or part thereof, under this Agreement infringes a patent, copyright, or other proprietary right or misappropriates a trade secret, except where: (a) the violation of any third party's proprietary right in connection with this Agreement arises from Planning Consultant's reliance on, or use of, tools, instructions, specifications or other materials provided by Consortium, or where Consortium or any third party modifies, adds to, or combines the Deliverables with any other data; or (b) Consortium fails to obtain intellectual property rights necessary to permit Planning Consultant to perform Services.

14.2.2 In case the Deliverables or any one or part thereof, is in such action held to constitute an infringement or misappropriation, or the use thereof is enjoined or restricted, Planning Consultant shall, at its own expense and election: (a) procure for Consortium the right to continue using the Deliverables; (b) modify the Deliverables to comply with the Specifications and not to violate any intellectual property rights; or (c) terminate the use of any infringing Deliverables upon receipt of Notice from Consortium and refund the Charges for all such Deliverables, as applicable.

15. DAMAGES LIMITATIONS.

15.1 Consortium. IN NO EVENT SHALL CONSORTIUM BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHER LEGAL THEORY, REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF CONSORTIUM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONSORTIUM'S MAXIMUM AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS AGREEMENT SHALL NOT EXCEED THE MAXIMUM AMOUNT, INCLUDING WITHOUT LIMITATION CHANGE ORDER PRICES AGREED TO BY THE PARTIES OR OTHERWISE ADJUDICATED.

15.2 Planning Consultant.

15.2.1 EXCEPT FOR INDEMNIFICATION OBLIGATIONS AND DAMAGES AS COVERED IN SECTION 16.4, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHER LEGAL THEORY, REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15.2.2 EXCEPT FOR INDEMNIFICATION OBLIGATIONS, CONTRACTOR'S LIABILITY TO CONSORTIUM UNDER THIS AGREEMENT SHALL NOT EXCEED THE MAXIMUM AMOUNT, INCLUDING WITHOUT LIMITATION CHANGE ORDER PRICES AGREED TO BY THE PARTIES OR OTHERWISE ADJUDICATED.

15.3 Liability Among Counties. Planning Consultant acknowledges and agrees that, pursuant to a separate agreement between Consortium and each County, each County is individually liable for the acts and omissions of its employees, agents and contractors, that there shall be no joint liability among or between the Counties, and that no individual County shall bear any liability for the acts or omissions of another County or its respective employees, agents, and contractors. Further, each individual County shall be responsible for the acts and omissions of its County employees or contractors participating on the Project.

16. TERMINATION.

16.1 Termination for Material Breach. In addition to the termination rights described above, Consortium may terminate this Agreement with prior Notice to Planning Consultant if Planning Consultant materially breaches this Agreement, provided Consortium has given Planning Consultant Notice of such breach and Planning Consultant failed to cure such breach within 30 Days after receipt of such Notice.

16.2 Termination for Rejection of Deliverables. If Planning Consultant delivers a Deliverable containing Deficiencies or fails to timely deliver a Deliverable as described in Section 3.3.4, Consortium shall have the right to immediately terminate this Agreement, without penalty or liability to Consortium, with such a termination being deemed a termination due to the default of Planning Consultant hereunder, and return the Deliverable to Planning Consultant. If Consortium terminates this Agreement under this Section, Planning Consultant shall, within 20

Days thereafter, refund to Consortium all payments made to Planning Consultant for the returned Deliverable and related Services rendered therefor.

16.3 Termination for Consortium's Nonpayment. If Consortium fails to pay Planning Consultant undisputed, material Purchase Prices and Charges within 90 Days after receipt of Notice from Planning Consultant of the failure to make such payments when due, Planning Consultant may, by giving Notice to Consortium, terminate this Agreement as of a date specified in the Notice of termination. Planning Consultant shall not have the right to terminate the Agreement for Consortium's breach of the Agreement except as provided in this Section, and such termination shall be Planning Consultant's exclusive remedy for Consortium's failure to make such payments.

16.4 Termination Remedies. In the event of termination of this Agreement by Consortium under Sections 16.1, 16.2, or 16.8, in addition to its other remedies, Consortium shall have the right to procure the Deliverables and/or Services that are the subject of this Agreement on the open market and Planning Consultant shall be liable for damages, subject to Section 15.2.2, for: (a) the cost difference between the original Agreement price for the Deliverables and/or Services and the replacement costs of such Deliverables and/or Services acquired from another vendor; and (b) if applicable, all administrative costs directly related to the replacement of this Agreement, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs. Consortium shall have the right to deduct from any monies due to Planning Consultant, or that thereafter become due, an amount for damages that Planning Consultant will owe Consortium for Planning Consultant's default.

16.5 Termination for Convenience.

16.5.1 In addition to its other rights to terminate, Consortium may terminate this Agreement in whole or in part for Consortium's convenience upon 60 Days' prior Notice to Planning Consultant when it is determined by Consortium to be in the best interests of Consortium. In addition, invocation of Section 16.6 (Termination for Withdrawal of Authority) or Section 16.7 (Termination for Non-Allocation of Funds) shall be deemed a termination for convenience but will not require such 60 Days' Notice. During the above-described 60-day period, Planning Consultant shall wind down and cease its Services as quickly and efficiently as possible, without performing unnecessary Services or activities and by minimizing negative effects on Consortium from such winding down and cessation of Services. If this Agreement is so terminated, Consortium shall be liable only for payment as provided below in Section 16.5.2 for Deliverables and Services rendered prior to the effective date of termination.

16.5.2 In case of such termination for convenience, Consortium shall pay to Planning Consultant the agreed upon Price, if separately stated, for Deliverables for which Acceptance has been given by Consortium, amounts for Services performed on Deliverables which are in development but which have not received Acceptance, and amounts for Services which have been provided in accordance with the terms of the Agreement, for which no separate price is stated and which are not associated with or related to specific Deliverables. The amounts for such Services shall not exceed their reasonable value, but such amounts shall not exceed the Price for the Deliverables with which they are associated or, if not associated with a Deliverable,

the price for the Services in the Cost Proposal or applicable Change Order, and such amounts shall be verified in documentation submitted by Planning Consultant to Consortium upon Consortium's request therefor. Failure to agree with such determination shall be a dispute. In no event shall Consortium pay to Planning Consultant an amount greater than Planning Consultant would have been entitled to if this Agreement had not been terminated.

16.6 Termination for Withdrawal of Authority. In the event that the authority of Consortium to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Agreement and prior to normal completion, Consortium may terminate this Agreement under Section 16.5 (Termination for Convenience).

16.7 Termination for Non-Allocation of Funds. If funds are not allocated to continue this Agreement in any future period, Consortium will not be obligated to pay any further charges for Deliverables and/or Services, and shall have the right to terminate this Agreement. Consortium agrees to notify Planning Consultant of such non-allocation at the earliest possible time. No penalty shall accrue to Consortium in the event this Section shall be exercised.

16.8 Termination for Conflict of Interest.

16.8.1 Consortium may terminate this Agreement by written notice to Planning Consultant if it is found, after due notice and examination, that there is a violation by Planning Consultant or its Subcontractors of any laws regarding ethics in public acquisitions and procurement and performance of contracts.

16.8.2 In the event this Agreement is terminated as provided above pursuant to a violation by Planning Consultant or its Subcontractors, Consortium shall be entitled to pursue the same remedies against Planning Consultant as it could pursue in the event of a breach of this Agreement by Planning Consultant under Section 16.1.

16.9 Termination Procedures.

16.9.1 Upon termination of this Agreement, Consortium, in addition to any other rights provided in this Agreement, may require Planning Consultant to deliver to Consortium any property, including Deliverables, produced or acquired for the performance of such part of this Agreement up to the date of termination.

16.9.2 Upon termination of this Agreement (other than a termination for convenience), Consortium may withhold from any amounts due Planning Consultant for Deliverables or Services such sum as the C-IV Procurement Manager determines to be necessary to protect Consortium from potential loss or liability.

16.9.3 After receipt of a Notice of termination, and except as otherwise directed by Consortium, Planning Consultant shall:

16.9.3.1 Stop work under this Agreement on the date, and to the extent specified, in the Notice;

16.9.3.2 Place no further orders or subcontracts for materials, Services, or facilities except as may be necessary for completion of such portion of the work under this Agreement that is not terminated;

16.9.3.3 As soon as practicable, but in no event longer than 30 Days after termination, terminate its orders and subcontracts related to the work which has been terminated and settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of Consortium to the extent required, which approval or ratification shall be final for the purpose of this Section;

16.9.3.4 Complete performance of such part of this Agreement as shall not have been terminated by Consortium;

16.9.3.5 Take such action as may be necessary, or as the C-IV Procurement Manager may direct, for the protection and preservation of the property related to this Agreement which is in the possession of Planning Consultant and in which Consortium has an interest.

16.9.3.6 Transfer title to Consortium and deliver in the manner, at the times, and to the extent directed by the C-IV Procurement Manager, any property which is required to be furnished to Consortium and which has been accepted or requested by Consortium;

16.9.3.7 Provide written certification to Consortium that Planning Consultant has surrendered to Consortium all such property; and

16.9.3.8 Return to Consortium all of the Confidential Information of Consortium and the Counties.

16.9.4 Planning Consultant shall pay within 30 Days after Notice the damages due Consortium as the result of termination.

16.9.5 Upon the expiration or termination of this Agreement, Planning Consultant shall assist Consortium in the orderly transfer of services rendered under this Agreement to a successor contractor and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of Consortium without additional costs or fees, except as specified and approved in this Agreement.

16.9.6 Planning Consultant shall provide to the Consortium all information requested by the Consortium that is necessary to facilitate a subsequent bidding process without additional costs or fees.

16.9.7 Planning Consultant shall provide to Consortium, without additional cost to the Consortium and at least 30 Days prior to the expiration or termination of this Agreement, all files, data, and records necessary to effect a smooth transition.

17. GENERAL PROVISIONS.

17.1 Americans with Disabilities Act. Planning Consultant shall comply with all applicable provisions of the Americans with Disabilities Act.

17.2 Assignment. Planning Consultant may not assign or transfer this Agreement or any of its rights hereunder, nor delegate any of its duties hereunder, without the prior written consent of Consortium, provided that any permitted assignment shall not operate to relieve Planning Consultant of any of its duties and obligations under this Agreement, nor shall such assignment affect any remedies available to Consortium that may arise from any breach of the provisions of this Agreement, its supplements, or warranties made herein including but not limited to, rights of setoff. Any attempted assignment, transfer or delegation in contravention of this Section of this Agreement shall be null and void. This Agreement shall inure to the benefit of and bind the Parties and their permitted successors and assigns.

17.3 Authority. Planning Consultant shall have no authority to bind, obligate or commit Consortium by any representation or promise without the prior approval of Consortium. Only the Consortium Board of Directors shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement on behalf of Consortium.

17.4 Authorization. Both Planning Consultant and Consortium have full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each has been properly authorized and empowered to enter into this Agreement and to bind each Party to each and every one of the terms, conditions and obligations set forth herein.

17.5 Binding Effect. Each Party agrees that this Agreement binds it and each of its employees, agents, independent contractors, and representatives.

17.6 Business Registration. Planning Consultant must be registered to conduct business in the State of California and with all applicable agencies, and Planning Consultant shall provide Consortium with a copy of its business license on or before the Execution Date of this Agreement.

17.7 Claims. Planning Consultant must submit claims against Consortium within the earlier of six months after the date upon which Planning Consultant knew of the existence of the claim or six months after expiration or termination of the Agreement. No claims shall be allowed unless made by Planning Consultant in accordance with this time period. Such claims must be submitted to the C-IV Procurement Manager or his or her designee by Planning Consultant in the form and with the certification prescribed by the C-IV Procurement Manager or her or his designee. Upon failure of Planning Consultant to submit its claim within the time allowed, all rights to seek amounts due on account of such claims shall be waived and forever barred except as otherwise permitted by law. Submission of such claims against Consortium shall be Planning Consultant's sole and exclusive remedy in the event that Consortium breaches this Agreement, except as provided in Section 11.4.2 or Section 16.3.

17.8 Conflicts Between Documents; Order of Precedence. In the event that there is a conflict between the documents comprising this Agreement, the order of precedence shall be as follows:

17.8.1 The terms and conditions in the body of this Agreement;

17.8.2 Any Change Orders, by reverse chronological order;

17.8.3 Exhibit A;

17.8.4 Exhibit B;

17.8.5 The Specifications;

17.8.6 The Deliverables;

17.8.7 The RFP; and

17.8.8 The Proposal.

17.9 Compliance with Civil Rights Laws.

17.9.1 No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any program provided by this Agreement because of race, color, creed, marital status, religion, sex, sexual orientation, national origin, Vietnam era or disabled veteran's status, age, the presence of any sensory, mental or physical disability, or political affiliation or belief.

17.9.2 During the performance of this Agreement, Planning Consultant shall comply with all federal and applicable State nondiscrimination laws, including but not limited to the following: Title VII of the Civil Rights Act, 42 United States Code section 12101, et seq.; the Americans with Disabilities Act of 1990; and the provisions of the California Fair Employment and Housing Act (Cal. Gov. Code section 12900, et seq.) and the applicable regulations promulgated thereunder in the California Code of Regulations (Title 2, section 7285.0, et seq.). In the event of Planning Consultant's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Agreement may be rescinded, canceled or terminated in whole or in part under Section 16.1 (Termination for Material Breach), and Planning Consultant may be declared ineligible for further contracts with Consortium. Planning Consultant shall be given time as provided in Section 16.1 in which to cure noncompliance. In addition to the cancellation of this Agreement, Planning Consultant may be subject to penalties under Federal and State law.

17.10 Construction in Public Buildings Financed by Federal Loans or Grants.

17.10.1 If Contractor or its Subcontractors are engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that are financed in whole or in part by a loan or grant from the Federal Government, Contractor and its Subcontractors shall comply with applicable regulations issued by the United States Secretary of Labor pursuant to 40 United States Code 3145 (formerly 40 United States Code section 276c)(the Davis-Bacon Act) and, to the extent these regulations are applicable, shall be subject to 18 United States Code section 1001; and

17.10.2 If Contractor or its Subcontractors, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever, induce any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, Contractor and its Subcontractors shall be subject to fines or imprisoned not more than five years, or both under 18 United States Code section 874 (the Copeland Anti-Kickback Act).

17.11 Debarment and Suspension. By signing and submitting this Agreement, Planning Consultant certifies to the best of its knowledge and belief that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Planning Consultant certifies that it will not contract with a subcontractor that is debarred or suspended. Planning Consultant further agrees that it will include this clause entitled “Certification Regarding Debarment, Suspension, Ineligibility, and voluntary Exclusion - Lower Tier Covered Transactions,” without modification in all lower tier transactions and in all solicitations for lower tier covered transactions.

17.12 Drug-Free Workplace Certification.

17.12.1 By signing this Agreement Planning Consultant hereby certifies under penalty of perjury under the laws of the State of California that the Planning Consultant will comply with the requirements of the California Drug-Free Workplace Act of 1990 (Cal. Gov. Code section 8350, et seq.) and will provide a drug-free workplace by taking the following actions:

17.12.1.1 Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by California Government Code section 8355(a).

17.12.1.2 Establish a Drug-Free Awareness Program as required by Government Code section 8355(b) to inform employees about all of the following:

- (1) The dangers of drug abuse in the workplace;
- (2) Planning Consultant’s policy of maintaining a drug-free workplace;
- (3) Any available counseling, rehabilitation, and employee assistance programs; and
- (4) Penalties that may be imposed upon employees for drug abuse violations.

17.12.1.3 Provide, as required by California Government Code section 8355(c), that every employee who works on the Agreement:

- (1) Will receive a copy of the Planning Consultant's drug-free policy statement; and
- (2) Will agree to abide by the terms of the Planning Consultant's statement as a term of condition of employment on the Agreement.

17.12.2 Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Planning Consultant may be ineligible for award of any future agreements by the State of California if the Consortium determines that any of the following has occurred:

17.12.2.1 Planning Consultant has made false certification; or

17.12.2.2 Violates the certification by failing to carry out the requirements as noted above.

17.13 Entire Agreement; Acknowledgement of Understanding. Consortium and Planning Consultant acknowledge that they have read this Agreement and the attached Exhibits, understand them and agree to be bound by their terms and conditions. Further, Consortium and Planning Consultant agree that this Agreement and the Exhibits are the complete and exclusive statement of the agreement between the Parties relating to the subject matter of this Agreement and supersede all proposals, letters of intent or prior agreements, oral or written, and all other communications and representations between the Parties relating to the subject matter of this Agreement.

17.14 Environmental Protection Standards. Planning Consultant shall comply with section 306 of the Clean Air Act, Section 308 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations (40 Code of Federal Regulations Part 15).

17.15 Force Majeure. Neither Planning Consultant nor Consortium shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such Party, except that Planning Consultant shall be liable for defaults of its Subcontractors. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government including Consortium, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, or other disasters, whether or not similar to the foregoing.

17.16 Governing Law and Venue. This Agreement shall be governed in all respects by and construed in accordance with the laws of the State of California, without giving effect to principles of conflicts of law. The exclusive venue of any action hereunder shall be in either the state courts of the State of California with application to matters with a venue of San Bernardino County, California, or the federal courts for the Central District of the State of California. Planning Consultant consents to personal jurisdiction of the state and federal courts in the State of California.

17.17 Headings. The headings throughout this Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

17.18 Health and Safety. Planning Consultant shall comply with all applicable local safety and health clearances, including fire clearances, for each site where Services are provided under the terms of this Agreement.

17.19 Independent Contractor Relationship. The Parties, in the performance of this Agreement, will be acting in their individual capacities and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one Party shall not be deemed or construed to be the employees or agents of the other Party for any purpose whatsoever. Neither Party shall have any right, power or authority to create any obligation, express or implied, on behalf of the other except as defined in this Agreement or as mutually agreed to under the terms of this Agreement. Planning Consultant, its agents, officers, Subcontractors, and employees at all times during the term of this Agreement shall represent and conduct themselves as independent contractors and not as employees of Consortium.

17.20 Legal and Regulatory Compliance. Planning Consultant shall comply with all applicable then-current Federal, State and local laws, regulations, codes, standards and ordinances during the term. In the event that any Deliverables provided or Services performed by Planning Consultant are subsequently found to be in violation of such laws, regulations, codes, standards and ordinances, it shall be the sole responsibility of Planning Consultant to bring the Deliverables and Services into compliance at no additional cost to Consortium.

17.21 Licensing Standards. Any licenses, certificates, or permits required by the Federal, State, County, or municipal governments for Planning Consultant to provide the Services described in the Agreement must be procured by Planning Consultant and be valid at the time Planning Consultant enters into this Agreement. Further, during the term of this Agreement, Planning Consultant must maintain such licenses, certificates, and permits in full force and effect. Licenses, certificates, and permits may include, but are not limited to driver's licenses, professional licenses or certificates, and business licenses. Such licenses, certificates, and permits will be procured and remain in full force by Planning Consultant at no expense to Consortium.

17.22 Lobbying Restrictions.

17.22.1 Federal Restrictions. Planning Consultant shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations, and shall be responsible for ensuring that all Subcontractors or sub-grantees of funds provided under this Agreement also fully comply with all such certifications and disclosure requirements.

17.22.2 Certification Regarding Lobbying. For Agreements with contractors who are state entities not under the authority of the Governor, or cities, private firms or agencies which are receiving in excess of \$100,000 in federal funds from the State to perform services, the

Planning Consultant agrees to sign and submit to the State the 'Certification Regarding Lobbying' form. (Section 1352, Title 31 of the United States Code).

17.23 Modifications. No modifications or amendments to this Agreement and no waiver of any provisions hereof shall be valid unless in writing and signed by duly authorized representatives of the Parties.

17.24 Nondiscrimination.

17.24.1 Planning Consultant hereby agrees that it and its agents, officers, employees and Subcontractors shall comply with Title VI of the Civil Rights Act of 1964 as amended; section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; the Food Stamp Act of 1977, as amended, and in particular section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code, section 51 et seq., as amended; California Government Code sections 11135-11139.5, as amended; California Government Code section 12940(c), (h)(1), (i), and (j); California Government Code, section 4450; Title 22, California Code of Regulations sections 98000-98413; the Dymally-Alatorre Bilingual Services Act; section 1808 Removal of Barriers to Inter Ethnic Adoption Act of 1996 and other applicable federal and state laws, as well as their implementing regulations including 45 Code of Federal Regulations Parts 80, 84, and 91; 7 Code of Federal Regulations Part 15; and 28 Code of Federal Regulations Part 35, by ensuring that during the performance of this Agreement, Planning Consultant, its agents, officers, employees and Subcontractors shall not subject to discrimination, harass or allow harassment against any employee, applicant for employment, or person providing or receiving services under this Agreement because of age, sex, color, disability, national origin, race, marital status, religion or political affiliation and hereby gives assurance that Planning Consultant will immediately take any measures necessary to effectuate this agreement.

17.24.2 This assurance is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and Planning Consultant hereby gives assurance that administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services Manual of Policies and Procedures Chapter 21, will be prohibited and prevented.

17.24.3 Planning Consultant shall ensure that it, its agents, officers, employees and Subcontractors shall compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized County, Consortium, State and/or Federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, State or Consortium shall have the right to invoke fiscal sanctions or other legal remedies in accordance with California Welfare and Institutions Code section 10605, or California Government Code sections 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

17.24.4 Planning Consultant shall include the nondiscrimination and compliance provisions of this Section in agreements with all Subcontractors.

17.25 Nonwaiver. Except as otherwise specifically provided herein, any failure or delay by either Party to exercise or partially exercise any right, power or privilege under this Agreement shall not be deemed a waiver of any such right, power, or privilege under this Agreement. Any waivers granted by Consortium for breaches hereof shall not indicate a course of dealing of excusing other or subsequent breaches.

17.26 Notices. Notice shall be deemed to be given by the Parties under this Agreement if in writing and delivered personally or by messenger, by telecopier or facsimile and confirmed, by nationally-recognized overnight carrier, or by U.S. mail sent first-class, registered, or certified mail, postage prepaid, to the addresses noted below the signatures on this Agreement. Such communications shall be effective upon the earlier of receipt or four Days after mailing. Each Party will provide Notice to the other of changes to such addresses.

17.27 OSHA Requirements – Safety and Health. All material, equipment, the Facility, and Services supplied by Planning Consultant shall meet the required standards of OSHA 1970 and CA-OSHA 1973 as last revised. Planning Consultant warrants that all material, equipment, the Facility, or labor meet all appropriate OSHA safety and health requirements. Further, Planning Consultant warrants that such material or Equipment will not produce or discharge in any manner or form, directly or indirectly, chemicals or toxic substance that could pose a hazard to the safety and health of anyone who may use the Equipment or come into contact with the Equipment.

17.28 Pro-Children Act of 1994. Planning Consultant shall comply with Public Law 103-227, Part C – Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994.

17.29 Publicity. Planning Consultant shall to submit to Consortium all advertising, sales promotion, and other publicity matters relating to the Deliverables, in whole or in part, or Services furnished by Planning Consultant wherein Consortium's name is mentioned or language used from which the connection of Consortium's name therewith may, in Consortium's judgment, be inferred or implied. Planning Consultant shall not publish or use such advertising, sales promotion, or publicity matter without the prior consent of Consortium. Nor shall Planning Consultant release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this Project without obtaining the prior written approval of Consortium.

17.30 Recycling. Planning Consultant shall use recycled and recyclable products, whenever practicable, in fulfilling the terms of this Agreement.

17.31 Remedies. Except for remedies specifically designated as exclusive, no remedy conferred by any of the specific provisions of this 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 under this Agreement, 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.

17.32 Severability. If any term or condition of this Agreement shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

17.33 State Energy Conservation Plan. Planning Consultant agrees to recognize and comply with the mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan Title 23 and 24, California Administrative Code, as required by the U.S. Energy, Policy and Conservation Act (P.L. 94-165).

17.34 Survival. The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the performance hereof by the Parties shall so survive the completion of the performance, cancellation or termination of this Agreement. In addition, the terms of Sections 6.6, 6.8, 6.11, 7.7-7.10 and 8-17 shall survive the termination of this Agreement.

17.35 Third Party. The State shall be considered as a third-party beneficiary for purposes of this Agreement. Except as otherwise specifically stated in the Agreement, the provisions of the Agreement are for the benefit of the Parties and not for any other person.

17.36 Waiver. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written instrument signed by the Parties.

IN WITNESS WHEREOF, the Parties have set their hands hereunto as of the Execution Date.

**CALIFORNIA STATEWIDE AUTOMATED
ELIGIBILITY SYSTEM
CONSORTIUM-IV JOINT
POWERS AUTHORITY**

PLANNING CONSULTANT

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Notice Address:

Notice Address:

California Statewide Automated Welfare Eligibility
System Consortium-IV Joint Powers Authority

Attention: Consortium Project Director

Attention:

EXHIBIT A

FINANCIAL MATTERS

- A. Consortium shall pay Planning Consultant for Deliverables and Services provided during the Initial Term of the Agreement no more than \$_____. Consortium shall pay no more for Deliverables and Services provided under the first Term Extension period than \$_____, no more than \$_____ for the optional second Term Extension period and no more than \$_____ for the optional third Term Extension period.
- B. Consortium shall pay a Maximum Amount for Deliverables and Services described herein under this Agreement of \$_____.
- C. Key Staff: _____.
- D. Additional Specifications: _____

EXHIBIT B

GUARANTY

In consideration of the execution by the California Statewide Automated Welfare Eligibility Consortium IV Joint Powers Authority (the "Consortium") of the Agreement dated _____, 2009 (the "Agreement") with _____ ("Affiliate"), _____ ("Parent") conditions herein, the full and faithful performance by Affiliate of all of the obligations undertaken by Affiliate pursuant to the Agreement and as it may hereafter be amended, modified, or extended from time to time, by change orders or otherwise.

If Affiliate fails or refuses to complete any of its obligations, Parent shall complete, or cause to be completed, the obligation that Affiliate failed or refused to complete, or be considered to be in breach of the Agreement to the same extent as Affiliate, pursuant to the terms and conditions of the Agreement.

Parent agrees that it shall not be necessary for the Consortium or its successors or assigns to exercise its rights against Affiliate, before proceeding to enforce its rights under this Guaranty. Parent waives: (a) notice of acceptance of this guaranty; (b) notice of any amendments, change orders, extensions of time for performance, changes in the work, or other acts by the Consortium affecting Affiliate's rights or obligations under the Agreement; (c) notice of any breach or claim of breach by Affiliate; and (d) the benefit of suretyship defense generally.

Parent represents and warrants that the execution and delivery of, and performance of the obligations contained in this Guaranty have been authorized by all appropriate action and will not constitute a breach of or contravene any agreement or instrument to which Parent is a party, and that this Guaranty is a valid and binding obligation of Parent enforceable against Parent in accordance with its terms.

Notices to Parent shall be sent to the address set forth below.

By: _____

Printed Name: _____

Title: _____

Address: _____

Date: _____