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Contract Number

20-870

SAP Number

4400014962

Public Works

Department Contract Representative	Melissa Walker, Deputy Director, Operations
Telephone Number	(909) 387-8040
Consultant	CycloMedia Technology, Inc.
Consultant Representative	Joe Astroth, CEO
Telephone Number	(415) 717-7645
Contract Term	September 1, 2020 through August 31, 2025
Original Contract Amount	\$1,688,644
Amendment Amount	
Total Contract Amount	
Cost Center	6650002000

IT IS HEREBY AGREED AS FOLLOWS:

**PROFESSIONAL SERVICES AGREEMENT
COUNTY OF SAN BERNARDINO DEPARTMENT OF PUBLIC WORKS**

WHEREAS, the County of San Bernardino (County) desires to engage the services of a professional consultant to conduct a mobile video/LiDAR survey to capture a spatial data inventory of the Traffic Control Device (TCD) and other roadway assets within the County Maintained Road System roadway/right-of-way and acquire a database of inventory items extracted from the survey video/LiDAR spatial data where the associated asset are certified as spatially accurate using the two sigma standard deviation method; and

WHEREAS, the County conducted a competitive process to find CycloMedia Technology, Inc. (Consultant) to provide these services, and

WHEREAS, the County finds Consultant qualified to (i) provide the mobile video/LiDAR asset inventory, and (ii) perform data extraction/attribution, and (iii) certify, by a licensed Land Surveyor or Professional Engineer registered by the State of California, the spatial accuracy of the inventory database services, and (iv) provision Software as a Service (SaaS) for hosting and licensing the LiDAR data for use by the County; and

WHEREAS, the County desires that such services be provided by Consultant and Consultant agrees to perform these services as set forth below;

NOW, THEREFORE, the County and Consultant mutually agree to the following terms and conditions and in the following attachments and/or exhibits:

ATTACHMENT A	Scope of Services
Exhibit 1	Project Area
Exhibit 2	Asset Data Extraction and Attribution
ATTACHMENT B	Schedule of Fees
ATTACHMENT C	License Agreement SaaS
ATTACHMENT D	Cloud Services Terms and Conditions
ATTACHMENT E	Non-Disclosure

A. DEFINITIONS

A.1 Information Products: The data, datasets and/or object information and/or change detection data related to the Services in any form, including but not limited to LiDAR data, LiDAR point clouds, 3D data and data regarding objects in the public space, such as traffic signs, road markings, pedestrian ramps and light poles.

A.2 Effective Date: The date this agreement is signed and approved by authorized representatives of both County and Consultant.

A.3 Scope of Services (SOS): The Services and Information Products to be provided by the Consultant under the terms and conditions of the Contract and attachments and/or exhibits.

B. CONSULTANT RESPONSIBILITIES

B.1 Services

Subject to the terms and conditions of this Agreement, Consultant shall provide the services necessary to perform in a complete, skillful and professional manner all of the services described in the Scope of Services (SOS).

B.2 Information Products

Subject to the terms and conditions of this Agreement, Consultant shall deliver the survey data and Information Products to the Department in the format specified, and provide ongoing access to the street level roadway imagery through a cloud-hosted software as a service application.

C. GENERAL CONTRACT REQUIREMENTS

C.1 Recitals

The recitals set forth above are true and correct and incorporated herein by this reference.

C.2 Contract Amendments

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

C.3 Contract Exclusivity

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

C.4 Attorney's Fees and Costs

If any legal action is instituted to enforce any party's rights hereunder, each party shall bear its own costs and attorneys' fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

C.5 Background Checks for Consultant Personnel

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

C.6 Change of Address

Consultant shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

C.7 Choice of Law

This Contract shall be governed by and construed according to the laws of the State of California.

C.8 Compliance with County Policy

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

necessary and appropriate.

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

C.9 Reserved

C.10 Primary Point of Contact

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

C.11 County Internship Initiative

Contractor agrees to be contacted by the County to solicit its participation in an internship initiative known as GenerationGo! Career Pathways, involving the potential placement and hiring of interns by Contractor's business. Contractor is encouraged, and agrees to make good faith efforts, to utilize the County's program to aid the *County's Vision for a skilled workforce and jobs that create countywide prosperity*, and its *goal to Create, Maintain and Grow Jobs and Economic Value in the County*. The County's objective with its internship initiative is to focus on training, education, employment and support services to develop a more highly-educated and trained workforce. When participating in the County's internship initiative, the Contractor remains an independent contractor and shall not be construed as agents, officers, or employees of the County. More information about the County's GenerationGo! Career Pathways Program can be located at <http://wp.sbcounty.gov/workforce/career-pathways/>.

C.12 County Representative

The Director of Public Works or his/her designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, change orders, and shall be the final authority in all matters pertaining to the Scope of Services by Consultant. If this Contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract, unless otherwise delegated.

C.13 Damage to County Property

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

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

C. 14 Debarment and Suspension

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

C.15 Drug and Alcohol Free Workplace

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

- C.15.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- C.15.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- C.15.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Consultant or Consultant's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

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

The County may terminate for default or breach of this Contract and any other Contract the Consultant has with the County, if the Consultant or Consultant's employees are determined by the County not to be in compliance with above.

C.16 Duration of Terms

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

C.17 Employment Discrimination

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

C.18 Environmental Requirements

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Consultant to use recycled paper for any printed or photocopied material created as a result of this Contract. Consultant is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

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

C.19 Improper Influence

Consultant shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have

any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Consultant or officer or employee of the Consultant.

C.20 Improper Consideration

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

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

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

C.21 Informal Dispute Resolution

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

C.22 Legality and Severability

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

C.23 Licenses, Permits and/or Certifications

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

All spatial data capture of TCD assets shall be conducted under the supervision of a licensed land surveyor or professional engineer registered in the State of California, who must certify the accuracy of the measured data, pursuant to section 6731.1 and section 8726 of the Business and Professions Code.

C.24 Material Misstatement/Misrepresentation

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

C.25 Mutual Covenants

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

C.26 Nondisclosure

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

All reports or deliverables furnished to the County by Consultant pursuant to this Contract, which contain information or analytics not publicly known, shall be kept confidential by the Consultant. This nondisclosure restriction shall not apply to raw imagery captured depicting, or LiDAR data collected concerning, public spaces, nor shall it preclude Consultant from future, unrelated uses of such raw imagery or data.

C.27 Notice of Delays

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

C.28 Ownership of Documents

All documents, data, products, graphics, computer programs and reports prepared by Consultant pursuant to the Contract shall be considered property of the County upon payment for services and products. Title to and ownership of all intellectual property rights remains with Consultant, subject to the requirements of Attachment C - License Agreement SaaS. All such items shall be delivered to County at the completion of work under the Contract, subject to the requirements of Article D -Term of the Contract.

C.29 Participation Clause

The County desires that Municipalities, School Districts, and other Tax Districts within the County of San Bernardino requiring the same services provided herein may at their option and through the County Purchasing agent, avail themselves of this Contract. Upon notice, in writing, the Consultant agrees to the extension of the terms of a resultant contract with such governmental bodies as though they have been expressly identified in this bid, with the provisions that:

C.29.1 Such governmental body does not have and will not have in force any other contract for like purchases.

C.29.2 Such governmental body does not have under consideration for award any other bids or quotations for like purchases.

Such governmental body shall make purchases directly through and to the Consultant. The County will not be liable for any such purchase made between the Consultant and another governmental body who avails themselves of this contract.

C.30 Air, Water Pollution Control, Safety and Health

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

C.31 Records

Consultant shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

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

C.32 Relationship of the Parties

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto. In the performance of this Contract, Consultant, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the County of San Bernardino. Any provision of this Contract that may appear to give the County any right to direct the Consultant concerning the details of performing the Scope of Services, or to exercise any control over such performance, shall mean only that the Consultant shall follow the direction of the County concerning the end results of the performance.

C.33 Release of Information

No news releases, advertisements, public announcements or photographs arising out of the Contract or Consultant's relationship with County may be made or used without prior written approval of the County.

C.34 Strict Performance

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

C.35 Subcontracting

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

Consultant shall obtain County's written consent, which County may withhold in its sole discretion, before entering into Contracts with or otherwise engaging any subcontractors who may supply any part of the services to County. At County's request, Consultant shall provide information regarding the subcontractor's qualifications and a listing of a subcontractor's key personnel including, if requested by the County, resumes of proposed subcontractor personnel. Consultant shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Article G. All approved subcontractors shall be subject to the provisions of this Contract applicable to Consultant Personnel.

For any subcontractor, Consultant shall:

- 35.1 Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and
- 35.2 Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.
- 35.3 Include in the subcontractor's subcontract substantially similar terms as are provided in Articles B. Consultant Responsibilities and C. General Contract Requirements.

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

C. 36 Subpoena

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

C.37 Termination for Convenience

The County and the Consultant each reserve the right to terminate the Contract, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the Consultant for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice Consultant shall promptly discontinue services unless the notice directs otherwise. Consultant shall deliver promptly to County and transfer title (if necessary) to all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

C.38 Time of the Essence

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

C.39 Venue

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, County of San Bernardino, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third-party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

C.40 Conflict of Interest

Consultant shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Consultant shall make a reasonable effort to prevent officers, employees, subcontractors, or members of governing bodies from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict of interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Consultant's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

Consultant understands per the attached Conflict of Interest and Political Reform Act Obligations (Attachment E) that the Department Director has determined Consultant meets Disclosure Determination number 1 and that no disclosure is required.

C.41 Former County Administrative Officials

Consultant agrees to provide, or has already provided information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Consultant. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Consultant. For purposes of this provision, "County administrative official" is defined as a member of the Board of

Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

C.42 Disclosure of Criminal and Civil Procedures

County reserves the right to request the information described herein from Consultant. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Consultant also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Consultant is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Consultant will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Consultant is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Consultant will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

C.43 Copyright

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, whether arising under copyright or patent law, now and hereafter, all reports, extracted data and any statistical compilations thereof, forms, designs, plans, procedures, systems, and any other materials or properties delivered under this Contract, all in accordance with the terms more specifically set forth in the License Agreement attached as Attachment C hereto.

C.44 Iran Contracting Act

IRAN CONTRACTING ACT OF 2010, Public Contract Code sections 2200 et seq. (Applicable for all Contracts of one million dollars (\$1,000,000) or more). In accordance with Public Contract Code section 2204(a), the Consultant certifies that at the time the Contract is signed, the Consultant signing the Contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable.

Consultants are cautioned that making a false certification may subject the Consultant to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

C. 45 Errors, Omissions and/or Conflicts

Consultant shall be responsible for the integrity of all design and research studies prepared or approved by the Consultant and should County suffer damages due to errors, omissions, and/or conflicts within such documents, the Consultant shall be responsible to County for costs of all such damages.

C. 46 Regulatory Agencies

Except for emergencies, or except for situations where contact is required by law or relevant professional canons of ethics (in which case Consultant will use its professional efforts to notify and confer with the County before such contact, the parties recognizing that there may not be time for such in an emergency), Consultant shall not contact the Local Enforcement Agency, South Coast Air Quality Management District or other regulatory agencies concerning any site that is the subject of this Contract without Public Works' prior approval.

D. TERM OF CONTRACT

This Contract is effective as of September 1, 2020 and expires August 31, 2025 but may be terminated earlier in accordance with provisions of this Contract.

E. COUNTY RESPONSIBILITIES

E.1 Compensate the Consultant for the services set forth in the Attachment A - Scope of Services, upon approval of a properly prepared invoice subject to the requirements of Article F, as agreed to in Attachment B – Schedule of Fees, in an amount not to exceed \$1,688,644, plus any approved contingency, over the Contract term.

E.1.1 The total of the imaging license fee will be invoiced upon commencement of the project. All other elements of the offer (e.g., Privacy Filter, Elevation Visualization, Asset Inventory Services, Training) will be invoiced in phases when delivered and approved by the County. Any mileage delivered over the contracted amount will be invoiced at \$138 per mile.

E.1.2 Consultant will invoice as follows:

E.1.2.1 Image Capture & Licensing – 100% image license fee (\$425,730) upon commencement of the project

E.1.2.2 Image Capture & Licensing – 100% Privacy Filter Option fee (\$15,425) upon publishing of the work

E.1.2.3 Image Capture & Licensing – 100% Elevation Visualization Tool fee (\$15,425) upon publishing of the work

E.1.2.4 Data Extraction & Attribution Phase 1 – 25% (\$266,513.25) of fee upon publishing of the work

E.1.2.5 Data Extraction & Attribution Phase 2 – 25% (\$266,513.25) of fee upon publishing of the work

E.1.2.6 Data Extraction & Attribution Phase 3 – 25% (\$266,513.25) of fee upon publishing of the work

E.1.2.7 Data Extraction & Attribution Phase 4 – 25% (\$266,513.25) of fee upon publishing of the work

E.1.2.8 Spatial Accuracy Certification Fee – 100% (\$166,011) of fee upon completion of the work

E.1.3 This Agreement allows for County access to the imagery and software for two (2) years from the delivery date. Should the County decide, after that time not to have Consultant re-drive, but wishes to continue to access the imagery captured, there is a \$10.00 per mile annual fee. Based on 3,085 miles, the annual fee for access would be \$30,850.00.

E.2 Provide or upload sufficient Customer Data, in a suitable format, for Consultant to provide the Services.

E.3 Provide adequate Subject Matter Expert resources to review the statement of work/project plan, geodatabase design, pilot data and final delivery of Services in a timely manner.

E.4 Take responsibility for (i) ensuring its own compliance with all applicable laws or regulations, and (ii) the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer data and activities.

F. FISCAL PROVISIONS

F.1 The maximum amount of payment under this Contract shall not exceed \$1,688,644, plus any approved contingency, and shall be subject to availability of other funds to the County. The consideration to be paid to Consultant, as provided herein, shall be in full payment for all Consultant's services and expenses incurred in the performance hereof, including travel and per diem.

Consultant bears the risk that it may not be able to generate its anticipated (or any) profit in completing its performance of all required items of work for the specified level of compensation. In no event shall Consultant be entitled to receive compensation for any item of work required of Consultant under the terms of the Contract, which item of work is not performed by Consultant (including Consultant's agents and approved subcontractors).

F.2 RESERVED

F.3 Consultant shall provide County itemized monthly invoices, in arrears, and in a format acceptable to the County for services performed under this Contract referencing the Task number outlined in the Attachment A - Scope of Services within twenty (20) days of the end of the previous month. The County shall make payment to Consultant within sixty (60) working days after receipt of invoice or the resolution of any billing dispute.

F.4 Consultant shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Consultant's designated checking or other bank account. Consultant shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

F.5 County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Consultant or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.

F.6 Costs for services under the terms of this Contract shall be incurred during the contract period except as approved by County. Consultant shall not use current year funds to pay prior or future year obligations.

F.7 Consultant shall adhere to the County's Travel Management Policy (8-02 and 08-02SP1) when travel is pursuant to this Contract and for which reimbursement is sought from the County. In addition, Consultant is encouraged to utilize local transportation services, including but not limited to, the Ontario International Airport.

G. INDEMNIFICATION AND INSURANCE REQUIREMENTS

G.1 Indemnification

Consultant will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any goods or services. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify Consultant promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve Consultant of its obligations only if and to the extent that such delay or failure materially prejudices Consultant's ability to defend such lawsuit or claim. County will give Consultant sole control of the defense (with counsel reasonably acceptable to County) and settlement of such claim; provided that Consultant may not settle the claim or suit absent the written consent of County unless such settlement (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the goods or services that are the subject of the claim. In the event that Consultant fails to or elects not to defend County against any claim for which County is entitled to indemnity by Consultant, then Consultant shall reimburse County for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from County. After thirty (30) days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by County to Consultant. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit Consultant's account at any time; and County, at its sole discretion, may settle the claim or suit.

If, in Consultant's opinion, any goods or services become, or are likely to become, the subject of a claim of infringement of Intellectual Property Rights, Consultant may, at its option: (i) procure for County the right to continue using the goods or receiving the services; (ii) replace or modify the goods or services to be non-infringing, without incurring a material diminution in performance or function; or (iii) if neither of the foregoing is feasible, in the reasonable judgment of Consultant, County shall cease use of the goods or services upon written notice from Consultant, and Consultant shall provide County with a pro-rata refund of the unearned fees paid by County to Consultant for such goods or services.

The Consultant agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability arising out of this Contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnities. The Consultant indemnification obligation applies to the County's "active" as well as "passive" negligence but does not apply to the County's "sole negligence" or "willful misconduct" within the meaning of Civil Code section 2782

G.2 Additional Insured

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

G.3 Waiver of Subrogation Rights

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

G.4 Policies Primary and Non-Contributory

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

G.5 Severability of Interests

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

G.6 Proof of Coverage

Consultant shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the Contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Consultant shall maintain such insurance from the time Consultant commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, Consultant shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

G.7 Acceptability of Insurance Carrier

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

G.8 Deductibles and Self-Insured Retention

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

G.9 Failure to Procure Coverage

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

G.10 Insurance Review

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

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

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

- G.11** Consultant agrees to provide insurance set forth in accordance with the requirements herein. If Consultant uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Consultant agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, Consultant shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- G.11.1** Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of the Consultant and all risks to such persons under this contract.

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

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

- G.11.2** Commercial/General Liability Insurance – Consultant shall carry General Liability Insurance covering all operations performed by or on behalf of Consultant providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

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

- G.11.3** Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

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

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

G.11.4 Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

G.11.5 Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

or

Directors and Officers Insurance coverage with limits of not less than one million (\$1,000,000) shall be required for Contracts with charter labor committees or other not-for-profit organizations advising or acting on behalf of County.

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

G.11.6 Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

H. SUCCESSORS AND ASSIGNS

H.1 This Contract shall be binding upon County and Consultant and their respective successors and assigns.

H.2 Neither the performance of this Contract, nor any part thereof, nor any monies due or to become due thereunder may be assigned by Consultant without the prior written consent and approval of County.

H.3 **Death or Incapacity:** If the Consultant transacts business as an individual, his/her death or incapacity shall automatically terminate this Contract as of the date of such event, and neither he/she nor his/her estate shall have any further right to perform hereunder, and County shall pay him/her or his/her estate the compensation payable under Article F, Fiscal Provisions, for any services rendered prior to such termination not heretofore paid, reduced by the amount of additional costs which will be incurred by County by reason of such termination. If there be more than one Consultant and any one of them die or become incapacitated and the others continue to render the services covered herein, County will make payment to those continuing as though there had been no such death or incapacity and County will not be obliged to take any account of the person who died or became incapacitated or to make any payments to such person or his estate. The provision shall apply in the event of progressive or simultaneous occasions of death or incapacity among any group of persons named as Consultant herein, and if death or incapacity befalls the last one of such group before this Contract is fully performed, then the rights shall be as if there had been only one Consultant.

I. RIGHT TO MONITOR AND AUDIT

- I.1** The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Consultant in the delivery of services provided under this Contract. Consultant shall give full cooperation, in any auditing or monitoring conducted. Consultant shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.
- I.2** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under the Contract or until all pending County, State and Federal audits are completed, whichever is later.

J. CORRECTION OF PERFORMANCE DEFICIENCIES

- J.1** Failure by Consultant to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.
- J.2** In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a. Afford Consultant thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County; and/or
 - b. Discontinue reimbursement to Consultant for and during the period in which Consultant is in breach, which reimbursement shall not be entitled to later recovery; and/or
 - c. Withhold funds pending duration of the breach; and/or
 - d. Offset against any monies billed by Consultant but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
 - e. Terminate this Contract immediately and be relieved of the payment of any consideration to Consultant. In the event of such termination, County may proceed with the work in any manner deemed proper by County. The cost to County shall be deducted from any sum due to Consultant under this Contract and the balance, if any, shall be paid by Consultant upon demand.
- J.3** Unless a remedy is specifically designated as exclusive, no remedy conferred by any of the specific provision of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either Party shall not constitute a waiver of the right to pursue other available remedies.

K. NOTICES

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

County of San Bernardino
Department of Public Works
Attn. Director
825 E. Third Street
San Bernardino, CA 92415

CycloMedia Technology, Inc.
Attn: Joe Astroth, CEO
4040 Civic Center Drive, Suite 200
San Rafael, CA 94903

Notice shall be deemed communicated two (2) County working days from the time of mailing if mailed as provided in this paragraph.

L. ENTIRE AGREEMENT

This Contract, including all Attachment, Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

IN WITNESS WHEREOF, the County of San Bernardino and Consultant have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

COUNTY OF SAN BERNARDINO

CYCLOMEDIA, TECHNOLOGY, INC.

▶ 
Curt Hagman, Chairman, Board of Supervisors

By ▶ 
(Authorized signature - sign in blue ink)

Dated: AUG 25 2020

Name Joe Astroth

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Title Chief Executive Officer




By 

Dated: 8/17/20

Address 4040 Civic Center Drive, Suite #200
San Rafael, CA 94903

FOR COUNTY USE ONLY

Approved as to Legal Form
▶ see attached
County Counsel
Date _____

Reviewed for Contract Compliance
▶ 
ANDY SILAO
Date 8/19/2020

Reviewed/Approved by Department
▶ 
Date 8/24/2020

Brendon Biggs

IN WITNESS WHEREOF, the County of San Bernardino and Consultant have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

COUNTY OF SAN BERNARDINO

CYCLOMEDIA, TECHNOLOGY, INC.

▶

Curt Hagman, Chairman, Board of Supervisors

By ▶ 
(Authorized signature - sign in blue ink)

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS
DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Name _____ Joe Astroth

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

Title _____ Chief Executive Officer

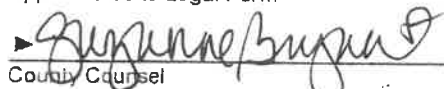
By _____
Deputy

Dated: _____ 8/17/20

Address _____ 4040 Civic Center Drive, Suite #200
San Rafael, CA 94903

FOR COUNTY USE ONLY

Approved as to Legal Form

▶ 
County Counsel

Reviewed for Contract Compliance

▶ _____

Reviewed/Approved by Department

▶ _____

Date AUGUST 18, 2020

Date _____

Date _____

Attachment A - Scope of Services

This Scope of Services (SOS) is entered into by and between the County of San Bernardino (County) and CycloMedia Technology, Inc. (Consultant) to establish terms and conditions applicable to the collection and extraction of Traffic Control Device (TCD) and other roadway Asset Inventory Data and provision of Software as a Service (SaaS) web-enabled cloud tools.

A. DEFINITIONS

- A.1 Artificial Intelligence (AI): A technology development of computer systems that enables them to self-learn and perform tasks that normally require human intelligence.
- A.2 California Manual on Uniform Traffic Control Device (CA MUTCD): Provides uniform standards and specifications for all official traffic control devices across California. CA MUTCD codes may differ or conflict with federal standards.
- A.3 County Maintained Road System (CMRS): The transportation network within County jurisdiction and maintenance responsibility area.
- A.4 Documentation: The technical, user and reference manuals, notes, instructions and summaries, technical release notes, specifications and any other supporting documentation related to the CycloMedia Offerings, in digital or printed form.
- A.5 ESRI ArcGIS Online (AGOL) Geodatabase: The compatibility standard for all services and data provided by Consultant to build out the AGOL Geodatabase. A geodatabase organizes spatial data optimized for storing and querying that data which then represents objects defined in geometric space.
- A.6 GIS Analyst: County point-of-contact responsible for data quality/spatial accuracy testing and acceptance; AGOL integration; and geodatabase administration.
- A.7 LiDAR (Light Detection and Ranging): Technology used to accurately measure distance to target and record point cloud features.
- A.8 Major Problem: A programming defect, error, failure, bug, any other malfunction in SaaS or any training problem that prevents it from operating in conformance with original Service Specifications and which, if not corrected within 5 working days, excluding weekends and holidays, will cause County to incur additional costs or work not previously anticipated.
- A.9 Minor Problem: A programming defect, error, failure, bug, any other malfunction in SaaS or any training problem that prevents it from operating in conformance with original Service Specifications and which, if not corrected within 30 working days, excluding weekends and holidays, will cause County to incur additional costs or work not previously anticipated.
- A.10 Project Analyst (PA): County point-of-contact responsible for internal project plan, resource management, user acceptance testing, contract management, training and implementation.
- A.11 Project Manager (PM): Consultant point-of-contact responsible for Project Plan, Documentation, data dictionary definition, milestones, execution, training, quality control and delivery.
- A.12 Project Plan: Consultant document that will guide project priorities, predecessor tasks, milestones, deliverables and estimated task completion dates.

Attachment A - Scope of Services

- A.13 System Specifications:** Software as a Service (SaaS) cloud-based tools provided by Consultant to view, access, utilize or otherwise benefit from video/LiDAR capture products.
- A.14 Traffic Control Device (TCD):** A sign, signal, marking or other device used to regulate, warn or guide traffic.

B. PROJECT DESCRIPTION

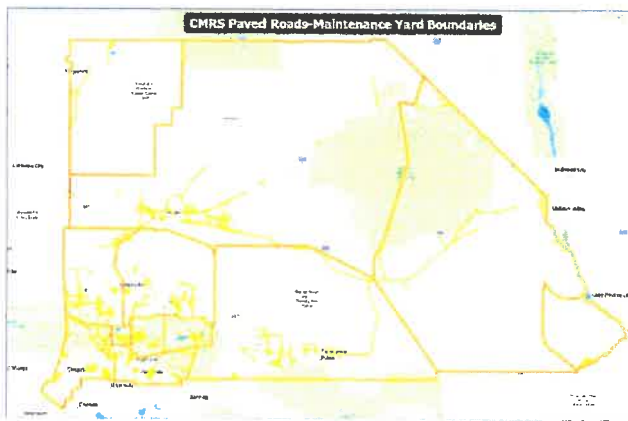
B.1 Background Information

The County has selected CycloMedia Technology, Inc. based on their response to RFP PWG-ADMIN-3535 to provide Transportation/Traffic control device asset inventory: data collection and extraction services for 2,150 centerline miles of paved roadway. Their written proposal and subsequent demonstrations to the evaluation panel clearly demonstrate that the Consultant has the qualifications, valid professional licenses, competence and capacity to provide the services, perform the work and meet or exceed the requirements and service levels described below.

B.2 Project Overview

Consultant will conduct data collection, extraction and analysis services to deliver a traffic control device and roadway asset inventory to populate the County AGOL Geodatabase with assets and their associated attributes. These AGOL feature service layers will then serve as the basis for an Asset, Maintenance Management and Planning System to increase efficiency in managing traffic and roadway operations to maximize the lifespan of existing assets.

The methodology employed shall be to collect high-resolution, high-quality street level imagery and LiDAR point cloud data along the right-of-way for approximately 2,150 centerline miles of paved roadway within the County's jurisdiction, extract assets (features) that are certified to be spatially accurate from that imagery using AI/machine learning that integrates completely with AGOL.



See *Exhibit 1 – Project Area* <http://arcg.is/1q8vraq0>

The Consultant shall collaborate with County Public Works staff to migrate and publish the captured features to the County AGOL Geodatabase and to the asset and operations management system.

The georeferenced imagery shall be provided Consultant's SaaS viewing tools with elevation, privacy filter and measuring capabilities for the defined project area.

The street level imagery and data shall be available for engineering, maintenance, and infrastructure evaluation among several departments within the County.

C. PROJECT TASKS, DELIVERABLES AND REQUIREMENTS

C.1 Task 1 - Project Management

The County intends to pursue an aggressive timeline, with a target date for completion of stated deliverables for all tasks outlined below for six (6) months from an executed Scope of Services. Upon

Attachment A - Scope of Services

acceptance of a project plan developed in consultation with County staff, the successful Consultant will be required to commit to an agreed upon timeframe and author, edit, review and distribute project Documentation and technical reports as needed. The Project Plan shall identify the PM and team members.

Deliverables to be reviewed and approved by the County.

- C.1.1 Detailed project plan/statement of work consistent with Attachment A-Scope of Services.
- C.1.2 Shared project collaboration website with access permissions for key County staff.
- C.1.3 Project schedule with milestones.
- C.1.4 County resource commitment levels.
- C.1.5 Weekly status report format, indicating percentage of completion for each deliverable.

C.2 Task 2 - Asset Inventory Database Development

The Consultant will be required to review and analyze the County's existing ESRI AGOL traffic asset geodatabase design published to the Public Works AGOL organization, legacy traffic control device asset inventory data and GIS road segment, handicap ramp, crossing, and storm drain inventories to design a geodatabase that meets the minimum data standards set forth below. The consultant will provide expert and consultative feedback as to collection/extraction methodology and database design criteria. The design shall define feature symbology styles and a feature extraction strategy that meets the County's requirements for:

- C.2.1 Compliance with fundamental data element standards.
- C.2.2 Integration with the County's existing ESRI GIS solution.
- C.2.3 XY coordinates shall be delivered in the NAD 1983 State Plane California Zone V (0405) Feet.
- C.2.4 Z values shall be delivered in the North American Vertical Datum 1988 (NAVD 88).
- C.2.5 Compatibility with the County's existing SQL based cost management system.
- C.2.6 Integration into an ESRI enabled SQL based asset and operations management system.
- C.2.7 Classification must use, follow and support efforts to maintain the standards published in the California Department of Transportation Manual on Uniform Traffic Control Devices and reference the most recent version of CA MUTCD codes.
- C.2.8 Relationship to the existing County CMRS road segment.
- C.2.9 Condition and visibility attribution.

Deliverables to be reviewed and approved by County Public Works staff:

- C.2.10 GIS geodatabase design, symbology catalog and data dictionary.
- C.2.11 Pilot sample data set with demonstrated location accuracy of +/- 1 ft.

C.3 Task 3 - Mobile Video Imagery and LiDAR Data Collection

By utilizing properly calibrated equipment with digital imagery and LiDAR enhanced GPS capabilities, the Consultant shall collect a full array of geospatially enabled ROW asset data complete with GPS attribute metadata, front view/back view digital images and visual assessment of asset condition.

Asset data will be required to be, as defined in the project plan/statement of work:

- C.3.1 Referenced to correspond with the County's CMRS segment centerlines.
- C.3.2 Collected with the methodology agreed upon.
- C.3.3 Collected within the specified timeframe.

Attachment A - Scope of Services

C.3.4 Captured in media formatted to reliably collect and extract attributes and corresponding metadata.

Deliverables to be reviewed and approved by the County Public Works staff:

C.3.5 Collected raw media meeting completeness criteria.

C.3.6 Demonstrated horizontal (x,y,z) accuracy to +/- 1 foot tolerance.

C.3.7 Tool/application for ongoing access to the media library.

C.4 Task 4 – Asset Data Extraction and Attribution

Following the data collection, the Consultant will be required to process collected data to build an inventory of assets as defined in the geodatabase design, data dictionary and symbology catalog.

C.4.1 Attribution requirements for each asset inventoried unless otherwise specified in Exhibit 2:

- Unique id for each asset.
- Basic condition assessment required and adequate for each asset unless noted.
- Still photo image attachments for each asset.
- Multiple images are required as noted.
- Horizontal x, y coordinates
- Vertical z coordinates are required where appropriate.

C.4.2 Features to be extracted, attributed and integrated into inventory shall include:

- Street name signs
- Traffic signs
- Traffic beacons
- Pavement striping
- Pavement markings
- Signal Poles
- Signals, mast arms
- Signal cabinets
- Street lights
- AC Dikes
- Curbs
- Guardrails
- Sidewalks
- Pedestrian ramps
- Intersections
- Bridges
- Culverts
- Catch basins
- Bus stop signs
- Park and ride signs

See Exhibit 2 Asset Data Extraction and Attribution for detailed attribute specifications

Attachment A - Scope of Services

C.5 Task 5 – Data Management

Ongoing data utilization, inventory maintenance and updates are required to be fully manageable by County Public Works staff with County owned resources. The vendor shall review the County's off-the-shelf mobile ESRI based solution for routine updates and maintenance of spatial asset attributes by County staff. Field solution shall be configured to enable County staff to create, modify, update, delete or archive features maintained in the County AGOL Geodatabase.

C.5.1 Consultant shall train staff to configure geodatabase:

- To run on County provided/supported mobile hardware/devices.
- With access privilege hierarchy such that County users assigned with access rights may view, write, modify, add and archive attributes, records, assets, etc.
- In a manner that allows County system administrators to manage the database and to maintain user access and necessary permissions for the rights listed above.

C.5.2 Deliverables shall include:

- Off-the-shelf ESRI mobile field tool(s) configured for ongoing use by County staff.
- Adequate training for key personnel to manage database and maintain data integrity.

C.5.3 Consultant shall provide browser-software for viewing, reporting, and measuring capabilities. The software shall run on desktops or tablets with an unlimited number of licenses, allowing any County employee within any Department to be assigned security privileges to view and utilize collected data for various purposes. This software is considered Software as a Service (SaaS) and is subject to:

- **Attachment C License Agreement SaaS**
- **Attachment D Business Associate Addendum for Cloud Services**

D. NOTIFICATION OF SAAS PROBLEM

M.1 Notification: County will notify Consultant of any problem with SaaS that prevents it from performing according to original System Specifications. Notification may be made by electronic mail, telephone, or facsimile. Consultant is to provide telephone response to such notification within forty-eight (48) hours. During Consultant telephone response, County Project Manager or designee, in consultation with Consultant, shall determine the magnitude of the problem and whether it falls under Subsection A A.7 ("Minor Problem") or A.8 ("Major Problem").

M.2 Performance Effort for Minor and Major Problem: Consultant will provide a resolution plan within forty-eight (48) normal business hours (8:00 a.m. - 5:00 p.m.), excluding weekends and holidays, of determination of problem magnitude. Resolution plan shall include Consultant's estimate of when and how problem will be resolved. If County Project Manager or designee agrees with Consultant's resolution plan, County Project Manager or designee shall provide verbal notice to Consultant of acceptance of resolution plan to be, optionally, followed by a written notice. Resolution plan shall provide for Consultant to remedy Minor Problem within thirty (30) days and major problems within forty-eight (48) normal business hours.

Exhibit 2 - Asset Data Extraction and Attribution

C will provide the following asset data extraction and attribution:

FEATURE	FEATURE TYPE	ATTRIBUTION	PICK LIST	FEATURE IMAGES	NOTES
Street name signs	Point	Condition	Good, Fair, Poor	Front and Back	
Traffic signs	Point	Condition	Good, Fair, Poor	Front and Back	
		MUTCD			
Traffic beacons	Point	Condition	Good, Fair, Poor	Front and Back	Flashing Beacon
Pavement striping	Line	Condition	Good, Fair, Poor	Start and End	Delivered in Feet
		Color	White, yellow		
		Length			
Pavement markings	Point	Condition	Good, Fair, Poor	Single Image	See symbol types below
		Type			
Signal poles	Point	Condition	Good, Fair, Poor	Single Image	
Signals, mast arms	Point	Condition	Good, Fair, Poor	Front and Back	Point on each traffic signal head connected to a mast arm
		Pole ID			ID of signal pole
Signal cabinets	Point	Condition	Good, Fair, Poor	Single Image	
		Pole ID		Single Image	ID of signal pole
Street lights	Point	Condition	Good, Fair, Poor	Single Image	
AC dikes	Line	Condition	Good, Fair, Poor	Start and End	Delivered in Feet
		Length			
Curbs	Line	Condition	Good, Fair, Poor	Start and End	Delivered in Feet
		Gutter	Y/N		
		Length			
Guardrails	Line	Condition	Good, Fair, Poor	Start and End	Delivered in Feet
		Length			
Sidewalk	Line	Condition	Good, Fair, Poor	Start and End	Delivered in Feet
		Length			
Pedestrian ramps	Point	Condition	Good, Fair, Poor	Single Image	
		Detectable Warning	Y/N		
Intersections	Point	Condition	Good, Fair, Poor	Single Image	
Bridges	Line			Start and End	Line up center of bridge
		Length			Delivered in Feet
Culverts	Point	Condition	Good, Fair, Poor	Single Image	
Catch basins	Point	Condition	Good, Fair, Poor	Single Image	
Bus stop signs	Point			Image not needed	
Park and ride signs				Image not needed	

ATTACHMENT B – SCHEDULE OF FEES

cyclomedia

Proposer: CycloMedia Technology, Inc.
4040 Civic Center Drive, Suite #200
San Rafael, CA 94903

Contact: Chris Baughman, Sr. Director of Sales Local Government
T: (260) 413.9022
E: cbaughman@cyclomedia.com

Traffic Control Device Asset Inventory: Data Collection and Extraction Services

Task	Unit type (hours/lane miles/each, etc.)	Estimated quantity	Cost per unit (\$)	Proposed cost (\$)
1. Project Management	each	0	0	0
2. Database Development	hours	0	0	0
3. Mobile Video Imagery & LiDAR Collection	lane miles	3085	138	425,730
• 2 Year SAAS License for All San Bernardino County Departments				
• Certify Spatial Accuracy				166,011
4. Data Extraction and Attribution	lane miles	3085	345.56	1,066,053
5. Web based Training	hours	4	0	0
Privacy Filter (Faces and License plates)	lane miles	3085	5	15,425
Elevation (Flood Assessment) Tool	lane miles	3085	5	15,425
Estimate of Proposer's Total Fees				\$1,688,644

The invoice total of this project will be billed on completion. Any mileage delivered over the contracted amount will be invoiced @\$138 per mile.

This Agreement allows for access to the imagery and software for two (2) years from the delivery date. Should San Bernardino County decide after that time not to have CycloMedia re-drive but wishes to continue to access the imagery captured, there is a \$10.00 per mile annual fee. Based on 3,085 miles, the annual fee for access would be \$30,850.00.

Mail or submit in person Attachment E, in a separate sealed envelope labeled "Fee Proposal Sheet" with the RFP Number and Title and the name of the Proposer clearly marked on the outside, to the address stated in Section 1, Paragraph B.

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GeoCycloramas and Street Smart - SaaS

This License Agreement (“**Agreement**”) is made and entered into as of this 11 day of August, 2020 (“**Effective Date**”) by and between CycloMedia Technology, Inc. (“**CycloMedia**”), a Delaware corporation with its principal place of business at 4040 Civic Center Dr., Suite #200., San Rafael, CA 94093 (USA), and County of San Bernardino (“**Customer**”), a political subdivision organized and existing under the constitution and the laws of the State of California with a location at 825 E. Third Street, San Bernardino, CA 92415.

GENERAL TERMS AND CONDITIONS OF CYCLOMEDIA TECHNOLOGY, INC.

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. THEY MATERIALLY AFFECT THE PARTIES’ OBLIGATIONS. CYCLOMEDIA TECHNOLOGY, INC. WILL ACCEPT ORDERS AND DO BUSINESS ONLY ON THE TERMS AND CONDITIONS BELOW.

1. **ENTIRE AGREEMENT.** These terms and conditions (“**Terms**”), together with the Service Schedules and Order Form(s), contain all of the terms and conditions of the agreement between CycloMedia and Customer for the services to be sold or provided to Customer, to the exclusion of any other statements and agreements, and to the exclusion of any terms and conditions incorporated in Customer’s order or other documents of Customer. CycloMedia’s acceptance of Customer’s order is expressly conditioned on Customer’s acceptance of these Terms, and Customer, upon placing an order, accepts these Terms in their entirety without modification. If any of these Terms conflict with any of the terms of any Service Schedule or Order Form, the terms of the Service Schedule will control with respect to the covered Services and the Order Form will take precedence and control solely with respect to the Services covered by that Order Form.
2. **DEFINITIONS.** In addition to terms defined in these Terms, the following terms will have the following meanings.
 - 2.1 “**Authorized Users**” means those individuals authorized by Customer to access the CycloMedia Offerings, as permitted by the applicable Service Schedule, and who have been supplied user identifications and passwords.
 - 2.2 “**CycloMedia Data**” means the data collected by the CycloMedia Offerings, including statistics relating to how often data is captured, transferred, stored, copied, manipulated, or downloaded, performance metrics relating to CycloMedia Offerings, Image Material, Information Products and configuration settings.
 - 2.3 “**CycloMedia Offerings**” means the Services as defined in the applicable Service Schedule.
 - 2.4 “**CycloMedia Property**” means the CycloMedia Offerings, Documentation, Image Material, Information Products, CycloMedia Data, CycloMedia’s Marks (including without limitation “CycloMedia”), CycloMedia’s Confidential Information, all Documentation or data provided by CycloMedia to Customer under these Terms, and all corresponding intellectual property rights.
 - 2.5 “**Customer Data**” means all data or information provided or submitted by Customer.
 - 2.6 “**Customer Property**” means Customer Data, Customer’s Marks, and Customer’s Confidential Information and all corresponding intellectual property rights.
 - 2.7 “**Documentation**” means the technical, user and reference manuals, notes, instructions and summaries, technical release notes, specifications and any other supporting documentation related to the CycloMedia Offerings, in digital or printed form.
 - 2.8 “**Image Material**” means the photographs taken from land, air, or water and digital seamless 360-degree photographs taken at street-level (“(Geo)Cycloramas”) related to the CycloMedia Offerings, in digital or printed form, including the associated metadata, and offered for use with the Software.
 - 2.9 “**Information Products**” means the data, datasets and/or object information and/or change detection data related to the CycloMedia Offerings in any form, including but not limited to LiDAR data, LiDAR point clouds, 3D data and data regarding objects in the public space, such as traffic signs, road markings, pedestrian ramps and light poles.
 - 2.10 “**Marks**” means any trademarks, service marks and logos, whether registered or unregistered.

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2.11 “**Order Form**” means the form signed by Customer that specifies the Services Customer is purchasing, in the form contained in Exhibit A.

2.12 “**Service(s)**” means the provision of Software, Image Material, Information Products, hosting and maintenance and professional services as described in a Service Schedule and specified in an Order Form.

2.13 “**Software**” means the object code version of the CycloMedia software, whether such software is accessed remotely over the Internet or is provided on media to Customer for use on computing devices under the control of Customer.

2.14 “**Subscription Term**” means the term during which Services are made available to Customer over the Internet, as defined in an Order Form.

2.15 “**Third Party Technology**” means the object code version of software or other technology that is licensed by CycloMedia or Customer from third parties, whether such software or technology is accessed remotely over the Internet or is provided on media for use on computing devices under the control of CycloMedia or Customer, as applicable.

3. RESPONSIBILITIES.

3.1 CycloMedia Responsibilities. CycloMedia will perform the Services as described in the applicable Service Schedule, beginning on the date identified in each applicable Order Form.

3.2 Customer Responsibilities. Customer (i) will provide or upload sufficient Customer Data, in a suitable format, for CycloMedia to provide the Services; (ii) will have suitable computing devices to be able to access the CycloMedia Offerings; (iii) will not use the CycloMedia Offerings for any inherently dangerous application or for an illegal activity; (iv) is solely responsible for backing up all Customer Data; (v) promptly will report to CycloMedia any unauthorized use of the CycloMedia Offerings; and (vi) will comply with all Customer requirements and use guidelines contained in the applicable Service Schedule (“**Use Guidelines**”). Customer shall allow each Authorized User access to the Services on a maximum of three computing devices.

3.3 User Names, Passwords and Compliance. Customer is responsible for keeping its user name(s) and password(s) confidential and secure, and limiting access to the CycloMedia Offerings to its Authorized Users. Customer is solely responsible and liable for any activity that occurs under its account, including without limitation all actions of Authorized Users. Customer will notify CycloMedia in writing within 3 days of Customer’s discovery of any unauthorized use. CUSTOMER HAS SOLE RESPONSIBILITY FOR (I) ENSURING ITS OWN COMPLIANCE WITH ALL APPLICABLE LAWS OR REGULATIONS, AND (II) THE ACCURACY, QUALITY, INTEGRITY, LEGALITY, RELIABILITY, AND APPROPRIATENESS OF ALL CUSTOMER DATA AND ACTIVITIES.

3.4 CycloMedia Data Collection. The CycloMedia Offerings may collect certain non-personally identifiable information that resides on Customer’s computer system or is generated by Customer’s use of the CycloMedia Offerings, including, without limitation to, statistics relating to how often data is captured, transferred, stored, copied, manipulated, or downloaded, performance metrics relating to the CycloMedia Offerings, and configuration settings. This information may be used by CycloMedia without restriction.

3.5 Subcontractors; Third Party Technology. CycloMedia shall have the right to use or subcontract with third parties to provide the CycloMedia Offerings; provided, however, that CycloMedia is not released from responsibility for its obligations under these Terms. CycloMedia shall have the right to use any Third Party Technology in the CycloMedia Offerings, and such Third Party Technology incorporated in the CycloMedia Offerings may be subject to the terms and conditions of the third party.

3.6 Delivery. Any delivery dates set forth in the applicable Order Forms are estimates only and CycloMedia reserves the right to readjust delivery dates without liability; provided, however, that CycloMedia shall use commercially reasonable efforts to provide or deliver all CycloMedia Offerings on or before any applicable delivery dates. CycloMedia may provide or deliver any CycloMedia Offerings in whole or in installments.

3.7 Change Orders. If either party wishes to change the scope or performance of the CycloMedia Offerings, it will submit details of the requested change to the other in writing. CycloMedia will, within

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a reasonable time after such request, provide a written estimate to Customer of (a) the likely time required to implement the change; (b) any necessary variations to the fees and other charges for the CycloMedia Offerings arising from the change; (c) the likely effect of the change on the CycloMedia Offerings; and (d) any other impact the change might have on the performance of these Terms. Promptly after receipt of the written estimate, the parties will negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither party will be bound by any Change Order unless it is signed in accordance with Section 14.

4. FEES AND PAYMENT.

4.1 **Payment.** CycloMedia will invoice Customer for all payments, fees, and other costs due. All fees and costs are due in U.S. dollars and due and payable within sixty (60) days from the date of the invoice, unless the parties otherwise agree in writing. If Customer reasonably and in good faith disputes any invoice, Customer will notify CycloMedia in writing of its objection within 10 days from the date of Customer's receipt of the invoice, provide a detailed description of the reasons for the objection, and pay the portion of the invoice that is not in dispute. Customer will be billed all applicable taxes in addition to the fees outlined in applicable Order Form. Customer shall have no right to set off against amounts which may become payable to Customer under these Terms. CycloMedia will apply all payments first to any unpaid costs and fees, then to any accrued and unpaid interest, and the balance to payments due under any invoices in inverse order of their dates.

4.2 **Suspension of Services.** If Customer's account is 10 days or more overdue (except with respect to charges then under reasonable and good faith dispute), or if at any time CycloMedia believes in good faith that the prospect of payment is impaired, in addition to any of its other rights or remedies, CycloMedia reserves the right to provide Notice of Intent to Suspend Services. If Customer's account balance is not brought current within 10 days of the Notice to Suspend Services, CycloMedia reserves the right to suspend services and Customer access to the CycloMedia Offerings, without liability, until Customer pays all overdue amounts in full or in CycloMedia's sole judgment provides adequate assurance of Customer's ability to fulfill its payment obligations, either then due or thereafter arising. Suspension will not relieve Customer of its obligation to pay the total fees owed.

4.3 **Subscription Fee.** CycloMedia will invoice Customer for Additional Hosting Fees after the end of the two-year (2-year) Subscription Term, subject to Article E.1.3 of the Professional Services Agreement, unless such fees are waived by subsequent Customer orders.

5. TERM; TERMINATION; CHANGES.

5.1 **Term.** These Terms continue for the period from September 1, 2020 through August 31, 2025 (the "**Term**"), subject to Article E.1.3 of the Professional Services Agreement, unless terminated sooner as provided herein.

5.2 **Termination.** A party may terminate these Terms or any Order Form for cause: (i) 30 days following written notice to the other party of a material breach, provided such breach remains uncured; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. In addition, CycloMedia may terminate these Terms or any Order Form immediately upon a violation of the applicable Use Guidelines. The parties each reserve the right to terminate the Agreement, for any reason, with a thirty (30) day written notice of termination. Such termination may include all or part of the services described herein. Upon such termination, payment will be made to the CycloMedia for services rendered and expenses reasonably incurred prior to the effective date of termination. Upon receipt of termination notice CycloMedia shall promptly discontinue services unless the notice directs otherwise.

5.3 **Effect of Termination.** Upon termination of these Terms or an Order Form, the parties will return or destroy any Confidential Information disclosed under these Terms, unless required by law to retain such Confidential Information. Termination will not relieve Customer of the obligation to pay any fees accrued or payable to CycloMedia prior to the effective date of termination. CycloMedia will not refund any pre-paid Subscription fees unless Customer terminates for cause, in which case CycloMedia will refund pre-paid fees for the remainder of a Subscription Term. The provisions of these Terms that should by their nature survive termination of these Terms will survive any termination.

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5.4 Regulatory and Legal Changes. If changes in applicable law, regulation, rule or order materially affect delivery of the Services, the parties will negotiate appropriate changes to these Terms. If the parties cannot reach agreement within 30 days after CycloMedia's notice requesting renegotiation this Agreement will automatically terminate.

5.5 Subscription Term. The initial Subscription Term commences at the Subscription Start Date and continues for a period of two (2) years. An annual Subscription Fee may be assessed for subsequent Subscription Terms per Attachment A – Schedule of Fees and Attachment D – Cloud Services (SaaS), Exhibit D-1 Service Level Agreement.

6. OWNERSHIP AND GRANT OF RIGHTS.

6.1 CycloMedia Property. Title to and ownership of all intellectual property rights relating to the CycloMedia Property will at all times remain with CycloMedia, including all adaptations, modifications, derivative works, additions or extensions, whether made by CycloMedia, Customer, or a third party.

6.2 Customer Data. As between CycloMedia and Customer, all Customer Data is owned by Customer. Customer grants CycloMedia a limited, non-exclusive right to use, access, duplicate, sublicense, and modify the Customer Data solely to perform its responsibilities under these Terms.

6.3 Grant of Rights. During each Subscription Term, CycloMedia grants to Customer limited, non-exclusive, non-transferable, non-sub-licensable rights to access and use the CycloMedia Offerings identified in the applicable Order Form. Each Service Schedule will specify any additional license rights granted to Customer. All other rights are reserved by CycloMedia.

7. CONFIDENTIAL INFORMATION.

7.1 Definition of Confidential and Proprietary Information. “**Confidential Information**” means trade secret other non-public information of or concerning a party or its business, suppliers, customers, products, or services, disclosed by a Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”). Without limitation, the CycloMedia Offerings and CycloMedia Data are CycloMedia Confidential Information and Customer Data are Customer Confidential Information. Information will not be considered to be Confidential Information to the extent that it (i) is already known to Receiving Party on a non-confidential basis when first obtained from Disclosing Party, (ii) is or becomes publicly known through no wrongful act of Receiving Party, (iii) is rightfully received by Receiving Party from a third party without restriction, or (iv) was independently developed by Receiving Party without use of any Confidential Information of Disclosing Party. Neither party will use or disclose any Confidential Information of the other party except as permitted by these Terms. Confidential Information of Disclosing Party will be maintained under secure conditions by Receiving Party using reasonable security measures and, in any event, not less than the same security measures used by Receiving Party for the protection of its own Confidential Information.

7.2 Compelled Disclosure. If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, it will, if possible, provide Disclosing Party with prior notice of the compelled disclosure and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.

7.3 Remedies. If Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of Disclosing Party in breach of this Section, Disclosing Party will have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

8. LIMITED WARRANTY.

8.1 CycloMedia Offerings. CycloMedia warrants the CycloMedia Offerings will operate in substantial conformity with the applicable Service Schedule and Documentation provided by CycloMedia to Customer. In the event of any breach of the warranty in this Section, which must be reported in writing by Customer within five (5) business days after Customer discovers or reasonably should have discovered such breach, Customer's sole and exclusive remedy, and CycloMedia's sole obligation, will be for CycloMedia to correct the reported

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nonconformity within a commercially reasonable period, as may be further described in the applicable Service Schedule. The media on which Software is delivered is warranted for thirty (30) days following delivery.

8.2 Limitations. CycloMedia does not make any warranty and is not responsible in any way for Third Party Technology or for loss of Customer Data. Customer acknowledges that communications and transactions conducted on-line may not be absolutely secure, that there may be system or Internet failure that limits Customer's accessibility to the CycloMedia Offerings, and that on-line services are not guaranteed to be error-free. By using the CycloMedia Offerings, Customer accepts all responsibility and risk associated with the use of the CycloMedia Offerings and the Internet generally.

8.3 Disclaimer of All Other Warranties. THE EXPRESS WARRANTIES IN THESE TERMS ARE IN LIEU OF, AND CYCLOMEDIA DISCLAIMS, ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN), RELATED TO THESE TERMS, WHETHER ARISING BY LAW, CUSTOM OR USAGE IN THE TRADE, COURSE OF DEALING, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT CYCLOMEDIA OR A THIRD PARTY SOFTWARE SUPPLIER IS AWARE OF ANY SUCH PURPOSE). *CYCLOMEDIA MAKES NO REPRESENTATION OR WARRANTY THAT CUSTOMER'S USE OF THE CYCLOMEDIA OFFERINGS, OR ANY SERVICE OR THE CYCLOMEDIA SITE, WILL BE IN COMPLIANCE WITH ANY LAW OR REGULATION.*

9. LIMITATION OF LIABILITY.

9.1 Direct Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS) RELATED TO THESE TERMS, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR LIABILITY ARISING UNDER ITS INDEMNITY OBLIGATIONS, OR FROM ITS GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR VIOLATION OF LAW, THE TOTAL CUMULATIVE LIABILITY OF CYCLOMEDIA FOR ANY BREACH OF THESE TERMS WILL NOT EXCEED ONE MILLION DOLLARS (US\$1,000,000).

10. CUSTOMER REPRESENTATIONS AND WARRANTIES.

10.1 Regulations. Each party represents and warrants that it is currently complying and will continue to comply with all requirements of laws and regulations applicable to Customer's use of the CycloMedia Offerings, and all other applicable federal, state and local laws, regulations and guidelines, including but not limited to those relating to export control, anti-corruption, and anti-terrorism ("**Regulations**"). CycloMedia certifies that neither it nor its principals or subcontracts is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. (See the following United States General Services Administration's System for Award Management website <https://www.sam.gov>). Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

10.2 Reliance. In connection with the performance of the Services, the parties agree that CycloMedia may rely upon the Customer Property. Customer represents and warrants that the Customer Property is complete and accurate. If any error results from incorrect Customer Property supplied by Customer, Customer shall be responsible for discovering and reporting such error, payment of any and all fees and expenses incurred by CycloMedia due to such error, payment for any additional Services to be performed by CycloMedia due to such error, and supplying the Customer Property necessary to correct such error by reprocessing at the earliest possible time.

11. INDEMNIFICATION.

11.1 RESERVED

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11.2 Indemnification by CycloMedia. CycloMedia will indemnify, defend, and hold harmless Customer, its officers, employees, agents and volunteers, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by any Software. If the Software becomes, or in CycloMedia's opinion is likely to become, the subject of an infringement or misappropriation claim, CycloMedia may, at its option and expense, either: (i) procure for Customer the right to continue using the Software as part of the CycloMedia Offerings, or (ii) replace or modify the Software so that it becomes non-infringing (provided any such replacement or modification does not materially degrade the Software's functionality as described in the then-current Documentation). Notwithstanding the foregoing, CycloMedia will have no obligation with respect to any Third Party Technology or Customer Property or an infringement or misappropriation claim if the claim is solely based on the Software being misused, used in violation of these Terms or any Regulations, used in nonconformance with the Documentation, or has been modified by Customer or any third party other than as approved by CycloMedia.

11.3 Notification and Cooperation. If a credible claim is made or threatened, including without limitation the filing of a lawsuit against Customer, or Customer receives a demand or notice claiming actual or potential infringement or misappropriation of any intellectual property rights, Customer will use reasonable efforts to notify CycloMedia promptly of such lawsuit, claim or election. However, Customer's failure to provide or delay in providing such notice will relieve CycloMedia of its obligations only if and to the extent that such delay or failure materially prejudices CycloMedia's ability to defend such lawsuit or claim. Customer will give CycloMedia sole control of the defense (with counsel reasonably acceptable to Customer) and settlement of such claim; provided that CycloMedia may not settle the claim or suit absent the written consent of Customer unless such settlement (a) includes a release of all claims pending against Customer, (b) contains no admission of liability or wrongdoing by Customer, and (c) imposes no obligations upon Customer other than an obligation to stop using the goods or services that are the subject of the claim.

12. **CHOICE OF LAW; DISPUTE RESOLUTION.** These Terms will be interpreted and construed in accordance with the laws of the State of California and the United States, excluding conflict of laws provisions. All disputes relating to these Terms will be subject to the exclusive jurisdiction of the Superior Court of California, County of San Bernardino, San Bernardino District, California, and the parties will submit to the personal and exclusive jurisdiction and venue of these courts. If any action or claim concerning this Agreement is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, County of San Bernardino, San Bernardino District.

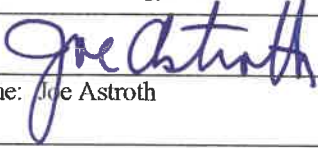
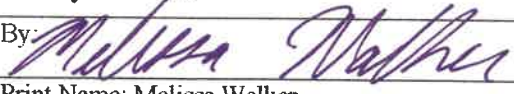
13. **RELATIONSHIP OF THE PARTIES.** The parties are independent contractors, and neither party has any power or authority, nor will it represent that it has any power or authority, to bind the other party or to assume or create any obligation or responsibility, express or implied, on behalf of the other party, or in the other party's name.

14. **GENERAL. Assignment.** These Terms binds the parties' representatives, successors, and assigns, except that neither party may assign these Terms without the prior written consent of the other party. **Notices.** Any written notice required to be given to a party will be given by personal delivery to that party, or mailed by registered or certified mail, return receipt requested, postage prepaid, to that party at that party's address on the Order Form. **Force Majeure.** Except for the obligation to make payments, neither party will be liable for delays or breaches in its performance under these Terms due to causes beyond its reasonable control. **Modifications; Severability; Waiver.** Any modification of these Terms will be effective only if in writing and signed by both parties. Any provision of these Terms that is held to be invalid, illegal or unenforceable will be severed from these Terms, and the remaining provisions will remain in full force and effect. No failure or delay by either party to exercise any right or remedy will be construed as a current or future waiver of such remedy or right. **Counterparts.** These Terms may be executed in any number of counterparts, each of which will be deemed an original, and all of which taken together will constitute one and the same instrument. Facsimile signatures, or other electronic signatures, are binding and have the same effect as a handwritten signature.

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In Witness Whereof, the parties have executed this Agreement.

CycloMedia Technology, Inc.	County of San Bernardino
By: 	By: 
Print Name: Joe Astroth	Print Name: Melissa Walker
Title: CEO	Title: Public Works Deputy Director, Operations
Date: 8/17/20	Date: 8/19/20



Contract Number

4400014962

ATTACHMENT D
CLOUD SERVICES TERMS AND CONDITIONS

These Cloud Services Terms and Conditions are attached to, form a part of, and supplement the General Terms only with respect to cloud services.

A. DEFINITIONS

Capitalized terms used herein have the same meaning as ascribed in the General Terms. In addition, the following capitalized terms shall have the meaning ascribed herein:

- 1) "CISO": County Chief Information Security Officer or other County-designated officer responsible for cyber-infrastructure security.
- 2) "Cloud Service": Generally, SaaS, PaaS, and/or IaaS depending on what Service Provider is offering under this Contract.
- 3) "CSP": Cloud Service Provider is the contracted derivative or direct provider of Cloud Services.
- 4) "CONUS": Continental United States
- 5) "County Data": Any information, formulae, algorithms, or other content that County, County's employees, agents and end users upload, create or modify using the SaaS pursuant to this Contract. County Data also includes user identification information, personally identifiable information, and metadata which may contain County Data or from which County Data may be ascertainable.
- 6) "Data Breach": Any access, destruction, loss, theft, use, modification or disclosure of County Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.
- 7) "IaaS" (Infrastructure as a Service): Service Provider provides the underlying cloud infrastructure for processing, storage, networks, and other fundamental computing resources that the customer does not manage or control, but the customer has control over operating systems; storage, deployed applications, and possibly limited control of select networking components (e.g., host firewalls).
- 8) "PaaS" (Platform as a Service): Applications running on a cloud infrastructure managed or controlled by the Service Provider that are client-created or acquired using programming languages and tools supported by the Service Provider, but deployed onto the cloud infrastructure and controlled by client.
- 9) "Recovery Point Objective (RPO)": The point in time at which County Data can be recovered and/or systems restored when service is restored after an interruption. The Recovery Point Objective is expressed as a length of time between the interruption and the most proximate backup of County Data immediately preceding the interruption. The RPO is detailed in the SLA.
- 10) "Recovery Time Objective (RTO)": The period of time within which information technology services, systems, applications and functions must be recovered following an unplanned interruption. The RTO is detailed in the SLA.

11) "SaaS" (Software as a Service): Applications running on a cloud infrastructure managed or controlled by the Service Provider including network, servers, operating systems, or storage, that are accessed by client devices through a thin client interface such as a web browser.

12) "SLA": Service Level Agreement which is attached hereto as Exhibit D-1 and hereby incorporated herein.

13) "Service Provider": Contractor, as defined in the General Terms or the individual or entity that is the owner of the rights to the Software.

B. CLOUD SERVICE AVAILABILITY

The Cloud Service shall be available twenty-four (24) hours per day, 365/366 days per year. If Cloud Service monthly availability averages less than 99.99% (excluding agreed-upon maintenance downtime), County shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the SLA. If Cloud Service monthly availability averages less than 99.99% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, County may terminate the contract for material breach. Service Provider shall provide advance written notice to County of any major upgrades or changes that will affect the Cloud Service availability.

C. DATA AVAILABILITY

County Data shall be available twenty-four (24) hours per day, 365/366 days per year. If County Data monthly availability averages less than 99.99% (excluding agreed-upon maintenance downtime), County shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the SLA if County is unable to access County Data as a result of: (i) acts or omission of Service Provider; (ii) acts or omissions of third parties working on behalf of Service Provider; (iii) network compromise, network intrusion, hacks, introduction of viruses, disabling devices, malware and other forms of attack that can disrupt access to Service Provider's server, to the extent such attack would have been prevented by Service Provider taking reasonable industry standard precautions; (iv) power outages or other telecommunications or Internet failures, to the extent such outages were within Service Provider's direct or express control. If County Data monthly availability averages less than 99.99% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, County may terminate the contract for material breach in accordance with the Termination for Default provision in the General Provisions – Information Technology.

D. SaaS and SECURITY

D.1 Certification

Service Provider shall certify:

- D.1.a the sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract, and, if requested by County, provide a copy of its Statement on Standards for Attestation Engagements (SSAE) 18 Service Organization Control (SOC) 2 Type II audit results;
- D.1.b its compliance with the California Information Practices Act (Civil Code Sections 1798 et seq.);
- D.1.c its compliance with privacy provisions of the Federal Privacy Act of 1974; and
- D.1.d its compliance with applicable industry standards and guidelines, including but not limited to relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCI/DSS Cloud Computing Guidelines.

D.2 Safeguards

Service Provider shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section D.1.a above at all times during the term of this Contract to secure County Data from Data Breach, protect County Data and the SaaS from

hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt and/or compromise County's access to County Data.

D.3 High-Availability and Redundancy

Service Provider shall have a high-availability and a redundant environment, where the minimum requirements are:

- D.3.a Power and/or generators shall be 2N
- D.3.b UPS power shall be 2N
- D.3.c Redundant servers shall be N+1
- D.3.d Data center shall be Tier-2
- D.3.e Data center cooling shall be 2N
- D.3.f All UPS's and Generators must be tested and inspected on a quarterly basis. Copies of inspection and testing results must be provided upon demand to the County. Inspection and testing records must be retained for a minimum of 3 years
- D.3.g Data center cooling must have preventative maintenance performed quarterly. Copies of preventative maintenance records must be provided upon demand to the County. Preventative maintenance records must be retained for a minimum of 3 years.

D.4 Physical

Service Provider shall have a reasonable physical security environment, where the minimum requirements are:

- D.4.a Physical access to facility, data center(s), and/or server room(s) is restricted using an access control system that utilizes iCLASS SE or multiclass SE readers.
- D.4.b Access control system must be capable of restricting access by time of day and groups
- D.4.c Access control system must be auditable providing customize reports on demand for inspection by the County
- D.4.d Access control system components and batteries must be inspected annually.
- D.4.e Access control system batteries must be replaced every 3 years or when they fail
- D.4.f Vendor must be able retain access control history for a minimum of 3 years or as required by law
- D.4.g Alerts are generated when physical security has been breached by the access control system or intrusion detection system
- D.4.h Intrusion detection systems must be monitored by a third party UL central station
- D.4.i Intrusion detection systems must be inspected and tested quarterly with signals sent to the central station. Testing reports must be retained for 3 years and provided on demand by the County.
- D.4.j Intrusion detection batteries must be inspected annually and replaced every 3 years or when they fail.
- D.4.k Facility, data center(s), and server room(s) have an appropriate Video Surveillance System in-place for surveillance.
- D.4.l Video surveillance system must have the capability to interface with the access control system and intrusion detection system
- D.4.m Video surveillance system must be inspected quarterly to make sure cameras are recording and video is being archived

- D.4.n Video surveillance system must archive video as per California Government Sections § 26202.6, § 34090.6 and § 53160
- D.4.o All access control systems, intrusion detection systems and video surveillance systems must be on the facilities emergency power system and protected by UPS.
- D.4.p Data center have protections in-place that minimize environmental issues such as temperature, fire, smoke, water, dust, electrical supply interference, and electromagnetic radiation.
- D.4.q A chemical fire suppression system installed in the data center as per NFPA 2001.
- D.4.r The chemical fire suppression system must be inspected semiannually as per NFPA 2001 §8.3
- D.4.s Smoke detectors under the raised floors.
- D.4.t Water detection system under the raised floors and above the ceiling.
- D.4.u Facility must be protected 100% by an automatic fire sprinkler system with the data center being protected with an automatic pre-action fire sprinkler system.
- D.4.v Facility automatic fire alarm system must be tested and inspected as per NFPA 25

D.5 Verification

Service Provider shall provide a Statement on Standards for Attestation Engagements 16 (SSAE16) Service Organization Controls Report (SOC) 1 and SOC 2 Type I and Type II Reports on an annual basis. Based on the report(s), its findings and remediation planned or accomplished shall be provided to the County CISO in terms of an attestation letter.

Service Provider shall also provide statistics specific to SaaS environment on a mutually agreed upon frequency with County that includes without limitation to performance, information security, network, and other pertinent SaaS data related to the Contract, at no cost to County.

D.6 Security

Service Provider assumes responsibility for the security and confidentiality, integrity, and availability of County Data under its control. No County Data shall be copied, modified, destroyed or deleted by Service Provider other than for normal operation or maintenance of SaaS during the Contract period without prior written notice to and written approval by CISO.

When data is destroyed or disposed, it shall be in accordance with the National Institute of Standards of Technology (NIST) Special Publication 800-88 published by the U.S. Department of Commerce. The incorporation of the Defense of Department (DoD) standard 5220.2-M wipe method shall be used when using data destruction programs, file shredders, etc. In either case, a written confirmation of this process is required to the County CISO within three (3) days of the destroyed/disposed data.

Remote access to County Data from outside the CONUS, including remote access to County Data by authorized SaaS support staff in identified support centers, is prohibited unless approved in advance by the CISO.

E. ENCRYPTION

In order to provide reasonable security to County Data, cloud service datacenters should encrypt all County Data while in route to and from the Service Provider (in motion) using secure transfer methods (e.g., Secure Sockets Layer, Transport Layer Security), and while stored in the datacenter (at rest).

E.1 Data In Motion

All transmitted County Data require encryption in accordance with:

- E.1.a NIST Special Publication 800-52 Guidelines for the Selection and Use of Transport Layer Security Implementations; and
- E.1.b NIST Special Publication 800-57 Recommendation for Key Management - Part 3: Application-Specific
- E.1.c Key Management Guidance; and
- E.1.d Secure Sockets Layer (SSL) is minimally required with minimum cipher strength of 128-bit.

E.2 Data At Rest

All County Data at rest require encryption in accordance with:

- E.2.a Federal Information Processing Standard Publication (FIPS) 140-2; and
- E.2.b National Institute of Standards and Technology (NIST) Special Publication 800-57 Recommendation for Key Management - Part 1: General (Revision 3); and
- E.2.c NIST Special Publication 800-57 Recommendation for Key Management - Part 2: Best Practices for
- E.2.d Key Management Organization; and
- E.2.e NIST Special Publication 800-111 Guide to Storage Encryption Technologies for End User Devices.
- E.2.f Advanced Encryption Standard (AES) with cipher strength of 256-bit is minimally required.

F. DATA LOCATION

Unless otherwise stated in the Statement of Services and approved in advance by the CISO, the physical location of Service Provider's data center where County Data is stored shall be within the CONUS, and County Data shall not be transmitted, processed or stored outside of CONUS.

G. RIGHTS TO DATA

The parties agree that as between them, all rights, including all intellectual property rights, in and to County Data shall remain the exclusive property of County, and Service Provider has a limited, non-exclusive license to access and use County Data as provided to Service Provider solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to County Data, including user tracking and exception County Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of County Data by Service Provider or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

H. TRANSITION PERIOD

For ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, Service Provider shall assist County in extracting and/or transitioning all County Data in the format determined by the County ("Transition Period"). The Transition Period may be modified in the SOS or as agreed upon in writing by the parties in a contract amendment. During the Transition Period, SaaS and County Data access shall continue to be made available to County without alteration. Service Provider agrees to compensate County for damages or losses County incurs as a result of Service Provider's failure to comply with this section. Unless otherwise stated in the SOS, the Service Provider shall permanently destroy or render inaccessible any portion of County Data in Service Provider's and/or subcontractor's possession or control following the expiration of all obligations in this section. Within thirty (30) days, Service Provider shall issue a written statement to County confirming the

destruction or inaccessibility of County Data. County at its option, may purchase additional transition services as agreed upon in the SOS.

I. DATA BREACH

I.1 Notification

Upon discovery or reasonable belief of any Data Breach, Service Provider shall notify the CISO by the fastest means available and in writing to the County Notices contact within twenty-four (24) hours after Service Provider reasonably believes a Data Breach has occurred. At a minimum, the notification shall include:

- I.1.a the nature of the Data Breach;
- I.1.b County Data accessed, used or disclosed;
- I.1.c any evidence of County Data extricated;
- I.1.d the identity of the person(s) who accessed, used, disclosed and/or received County Data (if known);
- I.1.e the law enforcement agency(ies) contacted; and
- I.1.f actions taken or will be taken to quarantine and mitigate the Data Breach; and
- I.1.g corrective action taken or will be taken to prevent future Data Breaches.

I.2 Investigation

Service Provider shall conduct an investigation of the Data Breach and shall share the report of the investigation with the CISO. If required by law, County and/or its authorized agents shall have the right to lead or participate in the investigation, in its sole discretion. Service Provider shall cooperate fully with County, its agents and law enforcement.

I.3 Post-Breach Audit

Upon advance written request, Service Provider agrees that the County or its designated representative shall have access to Service Provider's SaaS, operational documentation, records and databases, including online inspection, that relate to the SaaS that experienced the Data Breach. The online inspection shall allow the County, its authorized agents, or a mutually acceptable third-party to test that controls are in-place and working as intended. Tests may include, but not be limited to, the following:

- I.3.a Operating system/network vulnerability scans,
- I.3.b Web application vulnerability scans,
- I.3.c Database application vulnerability scans, and
- I.3.d Any other scans to be performed by the County or representatives on behalf of the County.

J. DISASTER RECOVERY AND BUSINESS CONTINUITY

J.1 Notification

In the event of disaster or catastrophic failure that results in significant loss of County Data or access to County Data, Service Provider shall notify County by the fastest means available and in writing, with additional notification provided to the CISO. Service Provider shall provide such notification within twenty-four (24) hours after Service Provider reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contactor shall inform County of:

- J.1.a the scale and quantity of County Data loss;
- J.1.b Service Provider's action plan to recover County Data and mitigate the results of

County Data loss; and

J.1.c Service Provider's corrective action plan to prevent future County Data loss.

J.2 Restore and Repair Service

Service Provider shall:

J.2.a restore continuity of SaaS,

J.2.b restore County Data in accordance with the RPO and RTO as set forth in the SLA,

J.2.c restore accessibility of County Data, and

J.2.d repair SaaS as needed to meet the performance requirements stated in the SLA.

J.3 Investigation and Audit

Service Provider shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with County. At its sole expense, Service Provider will have an independent, industry-recognized, County-approved third party perform an information security audit. Within five (5) business days of Service Provider's receipt of the final report, Service Provider will provide the County with a copy of the report and a written remediation plan.

[END OF CLOUD SERVICES TERMS]

ATTACHMENT E - CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS

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

During the term of this Contract Consultant shall not act a Consultant or perform services of any kind for any person or entity whose interests conflict in any way with those of the County. Consultant shall at all times comply with the terms of the Political Reform Act and the local conflict of interest code. Consultant shall immediately disqualify itself and shall not use its official position to influence in any way, any matter coming before the County in which the Consultant has a financial interest as defined in Government Code section 87103. Consultant represents that it has no knowledge of any financial interests which would require it to disqualify itself from any matter on which it might perform services for the County.

"Consultant" means an individual who, pursuant to a contract with a state or local agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the County to enter into, modify, or renew a contract provided it is the type of contract that requires County approval;
5. Grant County approval to a contract that requires County approval and to which the County is a party, or to the specifications for such a contract;
6. Grant County approval to a plan, design, report, study, or similar item;
7. Adopt, or grant County approval of, policies, standards, or guidelines for the County, or for any subdivision thereof; or

(B) Serves in a staff capacity with the County and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the County that would otherwise be performed by an individual holding a position specified in the County's Conflict of Interest Code.

DISCLOSURE DETERMINATION:

1. Consultant will not be "making a government decision" or "serving in a staff capacity" as defined in Sections A and B above. No disclosure required.
2. Consultant will be "making a government decision" or "serving in a staff capacity" as defined in either Section A or B above. As a result, Consultant shall be required to file a Statement of Economic Interest with the Clerk of the Board of Supervisors in a timely manner as required by law.