

# IMPLAN Renewal for San Bernardino County, CA - Economic Development

This proposal contains all details relevant to the renewal pricing and terms as requested by Ryan Niesen

PREPARED BY:  
Colton Hall  
For San Bernardino County, CA - Economic Development

# Order Form

Order Number:202303953

Prices valid through: 11 / 16 / 2024

PRODUCT	PRICE	QTY	DISCOUNT	TAX
Single County Plan 36-Month Renewal - San Bernardino County, CA	\$10,500.00	1	-\$2,100.00	\$0.00
Additional Authorized User - County 36-Month Renewal	\$1,500.00	2	-\$600.00	\$0.00

Subtotal	\$13,500.00
Discount	-\$2,700.00
Tax	\$0.00
<b>Total*</b>	<b>\$10,800.00</b>

RENEWAL SUBSCRIPTION LENGTH (MONTHS)	36
RENEWAL DUE DATE	11 / 16 / 2024
AUTHORIZED USERS	3 Total

**Notes:**

Current subscription expires on 11 / 16 / 2024. Signed Order Form must be received on or before that date to ensure continued access to the IMPLAN Geography.

\*Client shall pay the Total Fees set forth on this Order Form, plus applicable taxes in 3, annual installments as follows:

Installment/Year 1 = \$3,600.00

Installment/Year 2 = \$3,600.00 Installment/Year 3 =

\$3,600.00

Payment is due upon receipt of the invoice each year. Interest will be charged on overdue amounts at the rate of 1% per month.

**Terms and Conditions:**

The IMPLAN Support Policy is located [here](#).

Use of the IMPLAN System is governed by the IMPLAN System Terms and Conditions of Use as attached hereto. Client's terms of purchase, including purchase order terms, are not applicable. IMPLAN and Client agree that this Order Form together with the IMPLAN System Terms and Conditions of Use (collectively, the "Agreement"), and Client's Exhibit A and Exhibit B represents the entire and fully integrated Agreement between the parties.

**Campaign Contribution Disclosure (SB 1439)**

IMPLAN has disclosed to San Bernardino County ("County") using Attachment B - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the San Bernardino County ("County") Board of Supervisors ("Board") or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of IMPLAN'S proposal to the County, or (2) 12 months before the date this Agreement was approved by the Board. IMPLAN acknowledges that under Government Code section 84308, IMPLAN is prohibited from making campaign contributions of more than \$250 to any member of the Board or other County elected officer for 12 months after the County's consideration of the Agreement. In the event of a proposed amendment to this Agreement, IMPLAN will provide the County a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the Board or other County elected officer within the preceding 12 months of the date of the proposed amendment. Campaign contributions include those made by any agent/person/entity on behalf of IMPLAN or by a parent, subsidiary or otherwise related business entity of IMPLAN.

**Electronic Versions**

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

# Acceptance

The individuals signing below hereby represent and warrant that they are duly authorized to execute and deliver this Agreement on behalf of their organization and that this Agreement is binding upon each party and organization in accordance with its terms.

**IN WITNESS WHEREOF**, each of the Parties has executed this **Agreement**, both Parties by its duly authorized officer, as of the day and year set forth below.

IMPLAN Group LLC

Client: San Bernardino County, CA – Economic Development

Name: Candi Clouse

Name: Dawn Rowe

Title: VP of Customer Success

Title: Chair, Board of Supervisors

Signature:

Signature:

Date:

Date:

February 7, 2024 - Version 3.7

**Modified for use by San Bernadino County, August 2024**

USE OF THE IMPLAN SYSTEM (AS DEFINED BELOW) IS SUBJECT TO THESE TERMS AND CONDITIONS AND ANY ADDITIONAL TERMS AND CONDITIONS SET FORTH IN THE ORDER FORM, ORDER CONFIRMATION AND/OR INVOICE (COLLECTIVELY, THE "ORDER," AND THE ORDER TOGETHER WITH THESE TERMS AND CONDITIONS, THIS "AGREEMENT") PROVIDED BY IMPLAN IN CONNECTION WITH THE PURCHASE OF A SUBSCRIPTION (A "SUBSCRIPTION") TO USE THE IMPLAN SYSTEM. THIS AGREEMENT REPRESENTS THE ENTIRE AND FULLY INTEGRATED AGREEMENT BETWEEN THE PURCHASER ("CLIENT") AND IMPLAN GROUP LLC ("IMPLAN") CONCERNING THE USE OF THE IMPLAN SYSTEM, AND THIS AGREEMENT SUPERSEDES ALL PRIOR PROPOSALS, REPRESENTATIONS, OR UNDERSTANDINGS WITH RESPECT TO THE IMPLAN SYSTEM. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NO OTHER COMMUNICATION WILL BE CONSTRUED AS, OR CONSTITUTE, A WAIVER OF THIS AGREEMENT, OR ACCEPTANCE OF ANY ADDITIONAL OR CONTRARY TERMS, CONDITIONS OR SPECIFICATIONS, AND IMPLAN HEREBY OBJECTS TO ANY SUCH ADDITIONAL OR CONTRARY TERMS, CONDITIONS OR SPECIFICATIONS, INCLUDING ANY ADDITIONAL OR CONTRARY TERMS CONTAINED IN A PURCHASE ORDER OR SIMILAR DOCUMENT SUBMITTED BY CLIENT. IF CLIENT ENTERS INTO THIS AGREEMENT ON HIS OR HER OWN BEHALF, THIS AGREEMENT WILL APPLY TO CLIENT PERSONALLY. IF CLIENT ENTERS INTO THIS AGREEMENT ON BEHALF OF AN ENTITY, CLIENT REPRESENTS AND WARRANTS THAT CLIENT HAS AUTHORITY TO BIND SUCH ENTITY TO THE TERMS OF THIS AGREEMENT.

**1. THE IMPLAN SYSTEM LICENSE.**

1.1 The "IMPLAN System" means IMPLAN's economic modeling platform available at <https://app.implan.com> (the "Site"), which includes the following features: (i) data that includes, without limitation, regional economic data, environmental data, national structural matrix data, inter-regional commuting data, and inter-regional commodity trade data (collectively, the "IMPLAN Data"), (ii) software for analyzing and otherwise working with IMPLAN Data (the "IMPLAN Software"), (iii) software for automating the use of the IMPLAN Software and IMPLAN Data ("IMPLAN API"), and (iv) IMPLAN System-generated multipliers describing rates of change across variables ("Multipliers").

1.2 If Client has purchased a Subscription, then, subject to the terms and conditions of this Agreement, IMPLAN grants Client a limited, non-exclusive, non-sublicensable and non-transferable license to access via the Site and use, during the Term, the IMPLAN System, solely for Client's internal, non-commercial purposes (except as set forth in Section 2) by and through Authorized Users. Without limiting the foregoing, Client acknowledges and agrees that, based on the terms of Client's Subscription, Client's license may not include access to or use of certain features of the IMPLAN System. "Authorized User" means (i) if Client is an individual, Client and (ii) if Client is an organization, each employee of Client that has been granted a valid username and password ("Credentials") that is used to verify such employee's identity and authorization to access and use the IMPLAN System. Credentials must be tied to an individual and will not be granted for role-based or consumer-based email addresses. For purposes of clarity, Authorized User credentials (username, password, API access tokens, etc.) may not be used by multiple individuals nor shared outside of the Client's organization.

**2. RESULTS.** All data, documents and other materials (collectively, "Results") generated from use of the IMPLAN System, including, without limitation, IMPLAN Data, models resulting from the use of the IMPLAN System ("IMPLAN Models," and together with the Site, IMPLAN Data and the IMPLAN System, the "IMPLAN

Materials”), are subject to copyright held by IMPLAN. Subject to the last sentence of this Section 2, Client may use, display, reproduce and publish Results, solely during the Term (unless otherwise agreed in writing by IMPLAN), in analyses, reports, presentations, publications, and similar public displays (collectively, “Publications”); provided that: (i) Publications contain only summary information (e.g., average output per worker, average labor income per worker and aggregated demographic information), each data point in any such Publication includes no more than fifty (50) industries, and general summary data (e.g., S-W index and GDP) in each such Publication includes no more than fifty (50) geographies; (ii) Client includes the following notation in any Publication: “IMPLAN® model, [YEAR] Data, using inputs provided by the user and IMPLAN Group LLC, IMPLAN System (data and software), 16905 Northcross Dr., Suite 120, Huntersville, NC 28078 [www.IMPLAN.com](http://www.IMPLAN.com)”. For purposes of clarity, once produced, Client may use, display, reproduce and publish Results in Publications in perpetuity. Notwithstanding the foregoing, Client may not include Multipliers in Publications, without IMPLAN’s prior written consent.

### **3. PERMITTED USE AND LICENSE LIMITATIONS.**

3.1 Client shall not, and shall not permit any Authorized User to, use the IMPLAN Materials for any purposes beyond the scope of the rights granted in this Agreement. Without limiting the foregoing, Client shall not at any time, directly or indirectly, and shall not permit any Authorized User to: (i) share any Credentials with anyone, except as authorized in this Agreement; (ii) copy, modify (other than modifications to IMPLAN Data enabled by standard IMPLAN Software functionality), adapt, clone, disassemble, decompile, decrypt, decode, or otherwise reverse engineer or create derivative works of any IMPLAN Materials (including, without limitation, any component of the IMPLAN Software) or attempt to derive or gain access to the source code of the IMPLAN Software, in whole or in part; (iii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, provide service bureau, time-sharing, or other services to third parties, or otherwise make available the IMPLAN Materials (except for Publications distributed in accordance with Section 2); (iv) input, upload, transmit or otherwise provide to or through the IMPLAN System any Client Data (as defined below) that is unlawful or injurious, or that contains, transmits or activates any viruses, worms, Trojan horses, corrupted files, hoaxes, bots, harmful code, denial-of-service attacks, backdoors, packet or IP address spoofing, forged routing, or any similar methods or technology that are of a destructive or deceptive nature; (v) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the IMPLAN System or the provision of the IMPLAN System to any third party, in whole or in part; (vi) remove, delete, alter or obscure any copyright, trademark, patent or other intellectual property or proprietary rights notices from the IMPLAN Materials; (vii) use the IMPLAN Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; (viii) except as provided by the IMPLAN API, access the IMPLAN Materials by bots or otherwise automated methods; or (ix) access or use the IMPLAN Materials for the development or provision of a competing software service or product or for any other purpose that is to IMPLAN’s detriment or commercial disadvantage. Client shall promptly notify IMPLAN of any breach of any of the foregoing.

3.2 Client is responsible and liable for all uses of the IMPLAN Materials resulting from access provided by Client, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Client is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Client will be deemed a breach of this Agreement by Client. Client shall take reasonable efforts to

make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the IMPLAN Materials, and shall cause Authorized Users to comply with such provisions.

#### 4. CLIENT DATA.

4.1 All information, data and other content, in any form or medium, that is submitted, posted or otherwise transmitted by or on behalf of Client or any Authorized User through the IMPLAN System is, collectively, "Client Data".

4.2 IMPLAN acknowledges that, as between IMPLAN and Client, Client owns all right, title, and interest, including all intellectual property rights, in and to the Client Data. Client hereby grants to IMPLAN a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Client Data and perform all acts with respect to the Client Data solely as may be necessary for IMPLAN to provide the IMPLAN System to Client.

4.3 IMPLAN may delete Client Data from the IMPLAN System thirty (30) days after expiration or termination of this agreement.

#### 5. INTELLECTUAL PROPERTY.

5.1 Client acknowledges and agrees that the IMPLAN Materials are the property of IMPLAN and that copyright and other intellectual property rights laws protect the IMPLAN Materials. Except as expressly permitted in this Agreement, Client may not disclose the IMPLAN Materials to any third party.

5.2 IMPLAN acknowledges that Client may be required to comply with public records laws pursuant to state statutes. Nothing in this Agreement shall be interpreted to in any way impair Client's ability to comply with such public records laws and no action taken by Client required by such public records laws shall constitute a breach of this Agreement.

5.3 Client acknowledges that, as between Client and IMPLAN, IMPLAN owns all right, title, and interest, including all intellectual property rights, in and to the IMPLAN Materials and any and all intellectual property provided to Client in connection therewith (collectively, the "IMPLAN IP").

5.4 IMPLAN reserves all rights not expressly granted to Client in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants to Client or any third party, by implication, waiver, estoppel, or otherwise, any intellectual property rights or other right, title, or interest in or to the IMPLAN IP.

5.5 Client hereby assigns to IMPLAN on Client's behalf, and on behalf of its employees, contractors and agents, all right, title, and interest in and to any ideas, know-how, concepts, techniques, or other intellectual property rights contained in Feedback (defined below), and IMPLAN is free to use (but not required to use) Feedback, without any attribution or compensation to any party, for any purpose whatsoever. "Feedback" means any communications or materials transmitted to or shared with IMPLAN by Client or any of its employees, contractors or agents by mail, email, telephone, or otherwise, suggesting or recommending changes to the IMPLAN IP, including, without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like. For the avoidance of doubt, Feedback does not include Client Data.

**6. U.S. GOVERNMENT RIGHTS.** The IMPLAN Materials were developed at private expense and are not in the public domain. The IMPLAN Materials are "Commercial Items" as defined in 48 C.F.R. § 2.101. U.S.



Government rights to use, modify, reproduce, release, perform, display, or disclose the IMPLAN Materials are limited to the rights set forth in this Agreement as provided in 48 C.F.R. § 12.212, or to the limited rights restrictions of DFARS 252.227-7015(b)(2), as applicable.

**7. WARRANTY DISCLAIMER.** THE IMPLAN MATERIALS ARE PROVIDED “AS IS” AND IMPLAN HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE IN CONNECTION THEREWITH. IMPLAN SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. IMPLAN MAKES NO WARRANTY OF ANY KIND THAT THE IMPLAN MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

**8. LIMITATION OF LIABILITY.** IN NO EVENT WILL IMPLAN’S OR ITS OFFICERS’, MANAGERS’, EMPLOYEES’, AGENTS’ OR REPRESENTATIVES’ LIABILITY OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED ON TORT (INCLUDING LIABILITY FOR NEGLIGENCE BUT EXCLUDING LIABILITY RESULTING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF IMPLAN), CONTRACT OR ANY OTHER THEORY, (A) INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES, EVEN IF SUCH LOSSES OR DAMAGES WERE FORESEEABLE AND REGARDLESS OF WHETHER IMPLAN OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, (B) INCLUDE DAMAGES FOR LOST PROFITS, OR (C) EXCEED THE AMOUNT CHARGED FOR THE USE OF THE IMPLAN SYSTEM IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

## **9. INDEMNIFICATION.**

9.1 IMPLAN shall indemnify, defend, and hold harmless Client from and against any and all losses, damages, liabilities, costs and expenses (including reasonable attorneys’ fees) (“Losses”) incurred by Client resulting from any third-party claim, suit, action, or proceeding (“Third-Party Claim”) that the IMPLAN Software or any use of the IMPLAN Software in accordance with this Agreement, infringes or misappropriates such third party’s United States patents, copyrights, or trade secrets; provided that Client promptly notifies IMPLAN in writing of the Third-Party Claim, cooperates with IMPLAN, and allows IMPLAN sole authority to control the defense and settlement of such Third-Party Claim. If such a claim is made or appears possible, Client agrees to permit IMPLAN, at IMPLAN’s sole discretion, to (A) modify or replace the IMPLAN Software, or component or part thereof, to make it non-infringing, or (B) obtain the right for Client to continue to use the IMPLAN Software. If IMPLAN determines that neither alternative is reasonably available, IMPLAN may, subject to Section 13.2, terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Client. This Section 9.1 will not apply to the extent that the alleged infringement arises from any allegation of or relating to any: (A) use of the IMPLAN Software in combination with data, software, hardware, equipment, or technology not provided by IMPLAN or authorized by IMPLAN in writing; (B) modifications to the IMPLAN Software not made by IMPLAN; or (C) Losses for which Client is obligated to indemnify IMPLAN pursuant to Section 9.2. This Section sets forth Client’s sole remedies and IMPLAN’s sole liability and obligation for any actual, threatened or alleged claims that this Agreement or any subject matter hereof infringes, misappropriate or otherwise violates any intellectual property rights of any third party.

9.2 Client agrees to be responsible to the extent permitted by law, for any Losses incurred by IMPLAN and its officers, managers, and employees, to the extent arising out of any breach of this Agreement by Client or Client’s officers, directors, managers or employees.



9.3 Without in anyway affecting the indemnity herein provided and in addition thereto, IMPLAN shall secure and maintain throughout the Agreement term the types of insurance (applicable to the delivery of its Services) with limits as shown and under the requirements set forth in Attachment A, as attached hereto and incorporated herein.

**10.SUSPENSION.** Notwithstanding anything to the contrary in this Agreement, IMPLAN may suspend Client's access to any portion or all of the IMPLAN System if: (i) IMPLAN reasonably determines that (A) there is a threat or attack on any of the IMPLAN IP; (B) Client's use of the IMPLAN System disrupts or poses a security risk to the IMPLAN IP or to any other customer or vendor of IMPLAN; (C) Client is using the IMPLAN IP for fraudulent or illegal activities; (D) subject to applicable law, Client has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) IMPLAN's provision of the IMPLAN System to Client is prohibited by applicable law; or (ii) any vendor of IMPLAN has suspended or terminated IMPLAN's access to or use of any third-party services or products required to enable Client to access the IMPLAN System; or (iii) an uncured material breach by Client (any such suspension described in subclause (i), (ii) or (iii), a "Service Suspension"). IMPLAN shall use commercially reasonable efforts to provide written notice of any Service Suspension to Client and to provide updates regarding resumption of access to the IMPLAN System, as applicable, following any Service Suspension. IMPLAN shall use commercially reasonable efforts to resume providing access to the IMPLAN System, as applicable, as soon as reasonably possible after the event giving rise to the Service Suspension is cured. IMPLAN shall have no liability for any damage or losses (including any loss of data or profits), or any other consequences that Client or any Authorized User may incur as a result of a Service Suspension.

**11. CONFIDENTIAL INFORMATION.** From time to time during the Term, either party may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "Confidential Information"). For avoidance of doubt, Client acknowledges that IMPLAN's Confidential Information includes the source code for the IMPLAN Software and the methods, algorithms, structure and logic, technical infrastructure, techniques and processes used by IMPLAN in developing, producing, marketing and/or licensing the IMPLAN Materials. Confidential Information does not include information that, at or prior to the time of disclosure, is: (a) in the public domain; (b) known to the receiving party; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's employees who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party. On the expiration or termination of the Agreement, unless prohibited by law, the receiving party shall promptly return to the disclosing party all copies, whether in written, electronic, or other form or media, of the

disclosing party's Confidential Information, or destroy all such copies and certify in writing to the disclosing party that such Confidential Information has been destroyed. Each party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date such Confidential Information is first disclosed to the receiving party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

**12. SERVICE LEVELS.** IMPLAN shall use commercially reasonable efforts to make the IMPLAN System available 24 hours a day, seven days a week, with 99.5% availability (calculated on a minutes-per-month basis) (the "Uptime Target"), excluding unavailability as a result of any of the Exceptions described below. For purposes of calculating the Uptime Target, the following are "Exceptions" to the Uptime Target, and the IMPLAN System shall not be considered unavailable to the extent any failure to meet the Uptime Target is caused by: (i) access to or use of the IMPLAN System by Client in a manner that does not comply with this Agreement; (ii) Client's internet connectivity; (iii) any Force Majeure Event; (iv) any failure, interruption, outage or other problem with any software, hardware, system, network, or other technology infrastructure that is not part of IMPLAN's systems, including, without limitation, hosting provider outages; or (v) scheduled downtime for routine maintenance of the IMPLAN System that occurs during off peak hours or on weekends. If IMPLAN fails to meet the Uptime Target in any calendar month, then Client must provide written notice to IMPLAN within 15 days of the last day of the applicable calendar month specifying that Client is claiming a service credit for such calendar month (a "Service Credit"). IMPLAN shall investigate such claim and shall respond within 30 days of the date of the applicable notice indicating whether its investigation indicates that Client is entitled to a Service Credit. If IMPLAN's investigation results in a finding that Client is entitled to a Service Credit, then the Subscription end date will be extended by the number of days that actual uptime does not meet the Uptime Target, rounded down to the nearest full day for any period of less than 24 hours. Service Credits are Client's sole and exclusive remedy for any claim that IMPLAN failed to meet the Uptime Target.

### **13. TERM AND TERMINATION.**

13.1 This Agreement is effective as of the date that Client signs Client's Order (the "Effective Date") and shall continue for the Subscription term set forth in Client's Order (the "Term"), unless otherwise terminated in accordance with the terms hereof. The expiration or termination of this Agreement shall not affect any rights or obligations that, by their nature, should survive the expiration or termination of this Agreement, including, without limitation, the limitations set forth in Section 8 and parties' respective indemnification obligations under Section 9. For the avoidance of doubt, (i) Client's right to generate new Publications pursuant to Section 2 and (ii) Client's license to use the IMPLAN System, including, without limitation, IMPLAN Data, or subsets thereof, each terminates as of the expiration or termination of this Agreement.

13.2 Either party may terminate this Agreement at any time, with or without cause. In the event that IMPLAN terminates this Agreement without cause before the expiration of the Term, Client will be refunded a pro rata amount of prepaid Fees (as defined below) reflecting the unused portion of the Term. For the avoidance of doubt, except for IMPLAN termination without cause as reflected in this Section 13.2, all payment obligations under this Agreement are non-cancelable and all Fees once paid are non-refundable.

13.3 Either party may provide notice of intent to terminate this Agreement if the other party materially breaches this Agreement. Termination shall become effective if such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach.

13.4 Client's IMPLAN Models will be housed and saved on IMPLAN servers with access granted solely during the Term. At the expiration of the Term or, if earlier, the date this Agreement is terminated, Client's access to the IMPLAN System (including any Client-generated IMPLAN Models or other materials) shall automatically terminate, and IMPLAN shall have no obligation to retain or grant Client access to such materials thereafter.

13.5 Notwithstanding anything set forth in this Agreement to the contrary, following the expiration or termination of this Agreement IMPLAN may permit (in its sole discretion) Client to continue to access certain IMPLAN data or other information through the IMPLAN System. In such case, Client shall have no rights or licenses with respect to such data or information or the IMPLAN System except as explicitly granted by IMPLAN in writing, and Sections 3, 10 and 11 of this Agreement shall continue to apply to Client's access and use of the IMPLAN System (and any data accessed via the IMPLAN System) for so long as IMPLAN permits such access and use.

**14. FEES AND PAYMENT.** As consideration for the rights granted hereunder, Client shall pay to IMPLAN, in accordance with the payment terms set forth in Client's Order, the fees and charges set forth in Client's Order and any other fees or charges mutually agreed by the parties (collectively, the "Fees"). Except as otherwise set forth herein, all payment obligations under this Agreement are non-cancelable and all Fees once paid are non-refundable.

**15. NOTICES.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and addressed to the applicable party at the following address (or to such other address as designated by such party from time to time in accordance with this Section 15): (i) if to IMPLAN, then to IMPLAN Group LLC, 16905 Northcross Drive, Suite 120, Huntersville, NC 28078; and (ii) if to Client, then to the e-mail address provided by Client in connection with Client's Subscription purchase. All Notices delivered to IMPLAN must be delivered by nationally recognized overnight courier (with all fees pre-paid) or certified or registered mail (in each case, return receipt requested, postage pre-paid), and all Notices delivered to Client will be delivered by electronic mail. Each Notice is effective as of the date of confirmation of delivery to the receiving party.

**16.** Intentionally omitted.

**17. EQUITABLE RELIEF.** Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 11 or, in the case of Client, Section 3, may cause the other party irreparable harm for which monetary damages may not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to seek equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

**18. SEVERABILITY.** If any of the terms and conditions of this Agreement conflict with any applicable law, rule or regulation, the affected terms and conditions will be deemed inoperative, but the remaining portions will remain in full force and effect.

**19. WAIVER.** No failure by either party to take any action or assert any right under this Agreement will be deemed to be a waiver of that right in the event of the continuation or repetition of the circumstances giving rise to that right.

**20. CHANGES TO THE TERMS.** Changes to these Terms and Conditions shall only be made by mutual written consent of IMPLAN and Client.

**21. EXPORT REGULATION.** The IMPLAN Materials utilize software and technology that may be subject to US export control laws, including the U.S. Export Administration Act and its associated regulations. Client shall not, directly or indirectly, export, re-export, or release the IMPLAN Materials or the underlying software or technology to, or make the IMPLAN Materials or the underlying software or technology accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Client shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the IMPLAN Materials or the underlying software or technology available outside the U.S.

**22. FORCE MAJEURE.** Neither party shall be liable for any delays or non-performance of its obligations (excluding the obligation to pay Fees due hereunder) arising out of causes not within such party's reasonable control, including, without limitation, actions or decrees of governmental authorities, criminal acts of third parties, earthquakes, flood, other natural disasters, war, terrorism, acts of God, or fire (each, a "Force Majeure Event").

**23. ASSIGNMENT.** Client may not assign or otherwise transfer Client's rights and obligations under this Agreement except with the prior written consent of IMPLAN. Any prohibited assignment will be null and void. IMPLAN may assign this Agreement with 30 day written notice and consent of Client, which will not be unreasonably delayed or withheld, in connection with any merger, consolidation or reorganization involving IMPLAN (regardless of whether IMPLAN is the surviving or disappearing entity) or a sale of all or substantially all of IMPLAN's business or assets relating to this Agreement. This Agreement is binding upon and inures to the benefit of the parties and their respective permitted successors and assigns.

**ATTACHMENT A**  
**INSURANCE REQUIREMENTS**

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

1. Without in anyway affecting the indemnity herein provided and in addition thereto, IMPLAN shall secure and maintain throughout the contract term the following types of insurance with limits as shown:
  - a. 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 IMPLAN and all risks to such persons under this contract. If IMPLAN has no employees, it may certify or warrant to the Client 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 Client's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
  - b. Commercial/General Liability Insurance — IMPLAN shall carry General Liability Insurance covering all operations performed by or on behalf of IMPLAN 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:
    - i. Premises operations and mobile equipment.
    - ii. Products and completed operations.
    - iii. Broad form property damage (including completed operations).
    - iv. Explosion, collapse and underground hazards.
    - v. Personal injury.
    - vi. Contractual liability.
    - vii. \$2,000,000 general aggregate limit.
  - c. 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.
  - d. 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

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

- e. Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved Client entities and cover breach response cost as well as regulatory fines and penalties.
2. Additional Insured. All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the Client 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 Client to vicarious liability but shall allow coverage for the Client 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 CC 2010.11 85.
3. Waiver of Subrogation Rights. IMPLAN shall require the carriers of required coverages to waive all rights of subrogation against the Client, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit IMPLAN and IMPLAN's employees or agents from waiving the right of subrogation prior to a loss or claim. IMPLAN hereby waives all rights of subrogation against the Client.
4. Policies Primary and Non-Contributory. All policies required herein are to be primary and noncontributory with any insurance or self-insurance programs carried or administered by the Client.
5. Severability of Interests. IMPLAN 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 IMPLAN and the Client or between the Client and any other insured or additional insured under the policy.
6. Proof of Coverage. IMPLAN shall furnish Certificates of Insurance to the Client 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 IMPLAN shall maintain such insurance from the time IMPLAN commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, IMPLAN shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request,
7. Acceptability of Insurance Carrier. Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A-VII".
8. Deductibles and Self-Insured Retention. Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
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, the Client has the right but not the obligation or duty to cancel the contract..

10. Insurance Review. Insurance requirements are subject to periodic review by the Client. 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 the Client. 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 the Client, inflation, or any other item reasonably related to the Client's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. IMPLAN agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of the Client 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 the Client.





**ATTACHMENT B**  
**Campaign Contribution Disclosure (Senate Bill**  
**1439)**

**DEFINITIONS**

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County's decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County's decision on the matter; or (d) when the person/company's agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County's decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsiary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), "shared management and control" can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources, or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

**Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.**

1. Name of Contractor: IMPLAN Group LLC
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2. Is the entity listed in Question No. 1 a non-profit organization under Internal Revenue Code section 501(c)(3)?

Yes  If yes, skip Question Nos. 3 - 4 and go to Question No. 5.  
 No

3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision: N/A

4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded (“closed corporation”), identify the major shareholder(s): N/A

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship
BH Capital LP	Majority Onwer

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)
N/A		

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district:

Company Name	Subcontractor(s):	Principal and/or Agent(s):
N/A		

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name
IMPLAN Group LLC	Colton Hall

9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No  If **no**, please skip Question No. 10.      Yes  If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: \_\_\_\_\_ Name of Contributor: \_\_\_\_\_

Date(s) of Contribution(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing below, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while this matter is pending and for 12 months after a final decision is made by the County.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Sandy Boone

IMPLAN Group LLC

Print Name    Sandy Boone, VP of Finance

Print Entity Name, if applicable