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SAN BERNARDINO COUNTY

Contract Number
20-1108

SAP Number

Purchasing Department

Department Contract Representative	Jessica Barajas
Telephone Number	909-387-5546
Contractor	Mindlance, Inc.
Contractor Representative	Harshita Sharma
Telephone Number	732-201-7843
Contract Term	April 05, 2020 through April 18, 2022
Original Contract Amount	
Amendment Amount	
Total Contract Amount	
Cost Center	

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the County of San Bernardino (County) desires to designate a contractor for professional Information Technology (IT) Staffing Services; and

WHEREAS, the County conducted a competitive process to find Mindlance, Inc. (Contractor) to provide these services, and

WHEREAS, and the County finds Contractor qualified to provide professional Information Technology (IT) Staffing Services; and

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

NOW, THEREFORE, the County and Contractor mutually agree to the following terms and conditions:

IT IS HEREBY AGREED AS FOLLOWS:

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I. TYPE OF AGREEMENT/SERVICES:

This is the standard agreement for the purchase of professional information technology (IT) services for the contracting COUNTY agency, department or BOARD-governed special district, which shall hereinafter be referred to as "DEPARTMENT". Employees or subcontractors of CONTRACTOR, who shall hereinafter be referred to as "PERSONNEL," shall render such services. These services may cover one or both of the following situations:

A. Professional Services – Fee for service assignment whereby the assignee works on one or more phases of a multiphase project. The nature and specific definition of these services shall be set forth on Work Order(s) (Exhibit A) issued under the terms and conditions of this agreement and approved in writing by the head of the contracting DEPARTMENT, who shall hereinafter be referred to as "DEPARTMENT HEAD," and CONTRACTOR.

The DEPARTMENT HEAD designates a Project Manager or other staff member, who shall hereinafter be referred to as "MANAGER," as the person to oversee CONTRACTOR activities related to services provided under Work Order(s) as follows:

1. Review of all proposed modifications to Work Order(s).
2. Review of all requested extensions in periods of performance.
3. Mediate possible disputes that may arise between PERSONNEL and DEPARTMENT staff.
4. All work performed by CONTRACTOR under a Work Order issued pursuant to this agreement must be approved by the MANAGER, who shall be responsible for detailed evaluation of CONTRACTOR performance and approval of all invoices.
5. Approvals of completed work shall not be unreasonably withheld and in no instance shall exceed more than two (2) weeks from receipt by the COUNTY.
6. The MANAGER will be responsible for liaison with CONTRACTOR in matters relating to policy, information, and procedural requirements. The MANAGER shall provide, on request, such information and documents as may be reasonably required by CONTRACTOR to perform under the agreement and subsequent Work Order(s).
7. Work specifications, project schedules, time and manner of project deliverables, and time, conditions and manner of payment(s) shall be set forth in the Work Order.
8. All Work Orders shall be executed by the DEPARTMENT HEAD or an authorized designee and authorized officials of CONTRACTOR.
9. CONTRACTOR understands that the COUNTY may elect to have other vendors provide similar professional services either under other agreements or under other contracts.
10. Performance Bond – For each Work Order issued under this agreement in which a Performance Bond is specified by the DEPARTMENT as required in Exhibit A, CONTRACTOR shall furnish to the DEPARTMENT a bond in the sum of not less than fifty percent (50%) of the total sum of each Work Order. Such bond shall be delivered to and filed with the MANAGER no later than seven (7) calendar days following the date of execution of the Work Order for which it is supplied.

    Each bond shall be payable to the County of San Bernardino and executed by a corporate surety authorized to conduct business as a surety in the State of California. Such bond shall be conditioned upon faithful performance by CONTRACTOR of the terms and conditions of both the Work Order and this agreement, and shall be renewed to provide for continuing liability in the above amount notwithstanding any payment or recovery.

B. Technical Services – Fee for service assignment whereby the assignee works in a technical support function. The project areas and required job classifications/skill set will be set forth on the Work Order(s) (Exhibit A) issued under the terms and conditions of this agreement and approved in writing by the DEPARTMENT HEAD and CONTRACTOR.

The DEPARTMENT HEAD designates a MANAGER as the person who will directly supervise CONTRACTOR activities related to services provided under Work Order(s) as follows:

1. Mediate possible disputes that may arise between PERSONNEL and DEPARTMENT staff.
2. Coordinate and monitor the work performance of PERSONNEL assigned to specific project areas, and supervise the particular tasks to which PERSONNEL are assigned.
3. All work performed by CONTRACTOR under a Work Order issued pursuant to this agreement must be approved by the MANAGER, who shall be responsible for detailed evaluation of CONTRACTOR performance and approval of all invoices.
4. Work specifications, project schedules, time and manner of project deliverables, and time, conditions and manner of payment(s) shall be set forth in the Work Order.
5. All Work Orders shall be executed by the DEPARTMENT HEAD or an authorized DEPARTMENT designee and authorized officials of CONTRACTOR.
6. CONTRACTOR understands that this is a non-exclusive contract and that the COUNTY may elect to have other vendors provide similar professional services either under other agreements or under other contracts.

C. Work Orders

1. Each Work Order (Exhibit A) shall include the following information:
    a. A title of project area.
    b. A brief description of project services to be performed.
    c. The term of the Work Order.

d. The classification of PERSONNEL.
e. The hourly rate for PERSONNEL.
f. The total costs for the Work Order.
g. The DEPARTMENT HEAD or an authorized DEPARTMENT designee and the authorized officials of CONTRACTOR shall execute all Work Orders.
h. The DEPARTMENT incurs no obligation under this agreement until such time as the DEPARTMENT HEAD and CONTRACTOR execute the specific Work Order. There shall be no further reimbursable expenses in addition to those agreed upon in the Work Order(s).
i. The work performed by CONTRACTOR shall be invoiced on a fee for service basis at the rates set forth in the Work Order(s) for each specified classification.

2. Issuance of Work Orders

a. Upon determination by the DEPARTMENT that a Work Order shall be issued, the DEPARTMENT may request the CONTRACTOR to provide the résumés of qualified PERSONNEL to perform the project services specified in the Work Order.
b. All PERSONNEL must be employees of, or under contract to CONTRACTOR and each must execute an Employer Acknowledgement (Exhibit B) and a Confidentiality Statement (Exhibit C) prior to commencing work pursuant to any Work Order.
c. After the résumés of the proposed PERSONNEL are accepted, those PERSONNEL must be available for interviews with DEPARTMENT staff within three (3) working days after the DEPARTMENT notifies CONTRACTOR of their acceptance.
d. The accepted PERSONNEL must be available to report to work at the location and on the date specified in the Work Order, usually within two (2) weeks following the execution of the Work Order.

3. PERSONNEL Assignments

a. CONTRACTOR will supply PERSONNEL in skill levels defined and required by the Work Order.
b. In those cases where PERSONNEL requests reassignment from CONTRACTOR for personal reasons, CONTRACTOR shall use its best efforts to provide the DEPARTMENT at least ten (10) business days advance written notice. In the event of termination of employment by PERSONNEL for any reason, CONTRACTOR will endeavor to provide the DEPARTMENT with as much advance notice as is reasonably possible. Upon the DEPARTMENT's request, CONTRACTOR will endeavor to replace reassigned or terminated PERSONNEL within five (5) business days.
c. The DEPARTMENT has the absolute right to disapprove any PERSONNEL or any proposed changes in PERSONNEL and to request substitution, replacement or termination of PERSONNEL. The DEPARTMENT, in each instance, will be provided with a resumé of the proposed substitute(s), work references, and an opportunity to interview the person(s) and check work references prior to giving an approval or disapproval.
d. In the event the DEPARTMENT requests removal of PERSONNEL for poor performance or improper conduct, the effective date of terminated service may be immediate, and the DEPARTMENT will pay actual hours worked up to the time of termination to CONTRACTOR.

II. GENERAL CONTRACT PROVISIONS

A. Compensation – Compensation for services will be based upon the hourly rate(s) indicated in Exhibit A and will not exceed the bill rate(s) indicated in Exhibit D. The COUNTY will not pay more than the rate(s) in Exhibit D during the TERM and any renewal period. There is no minimum amount of compensation guaranteed to the CONTRACTOR and CONTRACTOR understands that if no work is awarded to the CONTRACTOR that the COUNTY is under no obligation to compensate CONTRACTOR for any reason whatsoever. [See II.J.]
1. PERSONNEL may not work overtime unless authorized by the DEPARTMENT HEAD or an authorized DEPARTMENT designee. Overtime compensation will be in compliance with the Fair Labor Standards Act. DEPARTMENT reserves the right to request replacement or terminate this agreement, in its sole discretion, if PERSONNEL submit unapproved overtime.

B. Statement of Understanding – This agreement and any subsequent Statement(s) of Work or Work Order(s) constitute the complete and exclusive statement of understanding between the parties which supersedes all previous agreements, written or oral, and all other communications between the parties relating to the subject matter of this agreement.

C. Conflicts – In the event of any conflict in the definition or interpretation of any word, responsibility, service, schedule, or project delineation between the agreement and the subsequent Statement(s) of Work or Work Order(s), conflicts(s) shall be resolved by giving precedence first to the agreement, then Statement(s) of Work or Work Order(s).

D. Changes to Agreement – Any changes to this agreement must be duly approved and executed by both the COUNTY and CONTRACTOR.

E. Changes to Statement of Work/Work Order – Changes to any Statement of Work or Work Order(s) must be approved in writing by the DEPARTMENT HEAD and CONTRACTOR, provided that in no case shall such changes have any effect if such changes would result in incurring any liability of cost to the COUNTY exceeding the total dollar amount authorized in II.A. above.

F. Term of Agreement – The term of this agreement begins April 5, 2020 through April 18, 2022.

G. CONTRACTOR agrees that should work be performed outside the scope of this agreement or any subsequent Statement of Work or Work Order without prior written approval in accordance with this agreement, such work shall be deemed to be a gratuitous effort on the part of CONTRACTOR, and CONTRACTOR shall have no claim therefore against the DEPARTMENT or COUNTY.

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H. Invoicing – CONTRACTOR shall invoice the DEPARTMENT within 15 days following the month in which services were performed. All invoices are payable upon receipt of invoice and verification of work performed. All invoices under this agreement shall reference this agreement and be submitted to the billing address specified on the Work Order.

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

J. CONTRACTOR understands that the DEPARTMENT HEAD has the discretion of selecting the vendor that best meets the needs of the COUNTY for professional IT services for any project or any work to be provided for a project or any work performed under Technical Services. Furthermore, CONTRACTOR understands that COUNTY can guarantee no minimum or maximum number of work hours to be performed by CONTRACTOR under this Agreement and that CONTRACTOR has no right to be awarded any work under this Agreement.

III. RESOURCES PROVIDED BY THE DEPARTMENT:

Where applicable, the DEPARTMENT will provide the CONTRACTOR's PERSONNEL with:

A. Desk space/workstation.

B. Access to conference rooms as available.

C. Computer time as required by project.

D. Access to current documentation related to projects.

IV. PROHIBITION AGAINST ASSIGNMENT OR DELEGATION:

This agreement, or any interest therein, including any claims for monies due with respect thereto, may not be assigned, and any such assignment shall be null and void.

V. COVENANT AGAINST FINDER FEES:

A. CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business.

B. For breach or violation of this warranty, the COUNTY shall have the right to terminate this agreement and, in its sole discretion, to deduct from agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fees.

VI. GRATUITIES:

The COUNTY may, by written notice to CONTRACTOR, terminate the right of CONTRACTOR to proceed under this agreement upon one (1) calendar days' notice, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by CONTRACTOR, or any agent or representative of CONTRACTOR, to any officer or employee of the COUNTY with a view toward securing this agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of this agreement; provided, that the existence of the facts upon which the COUNTY makes such findings shall be the issue and may be reviewed in any competent court.

In the event of such termination, the COUNTY shall be entitled to pursue the same remedies against CONTRACTOR as it could pursue in the event of default by CONTRACTOR.

VII. INDEPENDENT CONTRACTOR:

A. This agreement is by and between the COUNTY and CONTRACTOR and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association as between the COUNTY and CONTRACTOR. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

B. CONTRACTOR is and shall be deemed to be at all times an independent contractor. COUNTY shall not be liable for any act or acts of CONTRACTOR and nothing herein contained shall be construed as creating the relationship of employer and employee between the parties.

1. CONTRACTOR agrees to be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding, and payment of any and all Federal, State and local personal income taxes, disability insurance, unemployment, and other taxes for such persons, including any related assessments or contributions required by law, and all other regulations governing such matters. CONTRACTOR further agrees to be solely responsible for compliance with the ACA in providing its PERSONNEL with any required "minimum essential coverage" under an "eligible employer-sponsored plan" each within the meaning of 26 United States Code (USC) §5000A (f) (1) (B), or any successor statute or regulation.

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2. CONTRACTOR shall not be reimbursed for any travel time conducted pursuant to this agreement.

3. Neither CONTRACTOR nor PERSONNEL shall be compensated or reimbursed for any holiday, vacation, sick leave, or other time off.

4. The employees and agents of each party, and those of their respective customers, shall, while on the premises of the other, comply with all policies, procedures, rules and regulations of the premises, including security requirements.

5. CONTRACTOR will be responsible for all telecommunications costs, where applicable.

VIII. SUBCONTRACTING:

Performance of this agreement or any portion thereof may be subcontracted by CONTRACTOR, subject to the COUNTY's prior written consent and provided that CONTRACTOR shall remain responsible for the complete and proper performance of services under Work Orders issued to CONTRACTOR.

IX. INSURANCE, WORKERS' COMPENSATION, LIABILITY EXPENSE:

Indemnification –CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by the 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 CONTRACTOR's 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.

ACA Indemnification - CONTRACTOR shall be solely responsible for, and shall reimburse, indemnify, and hold harmless COUNTY (hereafter collectively referred to as "County Indemnity") for, any taxes, penalties, or other liabilities assessed against CONTRACTOR or COUNTY under 26 USC §4980H with respect to PERSONNEL due to CONTRACTOR's failure to: (i) offer "minimum essential coverage" under an "eligible employer-sponsored plan" each within the meaning of 26 USC §5000A(f)(1)(B); or (ii) offer coverage that is not "affordable" or fails to provide "minimum value," each within the meaning of 26 USC §36B(c)(2)(C) and §4980H(b) and related regulations.

Provided, however, that in no event shall County Indemnity extend to any taxes, penalties, or other liabilities under the under Code §4980H where such tax, penalty, or other liability results from the imposition of penalties under (i) 26 USC §4980H (a), as a result of the failure by COUNTY to make offers of minimum essential coverage to its employees under an eligible employer-sponsored plan; or (ii) 26 USC §4980H(b) as a result of COUNTY's making an offer of minimum essential coverage to its employees under an eligible employer-sponsored plan that is either unaffordable or fails to provide minimum value.

If COUNTY is notified by any government entity of COUNTY's potential liability for any such taxes, penalties, or other liabilities relating to Assigned Employees, CONTRACTOR shall fully cooperate, at CONTRACTOR's reasonable expense, with COUNTY's efforts to object to or appeal any such determination of liability or potential liability.

Additional Insured – All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming the COUNTY and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for 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.

Waiver of Subrogation Rights – The CONTRACTOR 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 the CONTRACTOR and CONTRACTOR's employees or agents from waiving the right of subrogation prior to a loss or claim. The CONTRACTOR hereby waives all rights of subrogation against the COUNTY.

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.

Severability of Interests – The CONTRACTOR agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the CONTRACTOR and the COUNTY or between the COUNTY and any other insured or additional insured under the policy.

Proof of Coverage – The CONTRACTOR shall furnish Certificates of Insurance to the COUNTY Department administering the contract evidencing the insurance coverage, including endorsements, as required, 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 CONTRACTOR shall maintain such insurance from the time CONTRACTOR commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the CONTRACTOR shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

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".

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.

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 COUNTY has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the COUNTY will be promptly reimbursed by the CONTRACTOR or COUNTY payments to the CONTRACTOR will be reduced to pay for COUNTY purchased insurance.

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Insurance Review – Insurance requirements are subject to periodic review by the 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 the 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 the 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. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.
Any failure, actual or alleged, on the part of the 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 the COUNTY.

The CONTRACTOR agrees to provide insurance set forth in accordance with the requirements herein. If the CONTRACTOR uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the CONTRACTOR agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services. Without in anyway affecting the indemnity herein provided and in addition thereto, the CONTRACTOR shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

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

If CONTRACTOR 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 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.

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

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

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

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.

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

or

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

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 claims involving violation, 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 a regulatory fines and penalties.

X. DISCLOSURE OF INFORMATION/CONFIDENTIALITY:

CONTRACTOR shall treat COUNTY documentation and data in confidence according to standards acceptable to the COUNTY. Additionally, CONTRACTOR shall not disclose or discuss the rate it pays to each employee or subcontractor with other employees, subcontractors, or others not having a need to know; payment rates shall remain entirely confidential. PERSONNEL shall be subject to the DEPARTMENT's approval which shall be contingent upon PERSONNEL passing a background security check.

Confidentiality of all programs, records, financial affairs, COUNTY relations to its customers and its employees, as well as any other information which may be specifically classified as confidential by the COUNTY in writing to CONTRACTOR is pursuant to all statutory laws relating to privacy and confidentiality as now in existence or as hereafter concerning any and all persons referred to CONTRACTOR by the COUNTY shall be considered confidential and kept confidential by CONTRACTOR and CONTRACTOR staff, agents or employees. CONTRACTOR agrees, that to the extent required by law or County policy, assigned PERSONNEL will comply with any and all federal and state laws, and COUNTY and DEPARTMENT policies and procedures pertaining to the confidentiality, privacy and security of information accessible to such assigned PERSONNEL, including participation in any required training and execution of any required confidentiality statements.

Recognizing CONTRACTOR's need to identify its services and related clients to sustain itself, the COUNTY shall not inhibit CONTRACTOR from publicizing its role under this agreement within the following conditions:

A. CONTRACTOR shall develop all publicity material in a professional manner.

B. During the course of performance on this agreement, CONTRACTOR shall not publish or disseminate commercial advertisements, press releases or feature articles using the name of COUNTY without the prior written consent of COUNTY. The COUNTY shall not unreasonably withhold written consent, and approval by COUNTY may be assumed in the event CONTRACTOR receives no adverse comments in writing from COUNTY within two (2) weeks after submittal.

C. CONTRACTOR may, without prior written permission of COUNTY, indicate in its proposals and sales materials that it has been awarded a contract to provide professional/technical IT services, provided, however, that the requirements of subparagraph "A", this Article, are adhered to by CONTRACTOR.

XI. OWNERSHIP AND USE OF DATA AND RESULTS:

The COUNTY and CONTRACTOR agree that all materials and information under this agreement shall become the sole property of the COUNTY.

This Agreement is subject to the San Bernardino County Sunshine Ordinance, County Code of Ordinances §19.0101 *et seq.* and California Public Records Act (Government Code §6250) (collectively, "Regulations"). All information, including detailed price and cost information, are public information. If CONTRACTOR believes that any portion of this Agreement (including any Work Orders, attachments, and amendments), materials, or work product provided to COUNTY is exempt from public disclosure, CONTRACTOR must clearly mark that portion "Confidential" or "Proprietary". CONTRACTOR also must include a brief description that sets out the reasons for exemption from disclosure. COUNTY will use reasonable means to ensure that such information is safeguarded, but will not be held liable for inadvertent disclosure of the information. Information marked "Confidential" or "Proprietary" in its entirety will not be honored, and COUNTY will not deny public disclosure of any information so marked. CONTRACTOR represents that it has a good faith belief that such portions are exempt from disclosure under the Regulations and agrees to reimburse COUNTY for, and to indemnify, defend, and hold harmless COUNTY, its officers, employees, and agents, from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs, and expenses, including without limitation, attorneys' fees, expenses, and court costs of any nature arising from or relating to COUNTY's non-disclosure of any such information.

XII. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

CONTRACTOR shall indemnify, hold harmless and defend (with counsel reasonably approved by the COUNTY) COUNTY, DEPARTMENT, and their authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability for or by reason of any actual or alleged infringement of any Patent, Copyright, or Trade Secret disclosure arising out of the operation and utilization of CONTRACTOR's programs and services supplied to the DEPARTMENT hereunder.

COUNTY shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, programs, systems, applications and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the COUNTY as the funding agency and CONTRACTOR as the creator of the publication. No such materials or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by CONTRACTOR in the United States or in any other country without the express written consent of COUNTY. Copies of all educational and training materials, curricula, audio/visual aids, printed material, and periodicals, assembled pursuant to this Contract must be filed with COUNTY prior to publication. CONTRACTOR shall obtain written permission from COUNTY prior to publication of said training materials.

XIII. DEFAULT:

A. By Insolvency:

The COUNTY may cancel forthwith this agreement for default in the event of occurrence of any of the following:

1. Insolvency of CONTRACTOR. CONTRACTOR shall be deemed to be insolvent if it has ceased to pay its debt in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition for bankruptcy has been filed, and whether insolvent within the meaning of the Federal Bankruptcy Law or not;
2. The filing of a voluntary petition to have CONTRACTOR declared bankrupt;
3. The appointment of a Receiver or Trustee for CONTRACTOR; or
4. The execution by CONTRACTOR of an assignment for the benefit of creditors.

The rights and remedies of the COUNTY provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

B. By Non-Performance:

1. The DEPARTMENT may, subject to the provisions of Paragraph XIII.B.3, by written Notice of Default to CONTRACTOR, terminate the whole or any part of this agreement or any Work Order in any one of the following circumstances:

   a. If CONTRACTOR fails to perform the services within the time specified herein or any extension thereof; or
   b. If CONTRACTOR fails to perform any of the other provisions of this agreement, or so fails to make progress as to endanger performance of this agreement in accordance with its terms; and, in either of these two circumstances does not cure such failure within a period of ten (10) calendar days (or such longer period as the DEPARTMENT may authorize in writing) after receipt of notice from the DEPARTMENT specifying such failure.

2. In the event the DEPARTMENT terminates this agreement in whole or in part as provided in Paragraph XIII.B.1.a, the DEPARTMENT may procure, upon such terms and in such manner as the DEPARTMENT may deem appropriate, services similar to those so terminated, and CONTRACTOR shall be liable to the DEPARTMENT for any excess costs for such similar services.

3. If, after notice of termination of this agreement under the provisions of this article, it is determined for any reason that CONTRACTOR was not in default under the provisions of this article, or that the default was excusable under the provisions of this article, the rights and obligations of the parties shall be the same as if the notice of termination had been pursuant to "Termination for Convenience" article (see Article XVIII).

4. The rights and remedies of the DEPARTMENT provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

XIV. COMPLIANCE WITH LAWS:

A. CONTRACTOR agrees to comply with all applicable federal, state and local laws, rules, regulations, ordinances or mandates; and all provisions required thereby to be included herein, are hereby incorporated by reference. CONTRACTOR will ensure that it has all necessary licenses and permits required by the laws of the United States, State of California, COUNTY and all other appropriate governmental agencies, and agree to maintain these licenses and permits in effect for the duration of this Contract. CONTRACTOR will notify COUNTY immediately of loss or suspension of any such licenses and permits.

B. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any loss, damage, or liability resulting from a violation on the part of CONTRACTOR of such laws, rules, regulations, ordinances or mandates.

C. CONTRACTOR shall use recycled and recyclable products, whenever practicable, in fulfilling the terms of the Contract. Recycled printed products shall include a symbol identifying the recycled material whenever practicable.

D. CONTRACTOR shall comply with all applicable provisions of the Americans with Disabilities Act (ADA).

XV. ASSURANCE OF COMPLIANCE WITH CIVIL RIGHTS LAW:

A. CONTRACTOR agrees to comply with the County of San Bernardino's rules and regulations, Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, Title VII of the Civil Rights Act of 1964, the California Fair Employment Practice Act, and other applicable federal, state and county laws, regulations and polices relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

B. CONTRACTOR hereby certifies and agrees that its affiliates, subsidiaries, or holding companies will comply with Subchapter VI of the Civil Rights Act of 1964, 42 U.S.C Sections 2000(e) through 2000(e)(17), all other anti-discrimination laws of the State of California, to the end that no person shall, on the grounds of race, creed, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this agreement or under any project, program or activity supported by this agreement.

C. CONTRACTOR shall take action to ensure that all PERSONNEL are employed by CONTRACTOR and that such employees are treated during employment, without regard to their race, color, religion, sex, ancestry, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

D. CONTRACTOR certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, religion, ancestry, national origin or sex.

E. CONTRACTOR shall allow the COUNTY access to its employment records during regular business hours to verify this compliance when so requested by the COUNTY.

F. If the COUNTY finds that any of the provisions of the anti-discrimination laws have been violated, the same shall constitute a material breach of contract upon which the COUNTY may cancel, terminate, or suspend the contract. While the COUNTY reserves the right to determine independently that the anti-discrimination provisions of this agreement have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that CONTRACTOR has violated state or Federal anti-discrimination laws shall constitute a finding by the COUNTY that CONTRACTOR has violated the anti-discrimination provisions of this agreement.

G. CONTRACTOR agrees that the COUNTY has the right to review, obtain and copy all records pertaining to performance of the Contract. CONTRACTOR agrees to provide the COUNTY with any relevant information requested and shall permit the COUNTY access to its premises upon reasonable notice for purposes of interviewing employees and inspecting records. The CONTRACTOR shall maintain records for a period of at least three (3) years after final payment under the Contract.

XVI. LIMITATION OF THE DEPARTMENT'S OBLIGATION DUE TO NON-APPROPRIATION OF FUNDS:

A. The DEPARTMENT's obligation is payable only and solely from funds appropriated for the purpose of this agreement.

B. All funds for payments after June 30th of the current fiscal year are subject to DEPARTMENT budget approval for this purpose. Payments during subsequent fiscal periods are dependent upon the same action.

C. In the event this agreement extends into succeeding fiscal year periods, and if the governing body appropriating the funds does not allocate sufficient funds for the next succeeding fiscal year's payments, then the affected services shall be terminated as of June 30th of the then current fiscal year. The DEPARTMENT shall notify CONTRACTOR in writing of such non-allocation at the earliest possible date.

XVII. TERMINATION FOR CONVENIENCE:

A. The County for its convenience may terminate this Agreement in whole or in part upon thirty (30) calendar day's written notice. Such adjustment shall provide for payment to the Contractor for services rendered and expenses incurred prior to the effective date of termination. Upon receipt of termination notice Contractor shall promptly discontinue services unless the notice directs otherwise. Contractor shall deliver promptly to County and transfer title (if necessary) all completed work, and work in progress, including drafts, documents, plans, forms, data, products, graphics, computer programs and reports.

B. The performance of work under this agreement may also be terminated in whole or in part from time to time when such action is deemed by the DEPARTMENT to be in its best interest. Termination of work hereunder shall be effected by delivery to CONTRACTOR of a Notice of Termination specifying the extent to which performance of work under this agreement is terminated, and the date upon which such termination becomes effective. The date upon which such termination becomes effective shall be at least thirty (30) days after notice is sent.

C. After receipt of a Notice of Termination and except as otherwise directed by the DEPARTMENT, CONTRACTOR shall:

1. Stop work under this agreement on the date and to the extent specified in Notice of Termination.

2. Transfer title and deliver to the DEPARTMENT all completed work and work in progress, including preliminary drafts, organizational plans and formats.

3. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

D. After receipt of a Notice of Termination, CONTRACTOR shall submit to the DEPARTMENT, in the form and with the certifications as may be prescribed by the DEPARTMENT, a termination claim and invoice. Such claim and invoice shall be submitted promptly, but not later than three (3) months from the effective date of termination. Upon failure of CONTRACTOR to submit a termination claim and invoice within the time allowed, the DEPARTMENT may determine on the basis of information available to the DEPARTMENT, the amount, if any, due to CONTRACTOR in respect to the termination. When such determination is made, the DEPARTMENT shall pay CONTRACTOR the amount so determined, and such determination shall be final.

XVIII. DISCONTINUANCE AND BACKUP:

If at any time during this agreement, CONTRACTOR discontinues its operation and support of the project without furnishing an equally qualified successor or transferee to carry on maintenance and support of the DEPARTMENT's activity at a comparable cost, or if the agreement or any Work Order is terminated for any reason, the DEPARTMENT shall have the right to immediately take possession of:

A. both the source code and object code to all programming provided by CONTRACTOR under this agreement

B. current data files related to the DEPARTMENT's established transactions

C. CONTRACTOR's documentation of said programming sufficient for DEPARTMENT personnel to install, operate, modify, and maintain said programming on a reasonable basis.

XIX. AUTHORIZATION WARRANTY:

CONTRACTOR represents and warrants that the party executing this agreement is an authorized agent who has actual authority to bind CONTRACTOR to each and every one of the terms, conditions and obligations set forth herein.

XX. CONFLICT OF INTEREST:

No COUNTY employee whose position in the COUNTY enables him to influence the award of this agreement or any competing agreement, and no spouse or economic dependent of such employee shall be employed in any capacity by CONTRACTOR herein, or have any other direct or indirect financial interest in this agreement.

CONTRACTOR shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the COUNTY. CONTRACTOR shall make a reasonable effort to prevent employees, consultants, 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 for 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 that COUNTY determines that a conflict of interest situation exists, any increase in costs associated with the conflict of interest situation may be disallowed by COUNTY and such conflict may constitute grounds for termination of the Contract.

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This provision shall not be construed to prohibit employment of persons with whom CONTRACTOR'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.

XXI. IMPROPER CONSIDERATION:

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

The COUNTY, by written notice, may immediately terminate any agreement 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 an agreement has been awarded.

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

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.

XXII. MISUSE OF COUNTY RESOURCES:

CONTRACTOR shall not utilize any resources provided by the COUNTY for any purposes other than work specified by the COUNTY. Breach of this provision will constitute performance failure and theft.

XXIII. NON-COUNTY BUSINESS EXPENSE REIMBURSEMENT:

CONTRACTOR shall not utilize any resources provided by the COUNTY for any purposes other than work specified by the COUNTY. Breach of this provision will constitute performance failure and theft.

XXIV. MUTUAL NON-SOLICITATION OF EMPLOYEES:

CONTRACTOR and COUNTY mutually agree not to solicit the other's personnel for purposes of employment during the term of this agreement.

XXV. NOTIFICATIONS

All notices or demands required or permitted to be given or made hereunder shall be in writing and shall be deemed to have been given if made by hand delivery with signed receipt, or when mailed by first class registered or certified mail, postage prepaid, addressed to the DEPARTMENT and copies to the COUNTY, and to the CONTRACTOR at their respective addresses furnished in writing to each other.

In the event of a problem or potential problem that will impact the quality or quantity of work or the level of performance under this Contract, notification will be made within one working day, in writing and by telephone.

XXVI. WAIVER:

No waiver of a breach of any provision of this agreement shall constitute a waiver of any other breach, or of such provision. Failure of the COUNTY to enforce at any time, or from time to time, any provision of this agreement shall not be construed as a waiver thereof. The remedies herein reserved shall be cumulative and additional to any other remedies in law or equity.

XXVII. DELAYS:

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this agreement, that party shall, within five (5) days, give notice thereof, including all relevant information with respect thereto, to the other party.

XXVIII. GOVERNING LAWS:

The terms and conditions of this agreement and all obligations and rights hereunder shall be governed by and construed in accordance with the laws of the State of California. The parties hereto further agree that in the event of any legal proceedings concerning the duties or obligations of the parties, the venue of such proceedings shall be in the Central Division of the Superior Court of California, County of San Bernardino or the Federal Court located in Riverside, California, as appropriate.

XXIX. CAPTIONS AND PARAGRAPH HEADINGS:

Captions, paragraph headings, and the "Table of Contents" used herein are for convenience only and are not a part of this agreement and shall not be used in construing it.

XXX. VALIDITY:

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The invalidity in whole or in part of any provision of this agreement shall not void or affect the validity of any other provision.

COUNTY OF SAN BERNARDINO on behalf of DEPARTMENT

► _____

Curt Hagman, Chairman, Board of Supervisors

Dated: NOV 17 2020

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

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

By _____
Deputy

Mindlance, Inc.
(Print or type name of corporation, company, contractor, etc.)

By ► _____
(Authorized signature - sign in blue ink)

Name Vikram Kalra
(Print or type name of person signing contract)

Title President / CEO
(Print or Type)

Dated: 10 / 30 / 2020

Address 1095 Morris Avenue, Unit 101A

Union, NJ 07083

Approved as to Legal Form	Reviewed by Contract Compliance	Presented to BOS for Signature
► _____	► _____	► _____
Kristina Robb, Deputy County Counsel		Valerie Clay, Interim Director Purchasing
Date 11/6/20	Date	Date 11/6/2020

EXHIBIT A-#

WORK ORDER NO: _____

Work Order Term: _____ - _____

Project Title: _____ PERSONNEL's Name: _____

Project Description: _____

_____

_____

_____

COUNTY MANAGER: _____

Worksite Address: _____

Billing Address: _____

Pursuant to agreement #_____ by and between the COUNTY, and _____

for Professional/Technical Services, CONTRACTOR hereby agrees to perform the following services:

I. The CONTRACTOR agrees to provide Professional/Technical Services through PERSONNEL on a time and materials basis at the specified hourly rates in the following classifications:

_____ @ $_____ / hour for _____ hours = $_____
Classification

☐Professional ☐Technical or ☐Professional AND Technical Services to be performed by the above classification:

_____

_____

Performance Bond required for the above classification? ☐ Yes ☐ No

_____ @ $_____ / hour for _____ hours = $_____
Classification

☐Professional ☐Technical or ☐Professional AND Technical Services to be performed by the above classification:

_____

_____

Performance Bond required for the above classification? ☐ Yes ☐ No

II. COUNTY will pay CONTRACTOR for all services to be rendered under the provisions of this Work Order in an amount not to exceed _____ Dollars _____ CONTRACTOR shall invoice only for hours worked, in accordance with the terms and conditions of the MASTER AGREEMENT and shall be responsible for limiting the number of hours worked by its employees pursuant to this Work Order.

CONTRACTOR:

Mindlance, Inc.

Signature: _____

Name: Vikram Kalra

Title: President / CEO

Date: _____

COUNTY OF SAN BERNARDINO

Purchasing Department

_____

Valerie Clay, Interim Director

Date: _____

SAMPLE

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EXHIBIT B-#

EMPLOYER ACKNOWLEDGEMENT

I understand that **Mindlance, Inc.** is my sole employer for purposes of the County of San Bernardino agreement for Professional/Specialized Services.

I rely exclusively upon **Mindlance, Inc.** for payment of salary and any and all other benefits payable to me or on my behalf during the period of said agreement.

I understand and agree that I am not an employee of San Bernardino County for any purpose and that I do not have and will not acquire any rights or benefits of any kind from the County of San Bernardino during the period of said agreement.

I understand and agree that I do not have and will not acquire any rights or benefits pursuant to any agreement between my employer, **Mindlance, Inc.** and the County of San Bernardino.

ACKNOWLEDGED AND RECEIVED:

NAME: _____ DATE: _____
(Signature)

NAME: _____
(Print)

COUNTY AGREEMENT NO.: _____

SAMPLE

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EXHIBIT C-#

CONFIDENTIALITY STATEMENT

As an employee or subcontractor of **Mindlance, Inc.** who is thereby involved with work pertaining to County services, you may have access to confidential data pertaining to persons and/or other entities that receive services from the County of San Bernardino. The County of San Bernardino has a legal obligation to protect all confidential data and especially data concerning health, criminal and welfare recipient records. The County must ensure that you too will protect the confidentiality of all data. Consequently, your signature on this confidentiality agreement is a condition of your performance of work for the County. Please read the agreement and take due time to consider it prior to signing.

CONFIDENTIALITY AGREEMENT:

I hereby agree that I will not divulge to any unauthorized person data obtained while performing work pursuant to the contract between **Mindlance, Inc.** and the DEPARTMENT. I also agree to keep the rate of payment I am receiving for this work entirely confidential, and not to disclose or discuss this information with anyone not having a need to know.

I agree to forward all requests for the release of information by me to my designated MANAGER.

I agree to keep confidential all design concepts, algorithms, programs, formats, documentation, vendor proprietary information and all other original materials produced, created or provided to or by me pursuant to the agreement between my employer and the County of San Bernardino. I agree to protect these confidential materials against disclosure to anyone other than **Mindlance, Inc.** or county employees who have a need to know the information.

I agree to keep confidential any proprietary information supplied to me by other County vendors during my employment with **Mindlance, Inc.**.

I agree to report any and all violations of the above by any other person and/or by myself to my designated MANAGER.

I agree to return all confidential materials to my designated MANAGER upon termination of my employment with **Mindlance, Inc.** or completion of the presently assigned work order, whichever occurs first.

NAME: _____ DATE: _____
(Signature)

NAME: _____
(Print)

COUNTY AGREEMENT NO.: _____

SAMPLE

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EXHIBIT D

RATE SHEET

ATTACHMENT F-Cost

Hourly Rate of Position

Line-number	Position	Pay Rate	Bill Rate
1	IT PROJECT MANAGER	**75.00**	**103.50**
2	BUSINESS SYSTEM ANALYST	**52.00**	**71.76**
3	PROGRAMMER ANALYST/ SOFTWARE DEVELOPER	**55.00**	**75.90**
4	APPLICATION PLATFORM SPECIALIST	**65.00**	**89.70**
5	**SYSTEM SUPPORT ANALYST**	**40.00**	**55.20**
6	SYSTEM ENGINEER	**55.00**	**75.90**
7	**WEB DESIGNER**	**45.00**	**62.10**
8	**GIS ANALYST**	**40.00**	**55.20**
9	**COMPUTER OPERATION SPECIALIST**	**29.00**	**40.00**
10	**COMPUTER OPERATOR**	**20.00**	**27.60**

List all fees, costs, and any other surcharges not already included, if applicable. If such fees, costs or surcharges are included, please add a subtotal line. Please use additional pages if needed.

FEE TYPE/ COST/ SURCHARGE	**COST**
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____

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