



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

Chris Bazar
Agency Director

Agenda Item _____ October 6, 2020

September 22, 2020

224 West Winton Ave
Room 110
Hayward, California
94544-1215

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510.670.5333
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Honorable Board of Supervisors
Administration Building
1221 Oak Street, Suite 536
Oakland, California 94612

Dear Board Members:

**SUBJECT: APPROVE THE STANDARD SERVICES AGREEMENT
(PROCUREMENT CONTRACT NO. 21138) WITH
BITFOCUS, INC. FOR ALAMEDA COUNTY'S HOMELESS
MANAGEMENT INFORMATION SYSTEM**

RECOMMENDATION:

A. Approve the standard services agreement (Procurement Contract No. 21138) with Bitfocus, Inc., (Principal: Robert Herdzyk; Location: San Francisco, California) for the provision of Clarity Homeless Management Information System (HMIS) (Clarity Human Services), a hosted Software-as-a-Service web-based data system and reporting tool in compliance with the U.S. Department of Housing and Urban Development mandate, for the term of 10/1/20 – 9/30/21, in the amount of \$317,776.28; and

B. Authorize Auditor-Controller to make the related budget adjustments.

DISCUSSION/SUMMARY:

In 2000, the U.S. Department of Housing and Urban Development (HUD) issued a mandate that every community in the country that receives HUD homeless-targeted funding implement an automated data collection system referred to as a Homeless Management Information System (HMIS). The Community Development Agency's (CDA) Housing and Community Development Department (HCD) built the HMIS in 2004, following HUD requirements and guidelines. In 2005 and annually thereafter, HUD awarded a Continuum of Care (CoC) grant to HCD for its HMIS system to cover licensing and some staff costs. As changes and best practices have evolved over time, HCD, as the HMIS administrator, has worked with the HMIS database provider to modify the system and add data points needed to provide our community with the best information and data on homelessness with the funds available. Ongoing HMIS operations are currently funded with two federal CoC grants and an occasional allocation of Boomerang funds to cover system upgrades and changes. This renewal contract is primarily for the annual user licenses fees, and the provision of ongoing system maintenance. Larger structural changes for Coordinated Entry and data needs of other programs are also in the planning process, and will come back to your Board for additional scope changes before the end of the calendar year.

There are currently 506 active HMIS users, with approximately 71,758 unduplicated client records since inception. HMIS focuses on user interface and ease of use by homeless service providers who enter client data. Bitfocus, Inc. has demonstrated capacity for implementation of coordinated entry systems, and it is also being used by San Francisco, Santa Clara, San Mateo, Contra Costa, and Marin counties.

On October 10, 2017, (Item No. 13) and October 29, 2019 (Item No. 18), your Board approved Procurement Contract Nos. 15712 and 19285, respectively with Bitfocus, Inc. for the provision of Clarity Homeless Management Information System (HMIS) (Clarity Human Services), a hosted Software-as-a-Service (SaaS) web-based data system and reporting tool in compliance with the HUD mandate. This original contract included the data transfer from the original HMIS system, migrating over 50,000 client records and building out a new system to host the HMIS in a new platform. It is anticipated that this contract will be renewed annually to pay for the cost of over 500 user licenses, as well as specific system improvements that are recommended by HMIS stakeholders convened to ensure the platform is well managed and serves the community with the required data.

This new procurement contract will allow for the continuous provision of services and system improvement through September 30, 2021.

SELECTION CRITERIA AND PROCESS:

Bitfocus, Inc. was selected through a competitive process issued on February 23, 2017 by CDA/HCD sent to all known HMIS vendors across the country.

Following a review of the five submitted proposals, a review panel consisting of representatives from EveryOne Home, the City of Oakland, Health Care Services Agency (HCSA), Behavioral Health (ACBH), and HCD rated and ranked all submissions. The panel determined that Bitfocus, Inc. was the highest-ranked vendor to manage the HMIS, requiring the transfer of all records into a new database system, managing and monitoring that system, and issuing user licenses to all 500+ users in Alameda County. Your Board approved the initial contract with Bitfocus, Inc. on October 10, 2017, (Item No. 13). Your Board also approved the first renewal contract on October 29, 2019 (Item No. 18).

The Auditor Controller's Office of Contract Compliance and Reporting has reviewed and issued Federal Grant Funds SLEB Waiver #F1773 (expires September 30, 2021) for this contract.

FINANCING:


This contract is included in CDA's approved FY 2020-21 Budget through HUD CoC grants (\$108,700.00), Shelter Crisis/Affordable Housing funding under Department ID 260930 (\$148,985.43), and California Emergency Solutions and Housing (CESH) Program (\$38,420.85). The HUD CoC grants require matching funds, which are provided by County General Funds.

\$21,670 in Whole Person Care funding for a portion of this contract. The attached financial recommendation would increase appropriation in the amount of \$21,670 with offsetting revenue in the same amount in their FY20/21 budget. There is no increase in Net County Cost as a result of this action.

VISION 2026:

The approval of this procurement contract with Bitfocus, Inc. for the Homeless Management Information System meets the 10X goal pathways of **Eliminate Homelessness** in support of our shared vision of **Thriving and Resilient Populations** and **Safe and Livable Communities**.

Very truly yours,

DocuSigned by:


002C10B338294FA...
Chris Bazar, Director
Community Development Agency

DocuSigned by:


CB284AE84C50405...
Colleen Chawla, Director
Health Care Services Agency

cc: Susan S. Muranishi, County Administrator
Donna R. Ziegler, County Counsel
Melissa Wilk, Auditor-Controller
Jennifer Schulz, County Administrator's Office
Heather M. Littlejohn, Office of the County Counsel
Sandra Rivera, Community Development Agency

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, made and entered into on the 1st day of October, 2020, by and between the County of Alameda, a body corporate and politic of the State of California, hereinafter referred to as "COUNTY", and Bitfocus, Inc., a Nevada corporation, hereinafter referred to as "CONTRACTOR".

WITNESSETH

Whereas, COUNTY is desirous of contracting with CONTRACTOR for the provision of Homeless Management Information System (HMIS) database services, a description of which are presented in Exhibit A, attached hereto; and

Whereas, CONTRACTOR is professionally qualified to provide such services and is willing to provide same to COUNTY; and

Now, therefore it is hereby mutually agreed to accept such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Definition of Services
Exhibit B	Payment Terms
Exhibit C	Insurance Requirements
Exhibit D	Debarment and Suspension Certification
Exhibit E	Contract Compliance Reporting Requirements

The term of this Agreement begins on October 1, 2020 and ends on September 30, 2021.

The compensation payable to CONTRACTOR hereunder shall not exceed \$317,776.28 (*Three Hundred Seventeen Thousand, Seven Hundred Seventy-Six dollars and Twenty-Eight cents*) for the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

COUNTY OF ALAMEDA

BITFOCUS, INC.

By: _____
President
Board of Supervisors

DocuSigned by:
By: Robert Herdzik 9/22/2020
8F56388E6556426...
Robert Herdzik
President and CEO

Approved as to form by:
Donna R. Ziegler, County Counsel

548 Market Street #60866
San Francisco, CA 94104

DocuSigned by:
By: Heather Littlejohn
4F16CF9B888B421...
Heather M. Littlejohn
Deputy County Counsel

Tax ID: 20 - 0252756

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONTRACTOR is an independent contractor. CONTRACTOR is not the agent or employee of the COUNTY in any capacity whatsoever, and COUNTY shall not be liable for any acts or omissions by CONTRACTOR nor for any obligations or liabilities incurred by CONTRACTOR.

CONTRACTOR shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such amounts.

In carrying out the work contemplated herein, CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

CONTRACTOR does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of COUNTY is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the COUNTY agency concerned.

Notwithstanding the foregoing, if the COUNTY determines that pursuant to state and federal law CONTRACTOR is an employee for purposes of income tax withholding, COUNTY may upon two weeks' notice to CONTRACTOR, withhold from payments to CONTRACTOR hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** To the fullest extent permitted by law, CONTRACTOR shall hold harmless, defend and indemnify the COUNTY of Alameda, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and

expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is in any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The COUNTY may participate in the defense of any such claim without relieving CONTRACTOR of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to COUNTY, including defense costs, and shall not be limited by any insurance limits.

In the event that CONTRACTOR or any employee, agent, or subcontractor of CONTRACTOR providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda COUNTY Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of COUNTY, CONTRACTOR shall indemnify, defend, and hold harmless COUNTY for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of CONTRACTOR or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of COUNTY.

3. **INSURANCE AND BOND:** CONTRACTOR shall at all times during the term of the Agreement with the COUNTY maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The COUNTY and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of CONTRACTOR's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the COUNTY, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. CONTRACTOR's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to COUNTY. CONTRACTOR's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the COUNTY before COUNTY's own insurance policy or self-insurance shall be called upon to protect it as a named insured.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., CONTRACTOR shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been

ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

5. **WORKERS' COMPENSATION:** CONTRACTOR shall provide Workers' Compensation insurance, as applicable, at CONTRACTOR's own cost and expense and further, neither the CONTRACTOR nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
6. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONTRACTOR shall indemnify and hold COUNTY harmless from any and all liability, fines, penalties and consequences from any of CONTRACTOR's failures to comply with such laws, ordinances, codes and regulations.
 - b. **Accidents:** If a death, serious personal injury, or substantial property damage occurs in connection with CONTRACTOR's performance of this Agreement, CONTRACTOR shall immediately notify the Alameda County Risk Manager's Office by telephone. CONTRACTOR shall promptly submit to COUNTY a written report, in such form as may be required by COUNTY of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONTRACTOR's sub- CONTRACTOR, if any; (3) name and address of CONTRACTOR's liability insurance carrier; and (4) a detailed description of the accident and whether any of COUNTY's equipment, tools, material, or staff were involved.
 - c. CONTRACTOR further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the COUNTY the opportunity to review and inspect such evidence, including the scene of the accident.
7. **DEBARMENT AND SUSPENSION CERTIFICATION:** (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).
 - a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, CONTRACTOR/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations

(CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.

- b. By signing this agreement, CONTRACTOR certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
- 8. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit B hereto.
- 9. TRAVEL EXPENSES: CONTRACTOR shall not be allowed or paid travel expenses unless set forth in this Agreement.
- 10. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONTRACTOR.
- 11. OWNERSHIP-OF DOCUMENTS: CONTRACTOR hereby assigns to the COUNTY and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the COUNTY, the CONTRACTOR, the CONTRACTOR's sub- CONTRACTORS or third parties at the request of the CONTRACTOR (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

CONTRACTOR also hereby assigns to the COUNTY and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in CONTRACTOR's Information System, respecting in any way the subject matter of this Agreement.

CONTRACTOR shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONTRACTOR agrees to take such further steps as may be reasonably requested by COUNTY to implement the aforesaid assignment. If for any reason said assignment is not effective, CONTRACTOR hereby grants the COUNTY and any assignee of the COUNTY an express royalty – free license to retain and use said Documents and Materials. The COUNTY's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and

whether or not CONTRACTOR's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In CONTRACTOR's contracts with other Contractors, CONTRACTOR shall expressly obligate its Sub-Contractors to grant the COUNTY the aforesaid assignment and license rights as to that CONTRACTOR's Documents and Materials. CONTRACTOR agrees to defend, indemnify, and hold the COUNTY harmless from any damage caused by a failure of the CONTRACTOR to obtain such rights from its CONTRACTORS and/or Sub-Contractors.

CONTRACTOR shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the CONTRACTOR and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the COUNTY harmless from any claims for infringement of patent or copyright arising out of such selection. The COUNTY's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, CONTRACTOR represents to and agrees with the COUNTY that CONTRACTOR has no present, and will have no future, conflict of interest between providing the COUNTY services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the COUNTY, as determined in the reasonable judgment of the Board of Supervisors of the COUNTY.

The CONTRACTOR agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the COUNTY will be kept confidential and not be disclosed to any other person. The CONTRACTOR agrees to immediately notify the COUNTY by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the COUNTY hereunder.

13. **NOTICES:** All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United

States Postal Service office or mailbox . Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Housing and Community Development Dept. 224
West Winton Avenue, Rm. 108
Hayward, CA 94544
Attn: Michelle Starratt, Housing Director

To CONTRACTOR: Bitfocus, Inc.
548 Market St. #60866
San Francisco, CA 94104
Attn: Robert Herdzik, President and CEO

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. **USE OF COUNTY PROPERTY:** CONTRACTOR shall not use COUNTY property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
15. **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:** CONTRACTOR assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the

benefits of, or be otherwise subjected to discrimination under this Agreement.

- a. CONTRACTOR shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. CONTRACTOR shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the COUNTY, CONTRACTOR shall provide the COUNTY with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. CONTRACTOR shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The CONTRACTOR shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.
16. **DRUG-FREE WORKPLACE:** CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR within five days thereafter shall notify the head of the COUNTY department/agency for which the contract services are performed. Violation of this provision shall constitute a material/breach of this Agreement.
17. **AUDITS; ACCESS TO RECORDS:** The CONTRACTOR shall make available to the COUNTY, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or

documents evidencing or relating to the expenditures and disbursements charged to the COUNTY, and shall furnish to the COUNTY, its authorized agents, officers or employees such other evidence or information as the COUNTY may require with regard to any such expenditure or disbursement charged by the CONTRACTOR.

The CONTRACTOR shall maintain full and adequate records in accordance with COUNTY requirements to show the actual costs incurred by the CONTRACTOR in the performance of this Agreement. If such books and records are not kept and maintained by CONTRACTOR within the County of Alameda, California, CONTRACTOR shall, upon request of the COUNTY, make such books and records available to the COUNTY for inspection at a location within COUNTY or CONTRACTOR shall pay to the COUNTY the reasonable, and necessary costs incurred by the COUNTY in inspecting CONTRACTOR's books and records, including, but not limited to, travel, lodging and subsistence costs. CONTRACTOR shall provide such assistance as may be reasonably required in the course of such inspection. The COUNTY further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the COUNTY, and the CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the COUNTY makes the final or last payment or within three (3) years after any pending issues between the COUNTY and CONTRACTOR with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** CONTRACTOR shall maintain and make available to COUNTY for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. CONTRACTOR's obligations under the preceding sentence shall continue for three (3) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by COUNTY), and CONTRACTOR shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the COUNTY's last payment to CONTRACTOR under this Agreement.
19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. **TERMINATION:** The COUNTY has and reserves the right to suspend, terminate, or abandon the execution of any work by the CONTRACTOR without cause at any time upon giving to the CONTRACTOR prior written notice. In the event that the COUNTY should abandon, terminate, or suspend the CONTRACTOR's work, the

CONTRACTOR shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to CONTRACTOR for its Homeless Management Information (HMIS) Software as a Service Services shall not exceed \$317,776.28 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.

21. **SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:** CONTRACTOR has been approved by COUNTY to participate in contract without SLEB participation. As a result, there is no requirement to subcontract with another business in order to satisfy the COUNTY's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the contract should change, CONTRACTOR may be required to immediately comply with the COUNTY's Small and Emerging Local Business provisions, including but not limited to:

- a. CONTRACTOR must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).
- b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. CONTRACTOR shall ensure that their own certification status and/or that of participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.
- d. CONTRACTOR shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the COUNTY. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the COUNTY department contract representative identified under Item #13 above. CONTRACTOR will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- e. All SLEB participation, except for SLEB prime CONTRACTOR, must be tracked and monitored utilizing the Elation compliance System.

COUNTY will be under no obligation to pay CONTRACTOR for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact OCC via e-mail at ACSLEBcompliance@acgov.org.

22. **FIRST SOURCE PROGRAM:** For contracts over \$100,000, CONTRACTOR shall provide COUNTY ten (10) working days to refer to CONTRACTOR, potential candidates to be considered by CONTRACTOR to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the COUNTY that CONTRACTOR has available during the contract term before advertising to the general public.
23. **CHOICE OF LAW:** This Agreement shall be governed by the laws of the State of California.
24. **WAIYER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.
26. **HEADINGS** herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. **ADVERTISING OR PUBLICITY:** CONTRACTOR shall not use the name of COUNTY, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of COUNTY in each instance.

28. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. **ASSURANCE OF PERFORMANCE:** If at anytime COUNTY believes CONTRACTOR may not be adequately performing its obligations under this Agreement or that CONTRACTOR may fail to complete the Services as required by this Agreement, COUNTY may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within ten (10) calendar days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. **SUBCONTRACTING/ASSIGNMENT:** CONTRACTOR shall not subcontract, assign, or delegate any portion of this Agreement or any duties or obligations hereunder without the COUNTY's prior written approval.
- a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. CONTRACTOR shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without COUNTY's prior written approval.
 - c. CONTRACTOR shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including, without limitation, Exhibit C. CONTRACTOR shall verify subcontractor's compliance.
 - d. CONTRACTOR shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between CONTRACTOR and its subcontractors.
31. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.

32. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
33. **PATENT AND COPYRIGHT INDEMNITY:** CONTRACTOR represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("CONTRACTOR Products") provided to COUNTY under this Agreement infringe any patent, copyright or other proprietary right. CONTRACTOR shall defend, indemnify and hold harmless COUNTY of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any CONTRACTOR Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. COUNTY will: (1) notify CONTRACTOR promptly of such claim, suit, or assertion; (2) permit CONTRACTOR to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable CONTRACTOR to do so. CONTRACTOR shall not agree without COUNTY's prior written consent, to any settlement, which would require COUNTY to pay money or perform some affirmative act in order to continue using the CONTRACTOR Products.
- a. If CONTRACTOR is obligated to defend COUNTY pursuant to this Section 33 and fails to do so after reasonable notice from COUNTY, COUNTY may defend itself and/or settle such proceeding, and CONTRACTOR shall pay to COUNTY any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with COUNTY's defense and/or settlement of such proceeding.
 - b. In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for COUNTY the right to continue using the CONTRACTOR Products; or (2) replace or modify the CONTRACTOR Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, COUNTY retains the right and ability to defend itself, at its own expense, against any claims that CONTRACTOR Products infringe any patent, copyright, or other intellectual property right.
34. **OTHER AGENCIES:** Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The CONTRACTOR is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the CONTRACTOR elects to supply other agencies, orders will be placed directly by the agency and payments made

directly by the agency.

35. EXTENSION: This agreement may be extended for an additional two years by mutual agreement of the COUNTY and the CONTRACTOR.
36. SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

1. General Scope

CONTRACTOR shall provide COUNTY, and all authorized licensees and organizations/agencies (as identified by COUNTY) with full access to and use of all documented features provided in the most recent version of Clarity Human Services program.

"Documented features" refers to those features stated in the CONTRACTORS' Proposal dated May 3, 2017 in response to the RFP and incorporated herein by this reference.

Basic program functionality must include:

- a. Data collection system and screens fully compliant with the most recent HMIS Data Standards, including but not limited to, the Universal Data Elements, Project Descriptor Data Elements, Program-Specific Data Elements, and Metadata Elements.
- b. Data collection systems and screens that allow for initial client set up and entry and Coordinated Entry System (CES) assessments, including all fields designed by COUNTY and/or required by HUD.
- c. Confidential data storage fully compliant with the most recent HMIS Data Standards and COUNTY policies.
- d. Data viewing, reporting and analysis tools, including reporting and analysis capabilities for parameters defined by the user and CONTRACTOR's "Report Library," enabling Client Level Reports, Agency Level Reports, Organization-Wide Reports, and System Administrator Level Reports. Report functionality shall also include multi-tiered drill-down functionality for any data element to provide sub-report details of the underlying data.
- e. Ability to capture and require client consent (e.g., client consent screen) to assist the COUNTY to ensure client level data entered into the system complies with COUNTY protected information consent requirements.
- f. Software shall include all features necessary to meet HUD HMIS required functionality and standards.

2. Specific Requirements

- a. CONTRACTOR shall make timely revisions and updates to the HMIS database

and software in accordance with any changes to the 2020 HMIS Data Standards, per U.S. Department of Housing and Urban Development (HUD) regulations (24 CFR Parts 91, 576, 580, and 583), as amended.

- b. CONTRACTOR shall maintain and update program functionality consistent with HUD-defined reporting measures and formatting to enable COUNTY to produce HUD-required reports.
- c. CONTRACTOR shall comply with all HUD, COUNTY and HUD Continuum of Care (CoC) Program policies, regulations, rules and laws, including state and federal privacy laws applicable to HMIS.
- d. CONTRACTOR shall provide standard hosting services by establishing access via the internet to Clarity Human Services for the following specified number of users and organizations. CONTRACTOR will procure and maintain all infrastructure and services required to provide the Clarity Human Services. The access, licenses and support described herein include the current version of Clarity Human Services in use by COUNTY as well as any modifications thereto, including but not limited to the CES reconfiguration completed in the past and as may be completed in the future.
 - 600 Enterprise Seat Licenses (General End User, includes access and operation at the Enterprise level per each seat.)
 - 111 Manager Seat Licenses (Includes Enterprise-level access and operation, with the addition of ability to customize agency preferences, including services and programs of the selected agency. An Agency Manager license is required to run the Data Analysis Tool.)
 - 6 Administrator Seat Licenses (Includes Enterprise and Manager level access and operation with the addition of System Administration management functions and includes 30 Hours of Advanced Technical Assistance per year.)
 - 1 Data Analysis Tool (Base: Data Analysis Ad-Hoc Query tool. Allows simple data mining through an intuitive drag and drop interface to assist in analyzing data.)
 - 6 Data Analysis (Standalone)
 - 1 Training Site License (Includes access to a Clarity Training Web Site that provides an implementation-specific site for training purposes, which the parties acknowledge is an important part of any Clarity installation). This service provides optional ongoing training site operation, including software updates in concert with the production site.

- 1 Data Integration Tool (DIT) (Allows for data import tool access, allowing for importing into the Clarity Human Services platform.)
 - 1 Platform License (Charity Human Services Edition with Data Analysis)
 - 1 Customer Data Model (SQL Access)
 - 4 Virtual Private Network (VPN) Maintenance
- e. CONTRACTOR shall provide initial, pre-use security and user access settings. Unless specified in writing, COUNTY is responsible for the ongoing adjustment and maintenance of data sharing settings, user access, and security rights.
- f. CONTRACTOR shall provide standard support services as specified in the Agreement as part of the fees charged for ongoing service. CONTRACTOR shall provide phone and e- mail support to COUNTY's authorized Technical Liaison as part of the Agreement Service Fees. This support is provided via the Technical Liaison for the explicit purpose of assisting COUNTY to understand and utilize existing system features and capacities. CONTRACTOR will not work directly with end users. This will be the responsibility of the Technical Liaison. Unless otherwise specified in other parts of this Agreement, these services do not include custom system adjustments, development of reports, post-setup system configuration, data conversion and migration, on-site services, or the actual use or application of system features and capacities on behalf of the user (e.g., users will be assisted with the use of features and capacities, but Bitfocus, Inc. will not actually use them on behalf of the end users). Technical/Product support will not take the place of the COUNTY taking advantage of adequate CONTRACTOR training.
- g. Service Levels. CONTRACTOR shall provide access to Clarity Human Services twenty-four (24) hours a day, seven (7) days a week, and guaranteed continuous service between the hours of 5 AM and 9 PM PST during the common Monday to Friday workweek. CONTRACTOR guarantees, in accord with the remedies stated below, that Clarity Human Services will be available with a Monthly Uptime Percentage of at least 99.95% during any monthly billing cycle. Outage time is defined as the length of time elapsed from when CONTRACTOR is notified of the problem to the point of time that the problem is remedied. Remedies for outage time longer than these parameters will be a refund or credit equal to one hundred [100] percent of the cost of the percent of outage time (calculated as percent outage out of total charge for month of outage). Requests for such remedies must be made within ten (10) days of outage time. These remedies will not be available in cases where:

- 1) COUNTY did not notify CONTRACTOR of a known inability to transmit or receive data within a reasonable time.
 - 2) Outage time is caused by acts of omission by COUNTY or its end-users.
 - 3) Failure of equipment or applications that are not owned or controlled by the CONTRACTOR.
 - 4) "Acts of war or god" and other circumstances beyond the control of CONTRACTOR.
 - 5) Scheduled and/or pre-announced service maintenance.
- h. CONTRACTOR will be available during normal business hours for both Operational and Technical support. Unless specific arrangements are made, after hours and weekend support will not be available. These calls may require contacting an on-call representative who will be able to assist or make arrangements to provide needed assistance. An after-hours contingency plan can be arranged through a support agreement.
 - i. CONTRACTOR will perform data recovery services without charge for data loss or damage resulting only from failures of software and equipment provided by CONTRACTOR.
3. CONTRACTOR project team will consist of the following Key Personnel and subcontractors, as applicable during the contract term:

Robert Herdzik

President and CEO

CONTRACTOR agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute subcontractors without the express written agreement of COUNTY, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of CONTRACTOR no longer be employed by CONTRACTOR during the term of this Agreement, CONTRACTOR shall make a good faith effort to present to COUNTY an individual with greater or equal qualifications as a replacement subject to COUNTY's approval, which approval shall not be unreasonably withheld.

4. CONTRACTOR shall provide access to the replicated database over VPN and associated documents (see no. 7 below) within 10 business days of contract execution and keep that access active throughout the term of the contract on a 24 hour, 7 days/week, 365 days/year basis. Professional Services will be provided as required by COUNTY and will be billed monthly based on actual hours utilized.

5. CONTRACTOR shall provide necessary helpdesk services in accordance to (4) above for this service.
6. CONTRACTOR shall provide all necessary documentation to support COUNTY including but not limited to, Data Dictionary for the replicated database and/or Entity Relationship Diagram (ERD), instruction manual to access the database, XML schema documents to push data into Clarity HMIS, supported Application Programming Interface (API) documentation and other available documentation required by COUNTY for using the service.
7. The approval of COUNTY to a requested change shall not release CONTRACTOR from its obligations under this Agreement.
8. Proprietary Rights.
 - a. Pre-existing Materials. COUNTY acknowledges that, in the course of performing the Services, CONTRACTOR may use software and related processes, instructions, methods, and techniques that have been previously developed by CONTRACTOR (collectively, the "Pre-existing Materials") and that same shall remain the sole and exclusive property of CONTRACTOR.
 - b. Data of County. COUNTY's information, or any derivatives thereof, contained in any CONTRACTOR repository (the "County Data," which shall also be known and treated by CONTRACTOR as Confidential Information) shall be and remain the sole and exclusive property of COUNTY. COUNTY shall be entitled to an export of County Data, upon the request of COUNTY and upon termination of this Agreement or a Service Agreement. CONTRACTOR is provided a license to County Data hereunder for the sole and exclusive purpose of providing the Services, including a license to store, record, transmit, maintain, and display County Data only to the extent necessary in the provisioning of the Services.
 - c. No License. Except as expressly set forth herein, no license is granted by either party to the other with respect to Confidential Information, Pre-existing Materials, or County Data. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information, Pre-existing Materials, or County Data, except as may be provided under a license specifically applicable to such Confidential Information, Pre-existing Materials, or County Data.
 - d. Intellectual Property Rights. CONTRACTOR, as owner/operator of Clarity Human Services shall and does own all titles, rights and interests in all Work Products created by CONTRACTOR and its subcontractors (collectively "Contractors") and used to provide services to COUNTY under this Agreement. With the limited exception of "Local Coordinated Entry Documents and

Materials", any and all work products commissioned by CONTRACTOR for use by COUNTY shall remain the sole ownership of the CONTRACTOR.

For the purposes of this Paragraph 7, "Work Products" are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation, publications, promotional or educational materials, reports, manuals, specifications, drawing and sketches, computer programs, software, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property, with the exception of "Local Coordinated Entry Documents and Materials."

CONTRACTOR retains full ownership of, and reserves all rights to, all software and other Work Products developed under this agreement. The COUNTY agrees to transfer any surviving ownership claims to the service, underlying software or Work Product in their entirety to CONTRACTOR upon termination of this contract.

- e. Use of Work Products. COUNTY acknowledges that, in the course of performing services, CONTRACTOR may use Work Products and related processes, instructions, methods, and techniques that have been previously developed by CONTRACTOR and that same shall remain the sole and exclusive property of CONTRACTOR.

To the extent any of the Work Products may be protected by U.S. Copyright laws, it is agreed that COUNTY commissions CONTRACTOR to create the copyrightable Work Products, which are intended to be work-made-for-hire for the benefit of COUNTY and the copyright of which is vested in CONTRACTOR.

CONTRACTOR and COUNTY agree that before commencement of any subcontract work CONTRACTOR will incorporate this to contractually bind or otherwise oblige its subcontractors and personnel performing work under this agreement such that CONTRACTOR' titles, rights, and interests in Work Products are preserved and protected as intended herein.

- f. The provisions of this Section shall survive the termination of this Agreement.

[END OF EXHIBIT A]

EXHIBIT B

PAYMENT TERMS

1. COUNTY will pay CONTRACTOR up to \$317,776.28 beginning October 1, 2020 and ending September 30, 2021 for services in accordance with the scope of work in Exhibit A and the Program Budget, in accordance with the conditions set forth below.

ANNUAL LICENING COSTS FOR CLARITY HUMAN SERVICES	
450 Enterprise seat licenses at a rate of \$25.75 per month per seat (General Access End User, includes access and operation at the Enterprise level per each seat, continuation of existing licenses)	\$139,050.00
150 Enterprise seats set up at a one-time rate of \$175.00 per seat	\$26,250.00
150 Enterprise seat licenses at a rate of \$25.75 per month per seat (General Access End User, licenses to be issued as needed for new participants).	\$46,350.00
111 Manager seat licenses at a rate of \$51.50 per month per seat (Includes Enterprise level access and operation, with the addition of ability to customize agency preferences, including services and programs of the selected agency. Agency Manager license is required to run Data Analysis Tool.)	\$68,598.00
6 Administrator seat licenses at a rate of \$154.50 per month per seat (Includes Enterprise and Manager level access and operation with the addition of System Administration management functions. Includes 30 Hours of Advanced Technical Assistance per year).	\$11,124.00
1 Training Site licenses at a rate of \$214.59 per month per license (Includes access to a Clarity Training Web Site that provides an implementation specific site for training purposes, which the parties acknowledge is an important part of any Clarity installation. This service provides optional ongoing training site operation, including software updates in concert with the production site)	\$2,575.08
1 Data Integration Tool (DIT) at a rate of \$618.00 per month (Allows for data import tool access, allowing for importing into the Clarity Human Services platform.)	\$7,416.00
1 Data Analysis Tool (Base) at a rate of \$515.00 per month Data Analysis Ad-Hoc Query tool. Allows simple data mining through an intuitive drag and drop interface to assist in analyzing data.	\$6,180.00
6 Data Analysis (Standalone) at a rate of \$1,200.00 per month, after \$7,200.00 discount per year.	\$0.00
4 Virtual Private Network (VPN) Maintenance at rate of \$30.90 per month per VPN	\$1,483.20
4 Technical Support (up to 50 hours total @\$175.00 per hour)	\$8,750.00
TOTAL FOR ANNUAL LICENSING COSTS	\$317,776.28

2. CONTRACTOR shall submit invoices no more than monthly including supporting documentation for costs invoiced. Invoices shall be reviewed by the liaison assigned to monitor this Contract and shall be approved by the Housing and Community Development Director or the Director's designee.
3. Total payment under the terms of this agreement shall not exceed \$317,776.28. These funds must cover all costs to the CONTRACTOR of providing or contracting for services, as no additional funds will be made available to reimburse expenses incurred in completing the Scope of Work described in Exhibit A.
4. All requests for reimbursement will be in a format approved by the COUNTY and shall be submitted to the COUNTY on a monthly basis with supporting documentation of actual costs incurred. Requests for reimbursement must be received within 30 days of the end of each claim month.
5. Any adjustments made by the fiscal auditors at the year-end audit, under the AICPA guidelines and other relevant federal regulations, should be brought to the attention of the COUNTY staff reconciliation.
6. Monthly invoices should include, by line item, documentation of the expenditure including copies of invoices. Invoices will be approved by the Director of Alameda County Housing and Community Development or her designee.
7. Once the line item budget has been approved through the execution of the Contract, there can be no more than four (4) requests of adjustments to budget line item amounts during the contract period, including any final adjustments done at the end of the program year unless approved by the CDA Director or his designee.

[END OF EXHIBIT B]

EXHIBIT C

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements. The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the contractor maintains broader coverage and/or higher limits than the minimums shown below, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability when extended to cover your business is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto or Hired and Non-Owned Autos Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) As required by State of California	WC: Statutory Limits EL: No less than \$1,000,000 per accident for bodily injury or disease
D	Technology Professional Liability (Errors and Omissions) Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving media liability and infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, security and privacy liability that include invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.	\$2,000,000 per occurrence \$2,000,000 project aggregate
E	<p>Endorsements and Conditions:</p> <ol style="list-style-type: none"> ADDITIONAL INSURED: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used). Auto policy shall contain or be endorsed to contain additional insured coverage for the County. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained and evidence of insurance must be provided during the entire term of the Agreement and for at least five (5) years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work. Proof of workers' compensation insurance coverage is not required if contractor provides a signed Workers Compensation Written Declaration of Compliance. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies, including excess and umbrella insurance policies, shall be primary and non-contributory coverage at least as broad as ISO CG 20 10 04 13 as respects the County, its officers, officials, employees, or volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise acceptable by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Self-insured retentions must be declared and approved. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The policy language shall provide or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or County. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods: <ul style="list-style-type: none"> Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above. Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured". CANCELLATION OF INSURANCE: Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice of cancellation provided to the County in accordance with policy terms and conditions. <p>CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of insurance and applicable insurance endorsements as set forth in the provisions of this Agreement and this Exhibit C, in forms satisfactory to County, evidencing that all required insurance coverage is in effect. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require the Contractor to provide complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.</p>	

EXHIBIT D

COUNTY OF ALAMEDA DEBARMENT AND SUSPENSION CERTIFICATION

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000)

The CONTRACTOR, under penalty of perjury, certifies that, except as noted below, CONTRACTOR, its principals, and any named and unnamed subcontractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: Bitfocus, Inc.

PRINCIPAL: DocuSigned by: Robert Herdzik TITLE: President, CEO
Robert Herdzik 9/22/2020
SIGNATURE: 8E56388E6556426... DATE: _____

FINANCIAL RECOMMENDATION FORM

#140100-35 Rev 5/21/14

AGENDA DATE: 10/6/2020**BOARD LETTER SUBJECT:**

APPROVE THE STANDARD SERVICES AGREEMENT (PROCUREMENT CONTRACT NO. 21138 WITH BITFOCUS, INC. FOR ALAMEDA COUNTY'S HOMELESS MANAGEMENT INFORMATION SYSTEM

BUDGET YEAR: 2021**FUND:** 10000

The use of Designations, as follows:

NAME OF DESIGNATION	ORG	AMOUNT

The increase (decrease) in anticipated revenue, as follows:

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
350100	456120	00000		\$21,670
ORG TOTAL				\$21,670

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
ORG TOTAL				\$0

GRAND TOTAL ANTICIPATED REVENUE **\$21,670**

The increase (decrease) in appropriations, as follows:

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
350100	610000	00000		\$21,670
ORG TOTAL				\$21,670

<i>Informational</i>				
ORG	ACCT	PROG	PROJ/GR	AMOUNT
ORG TOTAL				\$0

GRAND TOTAL APPROPRIATION **\$21,670**