

CONTRACT # 16-27-0008-M2

BETWEEN

COUNTY OF ORANGE

AND

ABRAZAR, INC.

FOR

**SENIOR NON-EMERGENCY MEDICAL TRANSPORTATION
SERVICES – SERVICE AREA 3**

(Funded by Measure M2)



CONTRACT

Table of Contents	2
Recitals.....	4

TABLE OF CONTENTS**Terms and Conditions**

1. Definitions	5
2. Term of Contract	5
3. Payments	5
4. Payment Terms – Payment in Arrears	6
5. Scope of Work.....	7
6. Contingency of Funds.....	7
7. Amendments – Changes/Extra Work.....	8
8. Breach of CONTRACT	8
9. Conditions Affecting Work	8
10. Conflict of Interest – CONTRACTOR’s Personnel	8
11. Conflict of Interest – COUNTY Personnel.....	8
12. Consulting CONTRACT – Follow-On Work	9
13. CONTRACTOR’s Records	9
14. County of Orange Child Support Enforcement.....	9
15. Data – Title To.....	9
16. EDD Independent CONTRACTOR Reporting Requirements.....	10
17. Gratuities.....	10
18. News/Information Release	10
19. Notices	10
20. Ownership of Documents	11
21. Precedence	11
22. Errors and Omissions.....	11

Program Specific Terms and Conditions

23. Performance Standards.....	12
24. Records and Audit	13
25. Evaluation and Monitoring.....	16
26. Publication.....	16
27. Procurement	16
28. Compliance with Non-Discrimination Laws.....	17
29. Compliance with Other Laws	18
30. Audits/Inspections.....	19
31. Legal Status of Contractor	20
32. Price Increase/Decrease.....	20
33. Performance Bond	20
34. Confidentiality of Service Recipients	21
35. Signature in Counterparts	21
36. Contractor Personnel – Drug-Free Workplace.....	21

General Terms and Conditions

A. Governing Law and Venue	23
B. Entire CONTRACT	23
C. Amendments	23
D. Taxes - Intentionally left blank	23
E. Delivery	23
F. Acceptance/Payment.....	23
G. Warranty.....	23
H. Patent/Copyright Materials/Proprietary Infringement.....	24
I. Assignment or Sub-contracting	24
J. Non-Discrimination	24
K. Termination	24
L. Consent to Breach Not Waiver	25
M. Remedies Not Exclusive.....	25
N. Independent CONTRACTOR	25
O. Performance.....	26
P. Insurance	26
Q. Bills and Liens - Intentionally left blank	29
R. Changes Intentionally left blank.....	29
S. Change of Ownership.....	29
T. Force Majeure	29
U. Confidentiality.....	29
V. Compliance With Laws	29
W. Freight (F.O.B. Destination) - Intentionally left blank.....	29
X. Pricing Intentionally left blank	29
Y. Intentionally left blank.....	29
Z. Terms and Conditions	29
AA. Headings	29
BB. Severability.....	29
CC. Calendar Days	29
DD. Attorney Fees.....	30
EE. Interpretation	30
FF. Authority	30
GG. Employee Eligibility Verification	30
HH. Indemnification.....	30
II. Audits/Inspections	30
CONTRACT Signature Page.....	32

ATTACHMENTS / EXHIBITS

Attachment A – SNEMT Scope of Work
Attachment B – SNEMT Policies and Procedures
Attachment C – Contractor’s Price Sheet
Attachment D – Sample Invoice
Attachment E – Sample Monthly Performance Report

Exhibit 1 – County of Orange Child Support Enforcement Certification
Exhibit 2 – Agreement between OCTA and County of Orange for Measure M2 Funds

CONTRACT

This Agreement # 16-27-0008-M2, hereinafter referred to as "CONTRACT" is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California; hereinafter referred to as "COUNTY," and ABRAZAR, Inc., a non-profit corporation in the State of California, with a place of business at 7101 Wyoming Street, Westminster, CA 92683-3811 hereinafter referred to as "CONTRACTOR," with COUNTY and CONTRACTOR sometimes referred to as "PARTY", or collectively as "PARTIES."

RECITALS

WHEREAS, the Senior Non-Emergency Medical Transportation Program (SNEMT) is to provide a coordinated community-based system of non-emergency medical transportation for older adults age sixty (60) and older who lack other reasonable means of medical-related transportation. The program utilizes appropriate vehicles on a cost per mile basis. The SNEMT funding comes from Tobacco Settlement Revenues (TSR), and Measure M2, among three (3) Service Areas in the COUNTY; and

WHEREAS, CONTRACTOR responded to a FY 2013-14 Request for Proposal ("RFP") for Senior Non-Emergency Medical Transportation Program Services to older adults in Orange County; and

WHEREAS, the CONTRACTOR responded and represented that its proposed services shall meet or exceed the requirements and specifications of the RFP for Senior Non-Emergency Medical Transportation Services in Service Area 3, Central/West County; and

WHEREAS, COUNTY approved an allocation of ~~\$1,045,156.00 (One Million Forty-Five Thousand One Hundred Fifty-Six Dollars and 00 Cents)~~ *\$1,317,849.00 (One Million Three Hundred Seventeen Thousand Eight Hundred Forty-Nine Dollars and 00 Cents)* in Program funding to CONTRACTOR to carry out certain program services/activities;

NOW, THEREFORE, the PARTIES mutually agree as follows:

Terms and Conditions:**1. Definitions**

- A. "Administrator" means the Executive Director, Orange County Office on Aging (OoA), the designated Area Agency on Aging for Orange County, or designee thereof.
- B. "Information & Assistance [I&A]" means the function of the Office on Aging that refers older adults to appropriate service and assistance agencies in Orange County.
- C. "Subcontractor" means any entity that furnishes to CONTRACTOR services or supplies relative to this CONTRACT.
- D. Additional definitions pertaining to M2 funds are contained in the Cooperative Agreement C-1-2583 between the Orange County Transportation Authority (OCTA) and the County of Orange, attached hereto as Exhibit B, and incorporated herein by reference.
- E. "COUNTY PROJECT MANAGER" means the COUNTY shall appoint a PROJECT MANAGER to act as a liaison between the COUNTY and the CONTRACTOR during the term of this CONTRACT. The COUNTY's PROJECT MANAGER shall coordinate the activities of the COUNTY staff assigned to work with CONTRACTOR.

- 2. Term of CONTRACT:** The term of the CONTRACT shall begin on July 12, 2016 and end June 30, 2017 unless terminated or extended as provided for in this CONTRACT; provided, however, the expiration of the term shall not affect any duties of CONTRACTOR which would extend beyond the term of this CONTRACT. This CONTRACT may not be renewed.

3. Payments

- A. Maximum Obligation of COUNTY. COUNTY will pay CONTRACTOR for the cost of the services provided up to a maximum obligation of ~~\$1,045,156.00~~ \$1,317,849.00.
- B. Monthly operating costs. Payments for monthly work completed shall be made as follows:
 - i. CONTRACTOR shall timely transmit to COUNTY all data required pursuant to this CONTRACT. CONTRACTOR also shall submit an invoice(s) and such other substantiating reports as COUNTY may require, including the Program Monthly Performance Report, all in a form satisfactory to Administrator, by the fifteenth (15th) day of each month, showing the prior month's actual services provided. If CONTRACTOR receives funds pursuant to this CONTRACT for more than one service area, each such service area shall be invoiced separately from all other service areas, and separate substantiating reports shall be submitted for each service area. COUNTY shall make monthly payments based on CONTRACTOR's data, invoice(s), and substantiating reports, unless otherwise approved by Administrator.
 - ii. No payments will be made if any preceding months' data, reports, or invoices are outstanding, unless otherwise approved by the Administrator.

- iii. Whenever CONTRACTOR is not in compliance with any provision of this CONTRACT, Administrator may withhold payment until such time as CONTRACTOR comes into compliance.
 - iv. Administrator also reserves the right to refuse payment to CONTRACTOR or to later disallow costs for any expenditure determined by Administrator not to be in compliance with this CONTRACT, or unrelated to activities for which this CONTRACT provides, or inappropriate to such activities; or for which there is inadequate supporting documentation presented; or for which prior approval was required but was either not requested or not granted. Payment to CONTRACTOR may be refused until COUNTY receives reimbursement for any CONTRACTOR outstanding disallowed costs.
 - v. Total Monthly Costs may exceed one-twelfth of the maximum obligation of COUNTY. Upon receipt of sufficient written justification from the CONTRACTOR, as determined in the sole discretion of the Administrator, or her designee, the Administrator has the discretion, in any given month, to pay over the monthly one-twelfth of the maximum obligation of COUNTY as stated in Paragraph 3 subsection A. Maximum Obligation of COUNTY. Notwithstanding the above, the total amount of compensation approved during the term of the CONTRACT shall not exceed the maximum obligation of COUNTY described.
- C. Full Compensation. CONTRACTOR agrees to accept the specified compensation as set forth in this CONTRACT as full remuneration for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the CONTRACTOR of all its duties and obligations hereunder.
- D. Reallocation of Funds. COUNTY reserves the right to reallocate the available program funds to other service areas based on CONTRACTOR performance or client demand.
- E. Program Income. This is defined as gross income received by CONTRACTOR directly generated from client user fees and cash contributions from donations and/or fundraising under the SNEMT Program.
- i. CONTRACTOR shall comply with all regulations concerning reporting and payment procedures for Program Income.
 - ii. All Program Income accrued on a monthly basis will be utilized to enhance program services under the SNEMT Program.
 - iii. Prior to CONTRACTOR receiving monthly reimbursement from COUNTY, remaining balance of Program Income will reduce monthly reimbursement by said amount.

4. Payment Terms – Payment in Arrears

- A. Invoices are to be submitted in arrears to the user agency/department to the ship-to address, unless otherwise directed in this CONTRACT. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the CONTRACTOR.

- B. Invoices shall cover services and/or goods not previously invoiced. CONTRACTOR shall reimburse the County of Orange for any monies paid to CONTRACTOR for goods or services not provided or when goods or services do not meet CONTRACT requirements.
- C. Payments made by the COUNTY shall not preclude the right of the COUNTY from thereafter disputing any items or services involved or billed under this CONTRACT and shall not be construed as acceptance of any part of the goods or services.
5. **Scope of Work:** This CONTRACT specifies the Contractual terms and conditions by which the COUNTY will procure services from CONTRACTOR as further detailed in the SNEMT Scope of Work, identified and incorporated herein by this reference as Attachment A and SNEMT Policies and Procedures, identified and incorporated herein by this reference as Attachment B.
- A. Services pursuant to Attachments A and B. CONTRACTOR agrees to provide services as described in the SNEMT Scope of Work, which is attached hereto as Attachment A and is hereinafter referred to as Attachment A, and SNEMT Policies and Procedures, which is attached hereto as Attachment B, is incorporated herein by reference, and is hereinafter referred to as Attachment B.
- B. These services shall be provided at the firm fixed price fully detailed in the Contractor's Price Sheet, which is attached hereto as Attachment C, is incorporated herein by reference, and is hereinafter referred to as Attachment C. CONTRACTOR shall operate continuously throughout the term of this CONTRACT with at least the minimum number and type of staff and volunteers required for provision of the services described. Such staff and volunteers shall be qualified in accordance with all applicable statutes and regulations. CONTRACTOR agrees to submit to COUNTY PROJECT MANAGER, upon request, a list of persons, including employees, sub-contractors and volunteers, who are to provide such services, and any changes to said list, by name, title, professional degree, and experience.
- C. Additional services. CONTRACTOR also shall provide the following services to older adults to whom it provides the services described in subsection "A" of this Paragraph 5: With the consent of the older adult, or his or her representative, CONTRACTOR shall bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the older adult, or the household of the older adult, in imminent danger. Nothing in this Paragraph 5 shall be construed to limit CONTRACTOR's responsibilities for elder abuse reporting as set forth in Paragraph 29 "F" of this CONTRACT.
- D. Coordination of services. CONTRACTOR shall assure that all services funded under this CONTRACT are coordinated with other appropriate services in the community and that services funded under this CONTRACT do not constitute unnecessary duplications of services provided by other sources.
- E. Coordination of resources. CONTRACTOR shall work collaboratively with OoA, particularly the Information and Assistance Program (I&A), to ensure that SNEMT clients who may need any services available through Older Americans Act or Older Californians Act Programs are referred to I&A for assistance in accessing these services.
6. **Contingency of Funds:** CONTRACTOR acknowledges that the obligations of COUNTY under this CONTRACT are contingent upon the availability of Federal and/or State funds as applicable and inclusion of sufficient funds for the services hereunder remains in

effect or operation. In the event that such funding is terminated or reduced, CONTRACT MANAGER may immediately terminate this CONTRACT, reduce COUNTY'S maximum obligation, or modify this CONTRACT, without penalty. The decision of CONTRACT MANAGER shall be binding on CONTRACTOR. CONTRACT MANAGER shall provide CONTRACTOR with written notification of such determination. CONTRACTOR shall immediately comply with DIRECTOR'S or CONTRACT MANAGER'S decision.

- 7. Amendments – Changes/Extra Work:** The CONTRACTOR shall make no changes to this CONTRACT without the COUNTY's written consent. In the event that there are new or unforeseen requirements, the COUNTY with the CONTRACTOR's concurrence has the discretion to request official changes at any time without changing the intent of this CONTRACT.
- 8. Breach of CONTRACT:** The failure of the CONTRACTOR to comply with any of the provisions, covenants or conditions of this CONTRACT shall be a material breach of this CONTRACT. In such event the COUNTY may, and in addition to any other remedies available at law, in equity, or otherwise specified in this CONTRACT:
- Terminate the CONTRACT immediately, pursuant to Paragraph K herein;
- Afford the CONTRACTOR written notice of the breach and ten calendar days or such shorter time that may be specified in this CONTRACT within which to cure the breach;
- Discontinue payment to the CONTRACTOR for and during the period in which the CONTRACTOR is in breach; and
- Offset against any monies billed by the CONTRACTOR but yet unpaid by the COUNTY those monies disallowed pursuant to the above.
- 9. Conditions Affecting Work:** The CONTRACTOR shall be responsible for taking all steps reasonably necessary, to ascertain the nature and location of the work to be performed under this CONTRACT; and to know the general conditions which can affect the work or the cost thereof. Any failure by the CONTRACTOR to do so will not relieve CONTRACTOR from responsibility for successfully performing the work without additional cost to the COUNTY. The COUNTY assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this CONTRACT, unless such understanding or representations by the COUNTY are expressly stated in the CONTRACT.
- 10. Conflict of Interest – CONTRACTOR's Personnel:** The CONTRACTOR shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the COUNTY. This obligation shall apply to the CONTRACTOR; the CONTRACTOR's employees, agents, and relatives; sub-tier CONTRACTORS; and third PARTIES associated with accomplishing work and services hereunder. The CONTRACTOR's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the COUNTY.
- 11. Conflict of Interest – COUNTY Personnel:** The County of Orange Board of Supervisors' policy prohibits its employees from engaging in activities involving a conflict of interest. The CONTRACTOR shall not, during the period of this CONTRACT, employ any COUNTY employee for any purpose.

- 12. Consulting CONTRACT – Follow-On Work:** No person or firm or subsidiary thereof who has been awarded a consulting services CONTRACT or a CONTRACT which includes a consulting component may be awarded a CONTRACT for the provision of services, the delivery of goods or supplies, or the provision of any other related action which is required, suggested, or otherwise deemed appropriate as an end product of the consulting services CONTRACT. Therefore, any consultant that CONTRACTs with a COUNTY agency/department to develop a feasibility study or to provide formal recommendations is precluded from contracting for any work recommended in the study or included in the recommendations.
- 13. CONTRACTOR’s Records:** CONTRACTOR shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by CONTRACTOR in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three (3) years after final payment is received from the COUNTY. Storage of records in another COUNTY will require written approval from the COUNTY. CONTRACTOR shall reimburse COUNTY for all costs and expenses incurred by COUNTY and /or the State and U. S. government resulting from travel to a location outside of the COUNTY to inspect the records.
- 14. County of Orange Child Support Enforcement:** In order to comply with the child support enforcement requirements of the COUNTY of Orange, within ten (10) days of award of CONTRACT, the selected CONTRACTOR agrees to furnish to the CONTRACT COUNTY PROJECT MANAGER, the Purchasing Agent, or the agency/department deputy purchasing agent:
- A. In the case of an individual CONTRACTOR, his/her name, date of birth, Social Security number, and residence address;
 - B. In the case of a CONTRACTOR doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten (10) percent or more in the contracting entity;
 - C. A certification that the CONTRACTOR has fully complied with all applicable federal and State reporting requirements regarding its employees; and
 - D. A certification that the CONTRACTOR has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.
- Failure of the CONTRACTOR to timely submit the data and/or certifications required may result in the CONTRACT being awarded to another CONTRACTOR. In the event a CONTRACT has been issued, failure of the CONTRACTOR to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the CONTRACT. Failure to cure such breach within ten (10) calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.
- 15. Data – Title To:** All materials, documents, data or information obtained from the COUNTY data files or any COUNTY medium furnished to the CONTRACTOR in the performance of this CONTRACT will at all times remain the property of the COUNTY. Such data or information may not be used or copied for direct or indirect use by the CONTRACTOR after completion or termination of this CONTRACT without the express written consent of the COUNTY. All materials, documents, data or information, including copies, must be returned to the COUNTY at the end of this CONTRACT.

16. **EDD Independent CONTRACTOR Reporting Requirements:** Effective January 1, 2001, the COUNTY of Orange is required to file federal Form 1099-Misc for services received from a “service provider” to whom the COUNTY pays \$600 or more or with whom the COUNTY enters into a CONTRACT for \$600 or more within a single calendar year. The purpose of this reporting requirement is to increase child support collection by helping to locate parents who are delinquent in their child support obligations. (See Exhibit A)

The term “service provider” is defined in California Unemployment Insurance Code Section 1088.8, subparagraph B.2 as “an individual who is not an employee of the service recipient for California purposes and who received compensation or executes a CONTRACT for services performed for that service recipient within or without the state.” The term is further defined by the California Employment Development Department to refer specifically to independent CONTRACTORS. An independent CONTRACTOR is defined as “an individual who is not an employee of the government entity for California purposes and who receives compensation or executes a CONTRACT for services performed for that ...government entity either in or outside of California.”

The reporting requirement does not apply to corporations, general partnerships, limited liability partnerships, and limited liability companies.

Additional information on this reporting requirement can be found at the California Employment Development Department web site located at www.edd.ca.gov/txicr.htm.

17. **Gratuities:** The CONTRACTOR warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the CONTRACTOR or any agent or representative of the CONTRACTOR to any officer or employee of the COUNTY with a view toward securing the CONTRACT or securing favorable treatment with respect to any determinations concerning the performance of the CONTRACT. For breach or violation of this warranty, the COUNTY shall have the right to terminate the CONTRACT, either in whole or in part, and any loss or damage sustained by the COUNTY in procuring on the open market any services which the CONTRACTOR agreed to supply shall be borne and paid for by the CONTRACTOR. The rights and remedies of the COUNTY provided in this Paragraph 17 shall not be exclusive and are in addition to any other rights and remedies provided by law or under the CONTRACT.
18. **News/Information Release:** The CONTRACTOR agrees that it will not issue any news releases in connection with either the award of this CONTRACT or any subsequent amendment of or effort under this agreement without first obtaining review and written approval of said news releases from the COUNTY through the COUNTY'S project manager.
19. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the PARTIES' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate PARTY at the address stated herein or such other address as the PARTIES hereto may designate by written notice from time to time in the manner aforesaid.

For COUNTY:

County of Orange
OC Community Resources
Office on Aging
PROJECT MANAGER
1300 South Grand Ave., Bldg. 'B', 2nd Flr
Santa Ana, CA 90705-4407

County of Orange
OC Community Resources
Contract Development & Management
CONTRACT MANAGER
1501 East St. Andrew Place, 1st Flr
Santa Ana, CA 92705-4930

For CONTRACTOR:

ABRAZAR, Inc.
Gloria Reyes, President & CEO
7101 Wyoming Street
Westminster, CA 92683-3811

20. **Ownership of Documents:** The COUNTY has permanent ownership of all directly connected and derivative materials produced under this CONTRACT by the CONTRACTOR. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the COUNTY and may be used by the COUNTY as it may require without additional cost to the COUNTY. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the CONTRACTOR without the express written consent of the COUNTY.
21. **Precedence:** The CONTRACT documents consist of this CONTRACT and its attachments and exhibits. In the event of a conflict between or among the CONTRACT documents, the order of precedence shall be the provisions of the main body of this CONTRACT, i.e., those provisions set forth in the paragraphs of this CONTRACT, and then the attachments and exhibits.
22. **Errors and Omissions:** All reports, files and other documents prepared and submitted by CONTRACTOR shall be complete and shall be carefully checked by the professional(s) identified by CONTRACTOR as project manager and key personnel attached hereto, prior to submission to the COUNTY. CONTRACTOR agrees that COUNTY review is discretionary and CONTRACTOR shall not assume that the COUNTY will discover errors and/or omissions. If the COUNTY discovers any errors or omissions prior to approving CONTRACTOR's reports, files and other written documents, the reports, files or documents will be returned to CONTRACTOR for correction. Should the COUNTY or others discover errors or omissions in the reports, files or other written documents submitted by CONTRACTOR after COUNTY approval thereof, COUNTY approval of CONTRACTOR's reports, files or documents shall not be used as a defense by CONTRACTOR in any action between the COUNTY and CONTRACTOR, and the reports, files or documents will be returned to CONTRACTOR for correction.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK

Program Specific Terms and Conditions**23. Performance Standards:**

- A. Accepted professional standards. The performance of work and services pursuant to this CONTRACT by CONTRACTOR and its sub-contractors, if any, shall conform to accepted professional standards associated with all services provided under this CONTRACT. CONTRACTOR shall resolve all issues regarding the performance of CONTRACTOR and its sub-contractors, if any, under this CONTRACT using good administrative practices and sound judgment. CONTRACTOR shall be accountable to COUNTY for the proper use of funds provided to CONTRACTOR pursuant to this CONTRACT and for the performance of all work and services pursuant to this CONTRACT.
- B. Office on Aging Senior Non-Emergency Medical Transportation Performance Standards. The Office on Aging has established the following Performance Standards for the delivery of Senior Non-Emergency Medical Transportation. Office on Aging may, at its discretion, adjust the standards and enforce penalties to ensure and encourage increased efficiency and improve performance of services. Failure to maintain Minimum Performance Levels may result in monitor findings or CONTRACT termination. Monitor findings could result in a decrease in CONTRACT funding.

STANDARD	MINIMUM PERFORMANCE LEVEL
Customer Complaints	No more than 10 valid complaints per 3,000 passengers per month.
On-Time Performance	Arrive for 95% of scheduled trips within 15 minutes before to 15 minutes after promised time.
Ride Time	No passenger rides longer than 45 minutes for a 15 mile trip.
Missed Trips	Maximum 3 missed trips per 3,000 trips per month.
Vehicle Accident Reporting	All accidents must be reported within 24 hours to OoA.
Special Incident Reporting	All special incidents must be reported within 24 hours to OoA
Driver Qualifications	No SNEMT vehicle may be operated by an unqualified driver.
Trip & Client Exceptions	Each client eligibility exception must meet the requirements noted in policies and procedures and must be noted in the client's folder.
Door-to-Door Service	Will be provided based on individual request or predetermined need.
Reports (other than accident reports)	Must be submitted according to specified due dates.
Ineligible Trips	No clients will receive ineligible trips.

- C. Reporting requirements.
- i. CONTRACTOR will be required to submit records, statistical information, financial reports, and program information in electronic or paper format as required by the COUNTY of Orange Office on Aging.
 - ii. CONTRACTOR shall retain all collected data for the periods specified in this CONTRACT. The COUNTY has the right to review this documentation at any time during normal business hours.
 - iii. COUNTY reserves the right to withhold payment or to terminate this CONTRACT for nonconformance with data collection and reporting requirements.
 - iv. Performance Reports
 - (1) The Monthly Program Performance Report shall be due on the 15th calendar day of the following month. The Monthly Program Performance Report shall document the services provided, performance, and fund expenditures of each contracted transportation program and shall be submitted to the COUNTY PROJECT MANAGER. At a minimum, this monthly report shall include the data listed on the Monthly Performance Report form, plus sufficient narrative to describe the general performance of the program during the preceding month, any changes or improvements which are being proposed for implementation, any changes to the assigned project staff or their work assignments, and any issues or challenges that have been identified that could negatively impact service quality and/or the continued operation of the program.
 - (2) The Monthly Program Performance Report shall be prepared in Microsoft Word or Excel and submitted in electronic form so as to facilitate COUNTY'S analysis and aggregation of performance data.

24. Records and Audit:

- A. Maintenance and retention. CONTRACTOR shall, at all times during the term of this CONTRACT, maintain complete records (which shall include, but not be limited to, accounting records, grants, CONTRACTs, agreements, letters of agreement, insurance documentation, memoranda and/or letters of understanding and client records) of its activities and expenditures hereunder in a form satisfactory to the State and COUNTY. All such records must be maintained and kept available by CONTRACTOR as follows:
 - i. Until three (3) years after final payment under this CONTRACT or until an audit has occurred and an audit resolution has been reached, whichever is later, unless otherwise authorized in writing by COUNTY; or
 - ii. For such longer period, if any, as is required by applicable statute, by any other section of this CONTRACT or by subsections "B" or "C" of this Paragraph 24 below, or for such longer period as the State or COUNTY deem necessary.
- B. Termination of CONTRACT. If this CONTRACT is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for the same periods as set forth in subsections "A" and "C" of this Paragraph 24.

- C. Litigation, claims, etc. In the event of any litigation, claim, negotiation, audit exception, or other action involving the records, all records relative to such action shall be maintained and kept available until three (3) years after every action has been cleared to the satisfaction of COUNTY and so stated in writing to CONTRACTOR.
- D. Accounting records. Unless otherwise agreed in writing by COUNTY PROJECT MANAGER, CONTRACTOR shall maintain accounting records to account for all funds received under this CONTRACT. Said records shall be separate from the records for any other funds administered by CONTRACTOR, and shall be kept in accordance with generally accepted accounting principles and procedures. Said records must contain information pertaining to receipt of funds for the program(s) for which this CONTRACT provides, authorization to expend said funds, obligations, unobligated balances, assets, liabilities, outlays or expenditures, program income, contributions, and third-party revenue. Said accounting records must be supported by source documentation (such as cancelled checks, paid bills, payrolls, time and attendance records, CONTRACT and subcontract award documents, etc.), and adequate source documentation of each transaction shall be maintained relative to the allowability of expenditures under this CONTRACT. If the allowability of expenditures cannot be determined because records or documentation of CONTRACTOR are nonexistent or inadequate according to generally accepted accounting principles and procedures, the expenditures will be questioned in the audit and may be disallowed during the audit resolution process.
- E. Financial reporting requirements. Grant funds shall be identified separately. The COUNTY requires CONTRACTOR to discretely identify State, federal and local grant funding in the Statement of Revenues and Expenditures. In addition, the amounts reported on the Schedule of Revenue and Expenditures shall be displayed by award year beginning July 1st and ending June 30th. For example, for a CONTRACTOR with an accounting period ending December 31, 2006, the amounts displayed by award year would appear on separate lines for FY 2005/06 (January 1 through June 30, 2006) and FY 2006/07 (July 1 through December 31, 2006).
- F. Subcontract provisions. CONTRACTOR shall place in all of its subcontracts, if any, made pursuant to, and/or utilizing funds provided by, this CONTRACT, provisions requiring the subcontractor: (1) to make available to COUNTY, State and federal officials all of its records with respect to the subcontract at any time during normal business hours for the purpose of auditing, examining or making excerpts of such records and auditing all invoices, materials, payrolls, records of personnel and other data relating to all matters covered by the subcontract; and (2) to retain books, documents, papers, records and other evidence pertinent to the subcontract for the period of time specified in this Paragraph 24, subsections "A", "B", and "C" of this CONTRACT.
- G. Audit.
- i. If CONTRACTOR expends more than \$500,000 in federal funds during the term of this CONTRACT, CONTRACTOR shall arrange for an audit to be performed, within one hundred fifty (150) days of the end of CONTRACTOR's fiscal year and in accordance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," which is incorporated herein by reference. Furthermore, COUNTY retains the authority to require CONTRACTOR to submit a similarly prepared

audit at CONTRACTOR's expense even in instances when CONTRACTOR's expenditure is less than \$500,000.

- ii. CONTRACTOR shall take the following actions in connection with such audit:
 - (1) Ensure that appropriate corrective action is taken to correct instances of noncompliance with federal laws and regulations. Corrective action shall be taken within six months after COUNTY receives CONTRACTOR's audit report;
 - (2) Adjust its own records as necessitated by the audit;
 - (3) Permit independent auditors to have access to its records and financial statements as is necessary for COUNTY or CONTRACTOR to comply with OMB Circular A-133;
 - (4) Submit two copies of its audit reports to COUNTY no later than 30 days after completion of the reports;
 - (5) Procure audit services in accordance with OMB Circular A-110 procurement standards and provide maximum opportunity for small and minority audit firms;
 - (6) Include in CONTRACT(s) with auditor(s) provisions that the auditor(s) will comply with all applicable audit requirements;
 - (7) Include in its CONTRACT with independent auditors a clause permitting representatives of COUNTY or the State to have access to the work papers of the independent auditors;
 - (8) Provide to COUNTY, the Bureau of State Audits, and their designated representatives, the right to review and to copy all audit reports and any supporting documentation pertaining to the performance of this CONTRACT, and the option to perform audits and/or additional work as needed;
 - (9) Cooperate with and participate in any further audits which may be required by COUNTY or the State;
 - (10) Ensure that its audit addresses all issues contained in any federal OMB Compliance Supplement that applies to its program;
 - (11) Ensure that the audit is performed in accordance with Government Auditing Standards, is performed by an independent auditor, and is organization-wide;
 - (12) Ensure that the audit is all-inclusive, i.e., it includes an audit of the financial statements, an assessment of internal controls (including tests of transactions), and a determination of compliance with laws and regulations of all major federal programs and selected non- major program transactions.

- H. If total funds awarded under this CONTRACT equal or exceed \$10,000, CONTRACTOR shall be subject to examination and audit, including interviews of its staff, by the COUNTY and State of California for a period of three (3) years after final payment under this CONTRACT.

- I. Final financial statement. Within thirty (30) days after termination of this CONTRACT, CONTRACTOR shall submit to COUNTY PROJECT MANAGER a final financial statement detailing all program expenditures and all income received during the term of this CONTRACT or include such a final financial statement with CONTRACTOR's final invoice and substantiating reports.

25. Evaluation and Monitoring:

- A. Site inspection. Authorized COUNTY, State and federal representatives shall have the right to inspect work, program and service sites of CONTRACTOR during the term of this CONTRACT at any time during normal business hours.
- B. Access to books and records. During normal business hours, CONTRACTOR shall provide access to COUNTY, the federal and State grantor agencies, the Controller General of the United States, and any duly authorized COUNTY, federal or State representatives to any books, documents, papers, and records of CONTRACTOR which are pertinent to this CONTRACT, for the purpose of making audits, examinations, excerpts, copies and transcriptions. CONTRACTOR shall include this requirement in any subcontracts to be funded in whole or in part by funds provided pursuant to this CONTRACT.
- C. Evaluating, monitoring and assessing CONTRACTOR's performance. Authorized COUNTY, State and/or federal representatives shall have the right to monitor, assess and evaluate CONTRACTOR's performance pursuant to this CONTRACT. Said monitoring, assessment and evaluation may include, but is not limited to, audits, inspections of project premises, visits to participant worksites, and interviews of project staff and participants.
- D. CONTRACTOR cooperation. CONTRACTOR shall actively participate and cooperate with COUNTY, State and/or federal representatives in the monitoring, assessment and evaluation processes, including making any program and any administrative staff (fiscal, etc.) available at the request of such representatives.
- E. Failure to comply. Failure by CONTRACTOR to meet the conditions necessary for an evaluation will be sufficient grounds for COUNTY to withhold and/or delay reimbursement or to terminate this CONTRACT.

- 26. Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this CONTRACT, are to be released by CONTRACTOR and/or anyone acting under the supervision of CONTRACTOR to any person, partnership, company, corporation, or agency, without prior written approval by the COUNTY, except as necessary for the performance of the services of this CONTRACT. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by the COUNTY unless otherwise agreed to by both PARTIES.

27. Procurement:

- A. Competitive process. CONTRACTOR acknowledges that the procurement of all supplies, services and equipment pursuant to, and utilizing funds provided by, this CONTRACT involves the expenditure of public funds and that the use of a competitive process open to all interested competitors is necessary to maintain the public trust and to allow all interested persons to compete for business resulting from expenditure of said public funds.

- B. Non-profit CONTRACTOR. If CONTRACTOR is a non-profit organization, CONTRACTOR shall comply with standards and guidelines provided in 45 C.F.R., Part 74, in procuring all supplies, equipment, construction and services pursuant to, and/or utilizing funds provided by, this CONTRACT.
- C. Local government CONTRACTOR. If CONTRACTOR is a local government, CONTRACTOR shall comply with the directives applicable to procurement by subgrantees set forth in 45 C.F.R. Part 92.36 in procuring all supplies, services and equipment pursuant to, and/or utilizing funds provided by, this CONTRACT.
- D. Deviation. Should CONTRACTOR wish to deviate from the requirements of this Paragraph 27, or wish to issue a subcontract to other than the lowest bidder or competitor, Contractor shall submit written justification therefore to COUNTY PROJECT MANAGER for approval or denial, and shall withhold any further action until receipt of written notice of COUNTY PROJECT MANAGER's approval of said request. The decision of COUNTY PROJECT MANAGER shall be final.

28. Compliance With Non-Discrimination Laws:

- A. State laws.
 - i. CONTRACTOR's signature affixed hereon shall constitute a certification, under penalty of perjury under the laws of the State of California, that CONTRACTOR has, unless exempted, complied with the nondiscrimination program requirements of Government Code Section 12900 (a-f) and Title 2, California Code of Regulations, Section 8103.
 - ii. CONTRACTOR shall include the nondiscrimination and compliance provisions of this subsection in all sub-contracts to perform work under this CONTRACT.
- B. Title VI of Civil Rights Act.
 CONTRACTOR hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with Title VI of the Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which funds are made available under this CONTRACT. CONTRACTOR hereby gives assurance that it will immediately take any measures necessary to effectuate this CONTRACT.
- C. Title VII of Civil Rights Act. CONTRACTOR shall comply with Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000), as amended by the Equal Opportunity Act of March 24, 1972 (Public Law No. 92-261), and with all applicable rules, regulations and orders promulgated pursuant thereto, as now in existence or as hereafter amended.
- D. Disability discrimination. CONTRACTOR shall comply with Sections 503 and 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and all requirements imposed by the applicable regulations and guidelines issued pursuant to those statutes, including 45 CFR, Part 84.

- E. Failure to comply. If CONTRACTOR fails to comply with the requirements of any subsection of this Paragraph 28, COUNTY PROJECT MANAGER may withhold payment to CONTRACTOR and/or terminate this CONTRACT in accordance with Paragraph K.

29. Compliance with Other Laws:

- A. Laws related to CONTRACT. CONTRACTOR and its subcontractors shall administer the program(s) funded by this CONTRACT in accordance with this CONTRACT, and with all applicable local, State and federal laws, regulations, directives, guidelines and/or manuals.
- B. Laws applicable to CONTRACTOR's operations. CONTRACTOR and its subcontractors shall comply with all federal, State and local laws and regulations pertinent to their operations, including, but not limited to all statutes, ordinances, regulations, directives, guidelines and/or manuals pertaining to wages and hours of employment, occupational safety, fire safety, health and sanitation.
- C. Federal environmental laws. If the amount of compensation CONTRACTOR shall receive under this CONTRACT exceeds \$100,000, CONTRACTOR and its sub-contractors shall comply with all applicable orders or requirements issued under the following laws:
- i. Clean Air Act as amended (42 U.S.C. 1857)
 - ii. Clean Water Act (33 U.S.C. 1368)
 - iii. Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.)
 - iv. Environmental Protection Agency Regulations (40 CFR, Part 15 and Executive Order 11738).
- D. State Energy Plan. CONTRACTOR shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the State Energy Plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stats. 871).
- E. Withholding. CONTRACTOR shall promptly forward payroll taxes, insurances and contributions, including State Disability Insurance, Unemployment Insurance, Old Age Survivors Disability Insurance, and federal and State income taxes withheld, to designated governmental agencies as required by law.
- F. Elder abuse reporting. CONTRACTOR shall comply with all applicable requirements pertaining to the reporting of elder and dependent adult abuse, including Welfare and Institutions Code Section 15600 et. seq. Before permitting any of its employees, agents, officers, CONTRACTORS, subcontractors or volunteers to provide services supported by this CONTRACT, CONTRACTOR shall deliver to them, and obtain their signatures on, the forms described in Welfare and Institutions Code Section 15659, describing the responsibility to report elder and dependent adult abuse. CONTRACTOR shall retain the originals of all such signed forms.
- G. Licenses, permits, etc. CONTRACTOR and its subcontractors shall secure, and maintain in full force and effect, any and all licenses, permits, notices, certificates and authorizations, required by statutes, ordinances, rules and regulations of any applicable governmental entities pertaining to CONTRACTOR's or its subcontractors' operations.

- H. State and local environmental and land use laws.
- i. CONTRACTOR shall comply with the California Environmental Quality Act (CEQA) and Section 65402 of the Government Code, as may be required by the land use agency of jurisdiction. CONTRACTOR further agrees to provide COUNTY PROJECT MANAGER proof that CONTRACTOR has complied with, and maintains compliance with, all zoning regulations and that CONTRACTOR has obtained, and is maintaining in full force and effect, all necessary licenses, permits, certifications, and authorizations to operate said programs at each location, or as may otherwise be approved by COUNTY PROJECT MANAGER.
 - ii. By signing this CONTRACT, CONTRACTOR swears under penalty of perjury that CONTRACTOR is not:
 - a. in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
 - b. subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
 - c. finally determined to be in violation of provisions of federal law relating to air or water pollution.
- I. Debarment.
- i. CONTRACTOR shall not make any award or permit any award at any time to any PARTY which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal/State assistance programs.
 - ii. CONTRACTOR shall timely execute any and all amendments to this CONTRACT or certificates or other required documentation relating to its subcontractors' debarment/suspension status.
- J. Failure to comply. If CONTRACTOR fails to comply with the requirements of any subsection of this Paragraph 29, COUNTY PROJECT MANAGER may withhold payment to CONTRACTOR and/or terminate this CONTRACT in accordance with Paragraph K.

- 30. Audits/Inspections:** CONTRACTOR agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the COUNTY) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of CONTRACTOR for the purpose of auditing or inspecting any aspect of performance under this CONTRACT. The inspection and/or audit will be confined to those matters connected with the performance of the CONTRACT including, but not limited to, the costs of administering the CONTRACT. The COUNTY will provide reasonable notice of such an audit or inspection.

The COUNTY reserves the right to audit and verify CONTRACTOR's records before final payment is made.

CONTRACTOR agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this CONTRACT or by law. CONTRACTOR agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, CONTRACTOR agrees to include a similar right to the COUNTY to audit records and interview staff of any subcontractor related to performance of this CONTRACT.

Should CONTRACTOR cease to exist as a legal entity, CONTRACTOR's records pertaining to this CONTRACT shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the Administrator.

31. **Legal Status of CONTRACTOR**

A. Corporate status.

- i. CONTRACTOR, if a corporation and not a municipality or Indian Tribal organization, does hereby certify that CONTRACTOR is lawfully incorporated within the State of California and that by its articles of incorporation, corporate charter, or the Statutes of California, is empowered and authorized to conduct and provide the services specified in this CONTRACT. CONTRACTOR further agrees that if it is shown that the corporate status of CONTRACTOR is not valid at the time of the effective date of this CONTRACT or if CONTRACTOR loses its lawful corporate status for any reason during the time of this CONTRACT, then sufficient grounds exist for COUNTY to terminate this CONTRACT pursuant to Paragraph K of this CONTRACT or to suspend payments and operations under this CONTRACT until satisfactory status is restored.
- ii. CONTRACTOR shall notify COUNTY immediately of any change in its corporate status.

B. Labor relations. CONTRACTOR, by signing this CONTRACT, does swear under penalty of perjury that no more than one (1) final unappealable finding of contempt of court by a federal court has been issued against CONTRACTOR within the immediately preceding two-year period because of CONTRACTOR's failure to comply with an order of a federal court requiring CONTRACTOR to comply with an order of the National Labor Relations Board.

32. Price Increase/Decrease: No price increases will be permitted during the first year of the CONTRACT. The COUNTY requires bona fide proof of cost increases on CONTRACTs prior to any price adjustment. The percentage of any price increase cannot exceed the percentage of increase in the Consumer Price Index for the corresponding time period. On an annual basis or when deemed necessary due to changes in the cost of transportation, the COUNTY will evaluate the Bureau of Labor Statistics Los Angeles-Riverside-Orange County Private Transportation Consumer Price Index (CPI) to determine if a cost increase is necessary and warranted. No retroactive price adjustments will be considered. The COUNTY may enforce, adjust, negotiate, or cancel escalating price CONTRACTs or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the CONTRACT. Adjustments increasing the CONTRACTOR's profit will not be allowed.

33. Performance Bond: All CONTRACTORs must either have a minimum of five (5) years' experience in providing services comparable to that in the scope of work, i.e. transporting older adults; or must provide a performance bond in an amount equal to the estimated amount of the CONTRACT within ten COUNTY working days of notification

prior to the CONTRACT award. The COUNTY shall return the bond to the CONTRACTOR after successful completion of all CONTRACTOR's obligations and services required under the CONTRACT

34. Confidentiality of Service Recipients

- A. Protection from unauthorized disclosure. CONTRACTOR shall protect from unauthorized disclosure the names and other identifying information of service recipients receiving services pursuant to this CONTRACT, and information about, or obtained from said service recipients, except for statistical information not identifying any service recipient.
- B. Use of information. CONTRACTOR shall not use such information for any purpose other than carrying out CONTRACTOR's obligations under this CONTRACT.
- C. Transmittal of requests for disclosure. CONTRACTOR shall promptly transmit to COUNTY all requests for disclosure of identifying information not authorized by the subject of such information.
- D. Nondisclosure by CONTRACTOR. CONTRACTOR shall not disclose, except as otherwise specifically permitted by this CONTRACT or authorized by the service recipient, any such identifying information to anyone other than COUNTY or the State of California without prior written authorization from COUNTY or the State, except when subpoenaed by a court.
- E. Blanket authorizations or blank releases. CONTRACTOR may allow clients to authorize the release of information to specific entities, but shall not request or encourage any service recipient to give a blanket authorization or sign a blank release, nor shall the CONTRACTOR accept such from any service recipient.
- F. Identity. For purposes of this section, identity shall include, but not be limited to, name, identifying number, symbol or other identifying characteristic assigned to the service recipient, such as finger or voice print or a photograph.
- G. Furnishing information as required by government CONTRACTs. The provisions of this Section shall not restrict CONTRACTOR's obligation to provide information required under this or any of its other COUNTY, State or federal contracts.

35. Signature in Counterparts: The PARTIES agree that separate copies of this CONTRACT and/or electronic signatures and handwritten signatures may be signed by each of the PARTIES, and this CONTRACT will have the same force and effect as if the Original had been signed by all the PARTIES.

36. CONTRACTOR Personnel – Drug-Free Workplace: CONTRACTOR hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. CONTRACTOR will:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- B. Establish a drug-free awareness program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. The organization's policy of maintaining a drug-free workplace;

- iii. Any available counseling, rehabilitation and employee assistance programs; and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- C. Provide as required by Government Code Section 8355(c) that every employee who works under this CONTRACT:
- i. Will receive a copy of the company's drug-free policy statement; and
 - ii. Will agree to abide by the terms of the company's statement as a condition of employment under this CONTRACT.
- D. Failure to comply with these requirements may result in suspension of payments under the CONTRACT or termination of the CONTRACT or both, and CONTRACTOR may be ineligible for award of any future COUNTY CONTRACTS if the COUNTY determines that any of the following has occurred:
- i. CONTRACTOR has made false certification, or
 - ii. CONTRACTOR violates the certification by failing to carry out the requirements as noted above.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK

General Terms and Conditions:

- A. Governing Law and Venue:** This CONTRACT has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this CONTRACT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange COUNTY, California, and the PARTIES hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the PARTIES specifically agree to waive any and all rights to request that an action be transferred for trial to another COUNTY.
- B. Entire CONTRACT:** This CONTRACT, including Attachments and Exhibits which are attached hereto and incorporated herein by this reference, when accepted by the CONTRACTOR either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire CONTRACT between the PARTIES with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing. Electronic acceptance of any additional terms, conditions or supplemental CONTRACTs by any COUNTY employee or agent, including but not limited to installers of software, shall not be valid or binding on COUNTY unless accepted in writing by COUNTY.
- C. Amendments:** No alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by the PARTIES; no oral understanding or agreement not incorporated herein shall be binding on either of the PARTIES; and no exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing.
- D. Taxes:** Intentionally left blank.
- E. Delivery:** Time of delivery of services is of the essence in this CONTRACT. COUNTY reserves the right to refuse any services and to cancel all or any part of the description or services that do not conform to the prescribed scope of services.
- F. Acceptance/Payment:** Unless otherwise agreed to in writing by the COUNTY, 1) acceptance shall not be deemed complete unless in writing and until all the services have actually been received to the satisfaction of COUNTY, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. Warranty:** CONTRACTOR expressly warrants that the services covered by this CONTRACT are fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon CONTRACTOR's part to indemnify, defend and hold COUNTY and COUNTY INDEMNITEES as identified in Paragraph "HH" below, and as more fully described in Paragraph "HH", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by COUNTY by reason of the failure of the services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.

- H. Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this CONTRACT, CONTRACTOR shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this CONTRACT. CONTRACTOR warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third PARTY. CONTRACTOR agrees that, in accordance with the more specific requirement contained in Paragraph "HH" below, it shall indemnify, defend and hold COUNTY and COUNTY INDEMNITEES harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
- I. Assignment or subcontracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, COUNTY PROJECT MANAGERS and assigns of the PARTIES. Furthermore, neither the performance of this CONTRACT nor any portion thereof may be assigned or subcontracted by CONTRACTOR without the express written consent of COUNTY. Any attempt by CONTRACTOR to assign or subcontract the performance or any portion thereof of this CONTRACT without the express written consent of COUNTY shall be invalid and shall constitute a breach of this CONTRACT.
- J. Non-Discrimination:** In the performance of this CONTRACT, CONTRACTOR agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. CONTRACTOR acknowledges that a violation of this provision shall subject CONTRACTOR to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.
- K. Termination:** In addition to any other remedies or rights it may have by law, COUNTY has the right to terminate this CONTRACT without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of CONTRACT, any misrepresentation or fraud on the part of the CONTRACTOR. Exercise by COUNTY of its right to terminate the CONTRACT shall relieve COUNTY of all further obligations.
- i. Termination for cause. In the event of: (1) a violation of the law or failure to comply in a timely manner with any condition of this CONTRACT; (2) inadequate program performance; (3) failure to comply with reporting requirements; (4) evidence that CONTRACTOR is in such an unsatisfactory financial condition, as determined by COUNTY, as to endanger performance of this CONTRACT, including the loss of other funding sources; (5) delinquency in payment of taxes or the costs of performance of this CONTRACT in the ordinary course of business; (6) appointment of a trustee, receiver or liquidator for all or a substantial part of CONTRACTOR's property, or institution of bankruptcy, reorganization, arrangement of liquidation proceedings by or against CONTRACTOR; (7) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings against CONTRACTOR's assets or income; (8) bankruptcy proceedings of CONTRACTOR; (9) finding of debarment or suspension; or (10) material change in CONTRACTOR's organizational structure, (11) any breach of CONTRACT, and (12) any misrepresentation, or fraud on the part of the CONTRACTOR; COUNTY may terminate this CONTRACT and be relieved of the payment of any compensation to CONTRACTOR.

In the event of such termination, COUNTY may proceed with the work for which this CONTRACT provides in any manner deemed proper by COUNTY. The cost to COUNTY of completing the work for which this CONTRACT provides shall be deducted from any sums due CONTRACTOR under this CONTRACT.

- ii. CONTRACTOR not relieved of liability. Notwithstanding the above, CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this CONTRACT by CONTRACTOR, and COUNTY may withhold any payments to CONTRACTOR until such time as the exact amount of damages due COUNTY from CONTRACTOR is determined.
 - iii. Termination for convenience. COUNTY may terminate this CONTRACT, without cause, upon thirty (30) days written notice to CONTRACTOR, except COUNTY may terminate this CONTRACT for failure of any of the funding contingencies set forth in Paragraph 6, Contingency of Funds, upon ten (10) days written notice to CONTRACTOR.
 - iv. Return of funds. CONTRACTOR agrees that upon expiration or notice of termination of this CONTRACT or dissolution of CONTRACTOR's entity, CONTRACTOR shall, immediately upon written demand, return to COUNTY all funds paid to CONTRACTOR by COUNTY which are not payable for goods or services delivered prior to the termination or expiration of this CONTRACT or the dissolution of CONTRACTOR's entity.
 - v. Cancellation of commitments/termination claim. After receipt of notice of termination, CONTRACTOR shall cancel outstanding commitments required by this CONTRACT.
 - a. With respect to the above-cancelled commitments, CONTRACTOR agrees to provide, within ten (10) days of a notice of termination, a plan for settlement of all outstanding liabilities and all claims arising out of such cancellation of commitments. Such plan shall be subject to the approval of COUNTY PROJECT MANAGER.
 - b. CONTRACTOR shall submit a termination claim to COUNTY PROJECT MANAGER promptly after receipt of a notice of termination, but in no event later than sixty (60) days from the effective date thereof unless an extension, in writing, is granted by COUNTY PROJECT MANAGER.
- L. Consent to Breach Not Waiver:** No term or provision of this CONTRACT shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the PARTY claimed to have waived or consented. Any consent by any PARTY to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. Remedies Not Exclusive:** The remedies for breach set forth in this CONTRACT are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this CONTRACT does not preclude resort by either PARTY to any other remedies provided by law.
- N. Independent CONTRACTOR:** CONTRACTOR shall be considered an independent CONTRACTOR and neither CONTRACTOR nor its employees; nor anyone working under CONTRACTOR shall be considered an agent or an employee of COUNTY.

Neither CONTRACTOR nor its employees; nor anyone working under CONTRACTOR shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.

- O. Performance:** CONTRACTOR shall perform all work under this CONTRACT, taking necessary steps and precautions to perform the work to COUNTY's satisfaction. CONTRACTOR shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other services furnished by the CONTRACTOR under this CONTRACT. CONTRACTOR shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of COUNTY required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by sub-contractors.

P. Insurance Provisions

Prior to the provision of services under this CONTRACT, the CONTRACTOR agrees to purchase all required insurance at CONTRACTOR's expense and to deposit with the COUNTY Certificates of Insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this CONTRACT have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the COUNTY during the entire term of this CONTRACT. In addition, all subcontractors performing work on behalf of CONTRACTOR pursuant to this CONTRACT shall obtain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR.

CONTRACTOR shall ensure that all subcontractors performing work on behalf of CONTRACTOR pursuant to this CONTRACT shall be covered under CONTRACTOR's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less than the level of coverage required by COUNTY from CONTRACTOR under this CONTRACT. It is the obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by CONTRACTOR through the entirety of this CONTRACT for inspection by COUNTY representative(s) at any reasonable time.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the COUNTY Executive Office (CEO)/Office of Risk Management upon review of CONTRACTOR's current audited financial report.

If the CONTRACTOR fails to maintain insurance acceptable to the COUNTY for the full term of this CONTRACT, the COUNTY may terminate this CONTRACT.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

The policy or policies of insurance maintained by the CONTRACTOR shall provide the minimum limits and coverage as set forth below:

Coverage	Minimum Limits
Commercial General Liability	\$1,000,000 per occurrence; \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned, and hired vehicles	4 passengers or less: \$1,000,000 combined single limit 7 passengers or less: \$2,000,000 combined single limit 8 passengers or more: \$5,000,000 combined single limit
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Network Security & Privacy Liability	\$1,000,000 per claims made
Sexual Misconduct Liability	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the COUNTY of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the CONTRACTOR's insurance is primary and any insurance or self-insurance maintained by the COUNTY of Orange shall be excess and non-contributing.

The Network Security and Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.
- 2). A primary and non-contributing endorsement evidencing that the CONTRACTOR's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the COUNTY of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this CONTRACT shall waive all rights of subrogation against the COUNTY of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the CONTRACT, upon which the COUNTY may suspend or terminate this CONTRACT.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

*Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the CONTRACTOR fails to provide the insurance certificates and endorsements within seven (7) days of notification to OC Community Resources/Contract Development & Management, award may be made to the next qualified CONTRACTOR.

COUNTY expressly retains the right to require CONTRACTOR to increase or decrease insurance of any of the above insurance types throughout the term of this CONTRACT. Any increase or decrease in insurance will be as deemed by COUNTY of Orange Risk Manager as appropriate to adequately protect COUNTY.

COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this CONTRACT may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this CONTRACT, nor act in any way to reduce the policy coverage and limits available from the insurer.

In addition to any other requirements of this CONTRACT, CONTRACTOR shall notify COUNTY of any modification, termination, or cancellation of any CONTRACT of insurance secured by CONTRACTOR pursuant to this CONTRACT as soon as CONTRACTOR learns of the potential for, or existence of, whichever is earlier, any such modification, termination or cancellation.

Should CONTRACTOR fail to comply with the provisions of this Paragraph P, Administrator may withhold or delay payments to CONTRACTOR, or terminate this CONTRACT.

***Certificate Holder Information:**

The County of Orange has contracted with EBIX RCS to monitor insurance certificates and endorsement for compliance with the above requirements. Upon initial award of a CONTRACT, the Certificate(s) and endorsements(s) should be forwarded to the agency/department address on your behalf. EBIX RCS may contact you to advise you of deficiencies and request corrected documents. Please cooperate with their request for information or corrections in order for the County to continue your CONTRACT through the expiration date.

- Q. Bills and Liens:** Intentionally left blank.
- R. Changes:** Intentionally left blank.
- S. Change of Ownership:** CONTRACTOR agrees that if there is a change or transfer in ownership of CONTRACTOR's business prior to completion of this CONTRACT, the new owners shall be required under terms of sale or other transfer to assume CONTRACTOR's duties and obligations contained in this CONTRACT and complete them to the satisfaction of COUNTY.
- T. Force Majeure:** CONTRACTOR shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this CONTRACT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided CONTRACTOR gives written notice of the cause of the delay to COUNTY within thirty-six (36) hours of the start of the delay and CONTRACTOR avails himself of any available remedies.
- U. Confidentiality:** CONTRACTOR agrees to maintain the confidentiality of all COUNTY and COUNTY-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this CONTRACT. All such records and information shall be considered confidential and kept confidential by CONTRACTOR and CONTRACTOR's staff, agents and employees.
- V. Compliance with Laws:** CONTRACTOR represents and warrants that services to be provided under this CONTRACT shall fully comply, at CONTRACTOR's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by COUNTY in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by COUNTY. CONTRACTOR acknowledges that COUNTY is relying on CONTRACTOR to ensure such compliance, and pursuant to the requirements of Paragraph "HH" below, CONTRACTOR agrees that it shall defend, indemnify and hold COUNTY and COUNTY INDEMNITEES harmless from all liability, damages, costs, and expenses arising from or related to a violation of such laws.
- W. Freight (F.O.B. Destination):** Intentionally left blank.
- X. Pricing:** Intentionally left blank.
- Y.** Intentionally left blank.
- Z. Terms and Conditions:** CONTRACTOR acknowledges that it has read and agrees to all terms and conditions included in this CONTRACT.
- AA. Headings:** The various headings and numbers herein, the grouping of provisions of this CONTRACT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
- BB. Severability:** If any term, covenant, condition, or provision of this CONTRACT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- CC. Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

- DD. Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this CONTRACT, or where any provision hereof is validly asserted as a defense, each PARTY shall bear its own attorney's fees, costs and expenses.
- EE. Interpretation:** This CONTRACT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this CONTRACT. In addition, each PARTY has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each PARTY further acknowledges that they have not been influenced to any extent whatsoever in executing this CONTRACT by any other PARTY hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this CONTRACT against the PARTY that has drafted it is not applicable and is waived. The provisions of this CONTRACT shall be interpreted in a reasonable manner to affect the purpose of the PARTIES and this CONTRACT.
- FF. Authority:** The PARTIES to this CONTRACT represent and warrant that this CONTRACT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
- GG. Employee Eligibility Verification:** The CONTRACTOR warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this CONTRACT meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The CONTRACTOR shall obtain, from all employees, consultants and subcontractors performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The CONTRACTOR shall retain all such documentation for all covered employee, consultants and subcontractors for the period prescribed by the law. The CONTRACTOR shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, and its COUNTY INDEMNITEES, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the CONTRACTOR or the COUNTY or COUNTY INDEMNITEES, or any combination of the three in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this CONTRACT.
- HH. Indemnification:** CONTRACTOR agrees to indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by CONTRACTOR pursuant to this CONTRACT. If judgment is entered against CONTRACTOR and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of County or COUNTY INDEMNITEES, CONTRACTOR and COUNTY agree that liability will be apportioned as determined by the court. Neither PARTY shall request a jury apportionment.
- II. Audits/Inspections:** CONTRACTOR agrees to permit the COUNTY's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the COUNTY) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including

payroll and accounts payable/receivable records, and other papers or property of CONTRACTOR for the purpose of auditing or inspecting any aspect of performance under this CONTRACT. The inspection and/or audit will be confined to those matters connected to the performance of the CONTRACT including, but not limited to, the costs of administering the CONTRACT. The COUNTY will provide reasonable notice of such an audit or inspection.

The COUNTY reserves the right to audit and verify the CONTRACTOR's records before final payment is made.

CONTRACTOR agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this CONTRACT or by law. CONTRACTOR agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, CONTRACTOR agrees to include a similar right to the COUNTY to audit records and interview staff of any subcontractor related to performance of this CONTRACT.

Should the CONTRACTOR cease to exist as a legal entity, the CONTRACTOR's records pertaining to this CONTRACT shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the COUNTY's project manager.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the PARTIES hereto certify that they have read and understand all the terms and conditions contained herein and have hereby cause this CONTRACT to be executed.

***ABRAZAR, Inc.**

By: _____

By: _____

Name: _____
(Print)

Name: _____
(Print)

Title: _____

Title: _____

Dated: _____

Dated: _____

*For CONTRACTORS that are corporations, signature requirements are as follows: 1) One signature by the Chairman of the Board, the President or any Vice President; and 2) One signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or an Assistant Treasurer.

For CONTRACTORS that are not corporations, the person who has authority to bind the CONTRACTOR to a contract, must sign on one of the lines above.

COUNTY OF ORANGE

A Political Subdivision of the State of California

By: _____
Steve Franks, Director
OC Community Resources

Dated: _____

**APPROVED AS TO FORM
DEPUTY COUNTY COUNSEL**