

**COUNTY OF SAN DIEGO
CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

**AGENDA ITEM REPORT
APRIL 3, 2025**

AGENDA MATTER:

CONTRACT PRICE INCREASE FOR DEATH-IN-CUSTODY STUDY CONTRACT WITH THE MOUNTAIN WHISPER LIGHT, INC.

EXECUTIVE SUMMARY:

CLERB staff are requesting that the Board (1) authorize Executive Officer Brett Kalina to seek \$89,868 in additional funds from the San Diego County Finance and General Government Group; and (2) authorize CLERB's Contracting Officer's Representative, Nawras Hakak, to amend County Contract Number 569176 to increase the contract price to \$208,368.

DISCUSSION:

On September 12, 2023, the Citizens' Law Enforcement Review Board ("CLERB"), acting by and through the County of San Diego, entered into County Contract Number 569176 (the "Contract") with The Mountain Whisper Light, Inc. ("MWL"), under which MWL is to provide an independent analysis of and report on in-custody deaths specific to the San Diego County Sheriff's Department. The Contract is attached hereto as **Attachment A**.

Under the Contract, CLERB agreed to pay MWL up to \$118,500 for its provision of the independent analysis and report on in-custody deaths. From September 2023 to present, MWL has diligently worked to provide the contracted services; however, both MWL and CLERB have faced significant roadblocks in acquiring data from the San Diego County Sheriff's Office ("SDSO"), primarily as the result of long delays and a general lack of cooperation from the SDSO in response to informal data requests and official public records requests for the information needed for MWL to complete its analysis and draft its report.

Because of these difficulties, MWL has need to perform a substantial amount of additional work to obtain the information necessary to perform its contractual duties. These delays are largely the result of SDSO's failure to follow applicable laws and regulations, and were therefore not reasonably foreseeable at when MWL bid the contract. Data collection was expected to be complete within two months, but is still ongoing over a year later. MWL has expended approximately \$158,388.00 to date in its performance of the Contract. A detailed breakdown of the services, dates of service, and costs of services that MWL has provided through February 2025 is attached hereto as **Attachment B**. MWL's efforts to obtain the necessary data from the SDSO through public records ("CPRA") requests are reflected in the "Drafting Documents," "Receipt & Reviewing of Documents," and "Editing & Finalizing Documents" categories.

In light of MWL's significant cost overruns and SDSO's delays, MWL has temporarily stopped providing services under the contract while MWL and CLERB seek an overarching resolution. This has allowed CLERB and MWL to pivot in their approach to preparing and completing the report. After March 28, 2025, CLERB and MWL will take the SDSO's data as they find it and complete the reports using the available data. With this new approach in mind, MWL has calculated its future expenses to complete the analysis and report at \$49,980. MWL's calculations are attached hereto as **Attachment C**.

To compensate MWL for its costs exceeding the current contract price and its future expected costs, staff is recommending that the Board authorize Executive Officer Brett Kalina to seek \$89,868 in additional funds from the San Diego County Finance and General Government Group and authorize CLERB's Contracting Officer's Representative, Nawras Hakak, to amend the Contract to increase the total contract price from \$118,500 to \$208,368. This increase request has been made necessary by the unforeseen delays by SDSO. Additionally, the modified approach to the completion of work will ensure that no further budget increases will be necessary.

The in-death custody study and resulting report will provide crucial information to CLERB, the SDSO, and the general public that may significantly impact the SDSO's custodial policies so as to reduce deaths of persons within the SDSO's custody. Increasing the budget will ensure that the substantial time, resources, and money that both MWL and CLERB have invested into this project materialize in the desired report that will benefit the San Diego County community, while preserving the collaborative relationship between CLERB and MWL.

Attachment A – County Contract Number 569176 – Agreement with the Mountain Whisper Light, Inc. for Independent Study and Report for In-Custody Deaths

Attachment B – The Mountain Whisper Light Expenses Spreadsheet

Attachment C – The Mountain Whisper Light Future Expenses Projection Spreadsheet

FISCAL IMPACT:

Increasing the budget will result in CLERB expending an additional \$89,868 from its operating budget on this project.

RECOMMENDED ACTION:

CLERB staff are requesting that the Board (1) authorize Executive Officer Brett Kalina to seek \$89,868 in additional funds from the San Diego County Finance and General Government Group; and (2) authorize CLERB's Contracting Officer's Representative, Nawras Hakak, to amend County Contract Number 569176 to increase the contract price to \$208,368.

ATTACHMENT A

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

This agreement ("Agreement") is made and entered into effective as of the date of the last signature on the signature page by and between the County of San Diego, a political subdivision of the State of California ("County") and The Mountain-Whisper-Light, Inc., located at 1827 23rd Avenue East, Seattle, WA 98112 ("Contractor"), with reference to the following facts:

RECITALS

- A. Pursuant to the San Diego County Administrative Code section 401, the County's Director of the Department of Purchasing and Contracting is authorized to award a contract for an independent study and report for in-custody deaths.
- B. Contractor is specially trained and possesses certain skills, experience, education, and competency to perform these services.
- C. The Chief Administrative Officer made a determination that Contractor can perform the services more economically and efficiently than the County, pursuant to section 703.10 of the County Charter.
- D. The Agreement shall consist of this document, Exhibit A Statement of Work, Exhibit A-1 Contractor's Technical Approach, Exhibit A-2, Contractor's Clarification to Quote, Exhibit B Insurance Requirements, and Exhibit C Payment Schedule. In the event of a conflict between any provisions of this Agreement, the following order of precedence shall govern: First (1st) this document; Second (2nd) Exhibit B; Third (3rd) Exhibit A; Fourth (4th) Exhibit C; and fifth (5th) Exhibit A-1.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1
PERFORMANCE OF WORK

- 1.1 Standard of Performance. Contractor shall, in good and workmanlike manner and in accordance with the highest professional standards, at its own cost and expense, furnish all of the labor, technical, administrative, professional and all other personnel, all supplies and materials, equipment, printing, transportation, training, facilities, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by County, necessary or proper to perform and complete the work and provide the services required of Contractor by this Agreement.
- 1.2 Contractor's Representative. The person identified on the signature page ("Contractor's Representative") shall ensure that Contractor's duties under this Agreement shall be performed on behalf of the Contractor by qualified personnel; Contractor represents and warrants that (1) Contractor has fulfilled all applicable requirements of the laws of the State of California to perform the services under this Agreement and (2) Contractor's Representative has full authority to act for Contractor hereunder. Contractor and County recognize that the services to be provided by Contractor's Representative pursuant to this Agreement are unique: accordingly, Contractor's Representative shall not be changed during the Term of the Agreement without County's written consent. County reserves the right to terminate this Agreement pursuant to section 7.1 "Termination for Default" if Contractor's Representative should leave Contractor's employ, or if, in County's judgment, the work hereunder is not being performed by Contractor's Representative.
- 1.3 Contractor as Independent Contractor. Contractor is, for all purposes of this Agreement, an independent contractor, and neither Contractor nor Contractor's employees or subcontractors shall be deemed to be employees of the County. Contractor shall perform its obligations under this Agreement according to the Contractor's own means and methods of work, which shall be in the exclusive charge and under the control of the Contractor, and which shall not be subject to control or supervision by County except as to the results of the work. County hereby delegates to Contractor any and all responsibility for the safety of Contractor's employees, which shall include inspection of property to identify potential hazards. Neither Contractor nor Contractor's employees or subcontractors shall be entitled to any benefits to which County employees are entitled, including without limitation, overtime, retirement benefits, workers' compensation benefits and injury leave.
- 1.4 Contractor's Agents and Employees or Subcontractors.

Contractor shall obtain, at Contractor's expense, all agents, employees, subcontractors, and consultants required for Contractor to perform its duties under this Agreement, and all such services shall be performed by Contractor's Representative, or under Contractor's Representatives' supervision, by persons authorized by law to perform such services. Retention by Contractor of any agent, employee, subcontractor, or consultant shall be at Contractor's sole cost and expense, and County shall have no obligation to pay Contractor's agents, employees subcontractors, or consultants; to support any such person's or entity's claim against the Contractor; or to defend Contractor against any such claim.

In the event any subcontractor or consultant is utilized by Contractor for any portion of the project, Contractor retains the prime responsibility for carrying out all the terms of this Agreement, including the responsibility for performance and ensuring the availability and retention of records of subcontractors and consultants in accordance with this Agreement.

- 1.4.1 "Related Subcontract" means an agreement to furnish, or the furnishing of, supplies, materials, equipment, or services of any kind to Contractor or any higher tier subcontractor in the performance of some or all of the work in this Agreement. Related Subcontracts includes consultant agreements, which are defined as agreements for services

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

rendered, or the rendering of services, by persons who are members of a particular profession or possess as special skill and who are not officers or employees of the Contractor. Examples include those services acquired by Contractor or a subcontractor in order to enhance their legal, economic, financial, or technical positions. Professional and consultant services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance, such as studies, analyses, evaluations, liaison with government officials, or other forms or representation. Related Subcontracts shall not include agreements for ancillary goods or services, or consulting services intended to support Contractor in a general manner not specific to the work performed under this Agreement. "Related Subcontractor" means an individual or entity holding or performing a Related Subcontract.

- 1.4.2 Required Subcontract Provisions: Contractor shall notify all Related Subcontractors of Contractor's relationship to County. Contractor shall include in its Related Subcontracts and require Related Subcontractors' compliance with the provisions of Articles 3, 7, 8, 9, 10, 11, 13, 14 and 16, and section 4.6.1 of Article 4, hereunder except altered as necessary for proper identification of the contracting parties.
 - 1.4.3 Contractor shall provide COR with copies of all Related Subcontracts entered into by Contractor within thirty (30) days after the effective date of the Related Subcontract, or within thirty (30) days of the effective date of this Agreement if such Related Subcontract is already in existence at that time.
 - 1.4.4 County Approval: Any Related Subcontract that is in excess of fifty thousand dollars (\$50,000) or twenty five percent (25%) of the value of this Agreement, whichever is less; or a combination of Related Subcontracts to the same individual or firm for the Agreement period, the aggregate of which exceeds fifty thousand dollars (\$50,000) or twenty five percent (25%) of the value of this Agreement, whichever is less; or any Related Subcontract for professional medical or mental health services, regardless of value, must have prior concurrence of the COR.
- 1.5 Offshore Prohibition. Except where Contractor obtains the County's prior written approval, Contractor shall perform the work of this Agreement only from or at locations within the United States. Any County approval for the performance of work outside of the United States shall be limited to the specific instance and scope of such written approval, including the types of work and locations involved. Notwithstanding the foregoing, this section shall not restrict the country or countries of origin of any assets purchased to provide the work hereunder; provided that when such assets are used to provide the work, such assets shall be used only from or at locations within the geographic boundaries of the United States.
- 1.6 DVB Participation. If this Agreement resulted from a solicitation containing Disabled Veteran Business ("DVB") requirements and forms, such requirements and Contractor's submitted forms are incorporated herein by reference to the extent not included as an Exhibit to this Agreement. Contractor shall make all commercially reasonable efforts to comply with all such DVB requirements, including meeting the DVB Percent of Utilization on Contractor's DVB Subcontractor Participation Plan. Contractor shall maintain a rate of DVB utilization throughout the term of this Agreement that is reasonably in alignment with the progress of the Agreement (e.g., term, utilization, deliverables). Contractor shall provide to County, upon request, documentation sufficient to verify Contractor's compliance with such requirements.
- If in County's determination, Contractor is not in compliance with all DVB requirements, County may take corrective action, which may include (i) requiring Contractor to submit a corrective action plan acceptable to County detailing actions the Contractor will take to fulfill its DVB requirements and/or (ii) withholding of payments to Contractor equivalent to the amount of DVB underutilization. Such corrective actions shall be in addition to any other remedies the County may have under this Agreement or at law or equity.
- 1.7 Preferred Vendor. If this Agreement resulted from a solicitation where Contractor claimed Preferred Vendor status in its response per section 405 of the San Diego County Administrative Code, Contractor shall perform a commercially useful function (as that term is defined in California Military and Veterans Code § 999 or successor statute) throughout the term of this Agreement.

ARTICLE 2
SCOPE OF WORK

- 2.1 Statement of Work. Contractor shall perform the work described in the "Statement of Work" attached as Exhibit A to this Agreement, and by this reference incorporated herein, except for any work therein designated to be performed by County.
 - 2.1.1 Evaluation Studies. Contractor shall participate as requested by the County in research and/or evaluative studies designed to show the effectiveness and/or efficiency of Contractor services or to provide information about Contractor's project.
- 2.2 Right to Acquire Equipment and Services. Nothing in this Agreement shall prohibit the County from acquiring the same type or equivalent equipment and/or service from other sources, when deemed by the County to be in its best interest.

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

- 2.3 Responsibility for Equipment. County shall not be responsible nor be held liable for any damage to persons or property consequent upon the use, misuse, or failure of any equipment used by Contractor or any of Contractor's employees, even though such equipment may be furnished, rented, or loaned to Contractor by County. The acceptance or use of any such equipment by Contractor or Contractor's employees shall be construed to mean that Contractor accepts full responsibility for and agrees to exonerate, indemnify, and hold harmless County from and against any and all claims for any damage whatsoever resulting from the use, misuse, or failure of such equipment, whether such damage be to the employee or property of Contractor, other Contractors, County, or other persons. Equipment includes, but is not limited to material, computer hardware and software, tools, or other things.
- 2.3.1 Contractor shall repair or replace, at Contractor's expense, all County equipment or fixed assets that are damaged or lost as a result of Contractor negligence.
- 2.4 Non-Expendable Property Acquisition. County retains title to all non-expendable property provided to Contractor by County, or which Contractor may acquire with funds from this Agreement if payment is on a cost reimbursement basis, including property acquired by lease purchase Agreement. Contractor may not expend funds under this Agreement for the acquisition of non-expendable property having a unit cost of \$5,000 or more and a normal life expectancy of more than one year without the prior written approval of COR. Contractor shall maintain an inventory of non-expendable equipment, including dates of purchase and disposition of the property. Inventory records on non-expendable equipment shall be retained, and shall be made available to the County upon request, for at least three years following date of disposition. Non-expendable property that has value at the end of the Agreement (e.g. has not been depreciated so that its value is zero), and to which the County may retain title under this paragraph, shall be disposed of at the end of the Agreement as follows: At County's option, it may: 1) have Contractor deliver to another County contractor or have another County contractor pick up the non-expendable property; 2) allow Contractor to retain the non-expendable property provided that Contractor submits to the County a written statement in the format directed by the County of how the non-expendable property will be used for the public good; or 3) direct the Contractor to return to the County the non-expendable property.

ARTICLE 3
DISENTANGLEMENT

3.1 General Obligations.

Upon the expiration or termination of all or a portion of the services provided hereunder ("Transitioning Services,"), the County may elect to have such services, substantially similar services, or follow-on services ("Disentangled Services") performed by County or one or more separate contractors ("Replacement Provider"). Contractor shall take all actions necessary to accomplish a complete and timely transition of the Disentangled Services ("Disentanglement") without any material impact on the services. Contractor shall cooperate with County and otherwise take all steps reasonably required to assist County in effecting a complete and timely Disentanglement. Contractor shall provide Replacement Provider with all information regarding the services and any other information needed for Disentanglement.

Contractor shall provide for the prompt and orderly conclusion of all work required under this Agreement, as County may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly Disentanglement.

3.2 Disentanglement Process.

Contractor and County shall discuss in good faith a plan for Contractor's Disentanglement that shall not lessen in any respect Contractor's Disentanglement obligations.

If County requires the provision of Transitioning Services after expiration or termination of the Agreement or Disentanglement work not otherwise required under this Agreement, for which additional compensation will be due, such services shall be compensated at: (i) the applicable rates in Agreement or a reasonable pro-rata of those prices, or (ii) if no applicable rates apply, no more than Contractor's costs. Such work must be approved in writing by County approval of a written Disentanglement plan or separately in writing and is subject to the Compensation clause on the signature page.

Contractor's obligation to provide Disentanglement services shall not cease until all Disentanglement obligations are completed to County's reasonable satisfaction, including the performance by Contractor of all Specific Obligations of Contractor. County shall not require Contractor to perform Transitioning Services beyond 12 months after expiration or termination, provided that Contractor meets all Disentanglement obligations and other obligations under Agreement.

3.3 Specific Obligations.

The Disentanglement shall include the performance of the following specific obligations ("Specific Obligations"):

3.3.1 No Interruption or Adverse Impact

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

Contractor shall cooperate with County and Replacement Provider to ensure a smooth Disentanglement, with no interruption of or adverse impact to Disentangled Services, Transitioning Services, other work required under the Agreement, or services provided by third parties.

3.3.2 Client Authorizations.

Contractor shall obtain from clients served by Contractor all client consents or authorizations legally necessary to transfer client data to Replacement Provider.

3.3.3 Leases, Licenses, and Third-Party Agreements.

Contractor shall procure at no charge to County all authorizations necessary to grant Replacement Provider the use and benefit of any third-party agreements pending their conveyance or assignment to Replacement Provider.

Contractor, at its expense, shall convey or assign to Replacement Provider leases, licenses, and other third-party agreements procured under this Agreement, subject to written approval of the Replacement Provider (and County, if Replacement Provider is other than County).

Without limiting any other provision of this Agreement, Contractor shall reimburse County for any losses resulting from Contractor's failure to comply with any terms of any third-party agreements prior to the date of conveyance or assignment.

3.3.4 Return, Transfer, and Removal of Assets.

Contractor shall return to County all County assets in Contractor's possession, pursuant to section 2.4 of this Agreement.

County shall be entitled to purchase at net book value Contractor assets used primarily for the provision of Disentangled Services to or for County, other than those assets expressly identified as not being subject to this provision. Contractor shall promptly remove from County's site any Contractor assets that County, or its designee, chooses not to purchase under this provision.

3.3.5 Delivery of Documentation.

Notwithstanding section 13.5 of this Agreement, and without limiting Contractor's obligations thereunder, Contractor shall deliver to Replacement Provider (and/or County, if Replacement Provider is other than County), all documentation and data necessary for Disentanglement.

ARTICLE 4
COMPENSATION

County will pay Contractor in accordance with Exhibit C Payment Schedule and this Article 4, for the work specified in Exhibit A Statement of Work (SOW), not to exceed the maximum compensation as set forth on signature page. Contractor shall employ and maintain an accounting and financial system to effectively monitor and control costs and assure accurate invoicing and performance under this Agreement.

4.1 General Principles. Contractor shall comply with generally accepted accounting principles, good business practices, San Diego County Code of Administrative Ordinances section 472, and the cost principles published by the federal Office of Management and Budget (OMB), including 2 CFR 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS "The Uniform Guidance," which can be viewed at https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title02/2cfr200_main_02.tpl. Contractor shall comply with all applicable federal, State, and other funding source requirements.

4.1.1 Fiscal Year. The County's fiscal year runs from July 1 through June 30 ("County Fiscal Year").

4.2 Compensation.

4.2.1 Contractor shall be entitled to compensation only upon completion and acceptance of a deliverable or portion of work as described in the Payment Schedule ("Services"). Services shall include any additional or as-needed services specified in the SOW and Pricing Schedule and pre-approved in writing by COR or authorized by County task order issued in accordance with this Agreement ("As-Needed Services").

4.2.1.1 Contractor shall be entitled to reimbursement for incidental expenses associated with any such portions of the work only when specifically allowed for in the SOW and Pricing Schedule ("Reimbursable Expenses"), and only upon completion and acceptance of the Services for which they were incurred unless earlier reimbursement is otherwise authorized under this Agreement. Compensation for Reimbursable Expenses shall be at cost.

4.2.1.2 Where travel, lodging, or meal expenses ("Travel Expenses") are allowable Reimbursable Expenses, rates must not exceed County-authorized rates set forth in San Diego County Administrative Code section 472.

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

Should Contractor incur Travel Expenses greater than the County-authorized rates, Contractor shall not be entitled to reimbursement for the difference between the County-authorized rate for each category and the actual cost.

4.3 Invoices.

4.3.1 Contractor shall invoice monthly for completed and accepted Services performed in the prior month. Completed fixed-price deliverables may be invoiced upon acceptance.

4.3.2 Contractor shall submit invoices to the COR that are completed and submitted in accordance with written COR instructions and are in compliance with all Agreement terms.

4.3.2.1 Contractor shall provide accurate invoices with sufficient detail and supporting documentation for County verification. Invoices must reference the Agreement number (and task order, if applicable), contain a detailed listing of each deliverable or portion of work, including the pay point, target, accomplishment, unit price, percentage completion, and appropriate calculations where applicable.

4.3.2.2 Contractor invoices shall include the following language:

I certify, under penalty of perjury under the laws of the State of California, that the deliverables and/or services invoiced were delivered and/or performed specifically for this Agreement in accordance with and compliance to all terms and conditions set forth therein.

4.3.3 Contractor requests for payment of authorized Reimbursable Expenses must be included in the invoice for the associated Services, unless previously invoiced in accordance with this Agreement.

4.4 Payments. Contractor shall be entitled to payment only upon County approval of a correct and substantiated invoice. Payment terms are, unless otherwise specified by County, thirty (30) days from the later of: (i) performance of work under the Agreement entitling Contractor to payment, (ii) County receipt of a correct and substantiated invoice, and (iii) County receipt of all substantiating information. The County at its sole discretion may issue partial payment where only a portion of an invoice is correct and substantiated. Payment shall be deemed to have been made on the date that County submits electronic payment or mails a warrant or check. The County is precluded from making payments prior to receipt of services (advance payments).

4.5 Full Compensation. The compensation set forth in this Agreement shall constitute the full and complete payment for Contractor's performance of the services set forth herein. Contractor shall not be entitled to any additional payment for services rendered. Contractor shall not be entitled to any compensation, reimbursement, ancillary benefits, or other consideration for services rendered beyond that specified in Agreement.

4.6 Prompt Payment for Vendors and Subcontractors

4.6.1 Unless otherwise set forth in this section 4.6, Contractor shall promptly pay Related Subcontractors for satisfactory performance of work required by this Agreement. Such prompt payment shall be no later than thirty (30) days after Contractor receives payment for such services from County, and Contractor shall apply such payments to the payment of the Related Subcontractor(s) that performed the work.

4.6.2 If Contractor determines that any payment otherwise due such Related Subcontractor is subject to withholding in accordance with a Related Subcontract, Contractor shall:

4.6.2.1 Provide written notice to the Related Subcontractor and COR within three (3) business days of such withholding stating the amount to be withheld, the basis for the withholding, and, if applicable, the cure required of the Related Subcontractor in order to receive payment of the amounts withheld; and

4.6.2.2 Reduce the Related Subcontractor's payment by an amount not to exceed the amount specified in the notice furnished under paragraph 4.6.3.1 above.

4.6.3 Contractor shall not include in any invoice to the County amounts that the Contractor has withheld or intends to withhold from a Related Subcontractor for failure to satisfactorily perform work in a manner required by this Agreement. If such withholding determination is made after submitting an invoice to the County, Contractor shall submit to County a revised invoice omitting or crediting such amount. Contractor shall not include such amounts in any subsequent invoices unless the Related Subcontractor has cured the basis for withholding.

4.7 Partial Payment. Contractor shall be paid only for work performed in accordance with this Agreement. If Contractor fails to perform a portion of the work or fails to perform some or all of the work in accordance with this Agreement, County, at its sole discretion, may provide partial payment to Contractor to reflect the reasonable value of work properly performed.

4.8 Withholding of Payment. Without limiting any other provision of this Agreement, County may withhold payment, in whole or in part, if any of the following exist:

4.8.1 Missing Information. Contractor has not provided to County any reports, data, audits, or other information required for Agreement administration, for reporting or auditing purposes, or by State, federal, or other funding source.

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

- 4.8.2 Misrepresentation. Contractor, with or without knowledge, made any misrepresentation of a substantial and material nature with respect to any information furnished to County
- 4.8.3 Unauthorized Actions by Contractor. Contractor took any action under this Agreement that required County approval without having first received such approval.
- 4.8.4 Breach. In the County's determination, Contractor is, or at the time of performance was, in breach of any of the terms of this Agreement.
 - 4.8.5 Wage Theft. Contractor has a judgment rendered against it by the California Division of Labor Standards Enforcement (DLSE), other state labor compliance body, or the United States Department of Labor that is unsatisfied. In such event, County may withhold payment from Contractor in the amount of such unsatisfied judgment until such judgment has been discharged.
- 4.9 Disallowance. County may disallow payment at any time if it determines that the basis for the payment is or was not eligible for compensation under this Agreement. If County makes payment to Contractor that is later disallowed by the County, State or federal government, or other funding source, County shall be entitled to prompt recovery of funds in accordance with Article 12.
- 4.10 Maximum Price. During the performance period of this Agreement, the maximum price for the same or similar items and/or services shall not exceed the lowest price at which Contractor then offers the items and/or services to its most favored customer.
- 4.11 Overpayments. If Contractor becomes aware of a duplicate contract financing or invoice payment or that County has otherwise overpaid on a contract financing or invoice payment, Contractor shall immediately notify the COR and County shall be entitled to prompt recovery of funds in accordance with Article 12.
- 4.12 Availability of Funding. The County's obligation for payment under this Agreement is contingent upon the availability of funding from which payment can be made. No legal liability on the part of the County shall arise for payment beyond the end of the County Fiscal Year for which funds are designated by the County. In the event that federal, State, or County funding ceases or is reduced, the County shall, in its sole discretion and without limiting any other provision of this Agreement, have the right to terminate or suspend this Agreement, or to reduce compensation and service levels proportionately.
- 4.13 Rate of Expense. Contractor shall control its rate of expense throughout the term of this Agreement such that it is reasonably in alignment with the progress of the Agreement, inclusive of term, achievement towards objectives, anticipated revenue, deliverables, and other applicable factors. Contractor shall provide to County, upon request, documentation sufficient to verify Contractor's compliance with such requirements.
 - 4.13.1 Contractor shall promptly inform the COR if its rate of expense exceeds, or is anticipated to exceed, the progress of this Agreement or would result in expenses that exceed the maximum Agreement amount or budget. In no event, however, shall Contractor's invoiced amounts exceed the maximum Agreement amount or budget.
 - 4.13.2 If the Agreement term, Initial Term, or any Option Period originates in one County Fiscal Year and ends in another County Fiscal Year, Contractor shall not exceed the amounts reasonably allocated to each of the County Fiscal Years based on the monthly budget or other rate of expense.

ARTICLE 5
AGREEMENT ADMINISTRATION

- 5.1 The Director of the Department of Purchasing and Contracting or designated Department of Purchasing and Contracting official is the contracting officer for this Agreement ("Contracting Officer").
- 5.2 County's Agreement Administrator. The County has designated the individual identified on the signature page as the Contracting Officer's Representative ("COR"). The COR will coordinate the County's administration of this Agreement.
 - 5.2.1 The COR is designated to receive and approve Contractor invoices for payment, audit and inspect records, inspect Contractor services, and provide other technical guidance as required.
 - 5.2.2 The COR is not authorized to make Changes to this Agreement, except for administrative adjustments, such as line-item budget changes or adjustments to the service requirements. that do not change the purpose or intent of the Statement of Work, the Terms and Conditions, the Agreement Term, or the total Agreement price ("Administrative Adjustments"). Each Administrative Adjustment shall be in writing and signed by COR and Contractor.
- 5.3 Agreement Progress Meeting. The COR and other County personnel, as appropriate, will meet periodically with the Contractor to review the Agreement performance, with the COR serving as meeting chair. At these meetings the COR will apprise the Contractor of how the County views the Contractor's performance and the Contractor will apprise the County of problems, if any, being experienced. The Contractor shall also notify the Contracting Officer (in writing) of any work being performed, if any, that the Contractor considers being over and above the requirements of the Agreement. Appropriate action shall be taken to resolve outstanding issues. The minutes of these meetings will be reduced to writing and signed by the COR and the Contractor. Should

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

the Contractor not concur with the minutes, the Contractor shall set out in writing any area of disagreement within 10 days. Appropriate action will be taken to resolve any areas of disagreement.

ARTICLE 6
CHANGES

- 6.1 Changes. Changes to this Agreement may only be made by Administrative Adjustment, Change Order, or amendment, in accordance with this Article 6. No other modification of this Agreement shall be valid.
- 6.1.1 Administrative Adjustment. Changes that do not change the purpose or intent of the Statement of Work, the Terms and Conditions, the Agreement Term, or the total Agreement price of the Agreement, such as line-item budget changes or adjustments to the service requirements, (“Administrative Adjustments”) may be made if in writing and signed by COR and Contractor
- 6.1.2 Change Order. The County may at any time, by written order, make Changes within the general scope of this Agreement (“Change Order”). If any Change Order causes an increase or decrease in the cost or time required for the performance of the work under this Agreement, an equitable adjustment shall be made to the price, delivery schedule, or both.
- 6.1.2.1 Contractor must assert any claim for equitable adjustment within thirty (30) days from the date of receipt by the Contractor of the Change Order; however, the Contracting Officer may receive and act upon any such claim asserted at any time prior to final payment under this Agreement where the facts justify such action. Where the cost of property made obsolete or excess as a result of a Change Order is included in the Contractor’s claim for equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any equitable adjustment shall be a dispute concerning a question of fact within the meaning of Article 15 “Disputes”. However, nothing in this section shall excuse the Contractor from proceeding with this Agreement as changed.
- 6.1.3 Amendment. The County and Contractor may modify this Agreement by written amendment signed by the Contracting Officer and Contractor.

ARTICLE 7
SUSPENSION, DELAY, AND TERMINATION

- 7.1 Termination for Default. In the event of Contractor’s breach of this Agreement, County shall have the right to terminate this Agreement in whole or in part.
- 7.1.2 Prior to termination for default, Contracting Officer will send Contractor written notice specifying the default. Contractor shall have ten (10) days from issuance (unless a different time is given in the notice) to respond to the notice as directed by County to acknowledge the default or show cause as to why Contractor is not in default. Such notice may provide Contractor the opportunity to cure the default or to demonstrate progress towards curing the default. If Contractor fails to respond, or if Contractor’s response is not satisfactory to the County, County may terminate this Agreement for default upon written notice from Contracting Officer.
- 7.1.3 If County determines that the default contributes to the curtailment of an essential service; poses an immediate threat to life, health, or property; or constitutes fraud or other serious misconduct, County may terminate this Agreement for default by written notice from the Contracting Officer without the notice described in section 7.1.2 above.
- 7.1.4 In the event of termination for default, all finished or unfinished documents, and other materials, prepared by Contractor under this Agreement shall become the sole and exclusive property of County.
- 7.1.5 If, after termination for default, it is determined for any reason that Contractor was not in default under this Agreement, the rights and obligations of the parties shall be the same as if terminated for convenience under section 7.5 “Termination for Convenience.”
- 7.2 RESERVED
- 7.3 Failure to Perform. Contractor shall immediately notify the COR upon learning that it has, or that it is reasonably foreseeable that it will, fail to perform or timely perform its obligations under this Agreement for any reason, including, but not limited to, a labor dispute, emergency, epidemic, pandemic, or supply chain shortage. In such event, Contractor shall, upon request, prepare and deliver to the COR a written mitigation plan. Nothing in this section relieves the Contractor of its obligations under this Agreement.
- 7.4 Reduction in Funding. In the event there is a reduction of funds made available by County to Contractor under this or subsequent agreements, the County of San Diego and its departments, officers and employees shall incur no liability to Contractor and shall be held harmless from any and all claims, demands, losses, damages, injuries, or liabilities arising directly or from such action.

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

- 7.5 Termination for Convenience. The County may, by written notice from Contracting Officer, terminate this Agreement for convenience, in whole or in part, at any time. Upon receipt of such notice, Contractor shall promptly report to County all undelivered or unaccepted work performed in accordance with this Agreement prior to termination ("Incomplete Work"). Contractor may, at County's option, be required to complete some or all Incomplete Work during Disentanglement.
- 7.5.1 The County shall pay Contractor as full compensation for work performed and costs of termination:
- 7.5.1.1 The unit or pro rata price for any delivered and accepted portion of the work.
- 7.5.1.2 Actual and reasonable Contractor costs for Incomplete Work not mitigable or otherwise recoverable by Contractor. Such compensation shall not exceed the unit or pro rata price due to Contractor had the work been completed.
- 7.5.2 In no event shall the County be liable for any loss of profits or any other consequential damages.
- 7.5.3 County's termination of this Agreement for convenience shall not preclude it from changing the termination to a default, as set forth in section 7.1 of this Agreement, nor from taking any action in law or equity against Contractor for:
- 7.5.3.1 Fraud, waste, or abuse of Agreement funds, or
- 7.5.3.2 Improperly submitted claims, or
- 7.5.3.3 Any failure to perform the work in accordance with the Statement of Work, or
- 7.5.3.4 Any breach of any term or condition of the Agreement, or
- 7.5.3.5 Any actions under any warranty, express or implied, or
- 7.5.3.6 Any claim of professional negligence, or
- 7.5.3.7 Any other matter arising from or related to this Agreement, whether known, knowable, or unknown before, during, or after the date of termination.
- 7.5 Suspension of Work. The Contracting Officer may order Contractor, in writing, to suspend, delay, or interrupt all or part of the work of this Agreement for the period of time that the Contracting Officer determines appropriate. County reserves the right to prohibit, without prior notice, Contractor or Contractor's employees, directors, officers, agents, subcontractors, vendors, consultants, or volunteers from 1) accessing County data systems and County owned software applications, including websites, domain names, platforms, physical files, 2) treating County's patients, clients, or facility residents, or 3) providing any other services under this Agreement.

ARTICLE 8
COMPLIANCE WITH LAWS AND REGULATIONS

- 8.1 Compliance with Laws and Regulations. Contractor shall at all times perform its obligations hereunder in compliance with all applicable federal, State, County, and local laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws and keep in effect any and all licenses, permits, notices and certificates as are required. Contractor shall further comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health, and sanitation.
- 8.2 Contractor Permits and License. Contractor certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to the County, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all existing foreign or domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of services hereunder. The County reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of any services hereunder.
- 8.3 Equal Opportunity. Contractor shall comply with federal and State equal employment opportunity laws, including, but not limited to, the provisions of Title VII of the Civil Rights Act of 1964 in that it will not discriminate against any individual with respect to his or her compensation, terms, conditions, or privileges of employment nor shall Contractor discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.
- 8.4 Affirmative Action. Each Contractor of services and supplies employing fifteen (15) or more full-time permanent employees, shall comply with the Affirmative Action Program for Vendors as set forth in Article IIIk (commencing at section 84) of the San Diego County Administrative Code, which program is incorporated herein by reference. A copy of this Affirmative

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

Action Program will be furnished upon request by COR or from the County of San Diego Internet website (www.sandiegocounty.gov).

- 8.5 Non-Discrimination. Contractor shall ensure that services and facilities are provided without regard to ethnic group identification, race, color, nation origin, creed, religion, age, sex, physical or mental disability, political affiliation or marital status in accordance with applicable laws, including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), section 162 (a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 324), section 504 of the Rehabilitation Act of 1973, The Civil Rights Restoration Act of 1987 (P.L. 100-209), Executive Order 12898 (February 11, 1994), Executive Order 13166 (August 16, 2000), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000-e), the Age Discrimination Act of 1975 (42 U.S.C. 6101), Article 9.5, Chapter 1, Part 1, Division 2, Title 2 (section 11135, et seq.) of the California Government Code, Title 9, Division 4, Chapter 6 (section 10800, et seq.) of the CCR and California Dept of Social Services Manual of Policies and Procedures (CDSS MPP) Division 21.
- 8.6 AIDS Discrimination. Contractor shall not deny any person the full and equal enjoyment of, or impose less advantageous terms, or restrict the availability of, the use of any County facility or participation in any County funded or supported service or program on the grounds that such person has Human Immunodeficiency Virus (HIV) or Acquired Immune Deficiency Syndrome (AIDS) as those terms are defined in Title 3, Division 2, Chapter 8, section 32.803, of the San Diego County Code of Regulatory Ordinances.
- 8.7 American with Disabilities Act (ADA) 1990. Contractor shall not discriminate against qualified people with disabilities in employment, public services, transportation, public accommodations, and telecommunications services in compliance with the Americans with Disabilities Act (ADA), the California Fair Employment and Housing Act (FEHA), and California Administrative Code Title 24.
- 8.8 Political Activities Prohibited. None of the funds, provided directly or indirectly, under this Agreement shall be used for any political activities or to further the election or defeat of any candidate for public office. Contractor shall not utilize or allow its name to be utilized in any endorsement of any candidate for elected office. Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities, or activities for or against the election of a candidate for an elected office.
- 8.9 Lobbying. Contractor agrees to comply with the lobbying ordinances of the County and to assure that its officers and employees comply before any appearance before the County Board of Supervisors. Except as required by this Agreement, none of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before State and federal Legislatures, the Board of Supervisors of the County, or before any other local governmental entity. This provision shall not preclude Contractor from seeking necessary permits, licenses and the like necessary for it to comply with the terms of this Agreement.
- 8.10 Religious Activity Prohibited. There shall be no religious worship, instructions or proselytization as part of or in connection with the performance of this Agreement.
- 8.11 Audit Requirement.
- 8.11.1 Contractor shall annually engage a Licensed Certified Public Accountant licensed to perform audits and attests in the State of California to conduct an annual financial audit of the organization. Contractors that expend \$750,000 or more of federal grant funds per year shall also have an audit conducted in compliance with Government Auditing Standards, which includes Single Audit Act Amendments and the Compliance Supplement (2 CFR part 200 App. XI). Contractors that are commercial organizations (for-profit) are required to have a non-federal audit if, during its fiscal year, it expended a total of \$750,000 or more under one or more HHS awards. 45 CFR part 74.26(d) incorporates the threshold and deadlines of the Compliance Supplement but provides for-profit organizations two options regarding the type of audit that will satisfy the audit requirements. Contractor shall include a clause in any agreement entered into with an audit firm, or notify the audit firm in writing prior to the audit firm commencing its work for Contractor, that the audit firm shall, pursuant to 31 U.S.C. 7503, and to the extent otherwise required by law, provide access by the federal government or other legally required entity to the independent auditor's working papers that were part of the independent auditor's audit of Contractor. Contractor shall submit two (2) copies of the annual audit report, the audit performed in accordance with the Compliance Supplement, and the management letter to the County fifteen (15) days after receipt from the independent Certified Public Accountant but no later than nine (9) months after the Contractor's fiscal year end.
- 8.11.2 Contractor shall immediately notify County upon learning that Contractor's independent Certified Public Accountant may or will issue a disclaimer of opinion due to substantial doubt of Contractor's ability to continue as a going concern.
- 8.12 Board of Supervisors' Policies. Contractor represents that it is familiar, and shall use its best efforts to comply, with the following policies of the Board of Supervisors, available on the County of San Diego website:

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

- 8.12.1 Board Policy B-67, which encourages the County's Contractors to offer products made with recycled materials, reusable products, and products designed to be recycled to the County in response to the County's requirements; and
- 8.12.2 Board Policies B-53 and B-39a, which encourage the participation of small and veteran owned businesses in County procurements; and
- 8.12.3 Zero Tolerance for Fraudulent Conduct in County Services. Contractor shall comply with County of San Diego Board of Supervisors Policy A-120 "Zero Tolerance for Fraudulent Conduct in County Services." There shall be "Zero Tolerance" for fraud committed by contractors in the administration of County programs and the provision of County services. Upon proven instances of fraud committed by contractors in connection with their performance under the Agreement, said contractor shall be subject to corrective action up to and including termination of the Agreement; and
- 8.12.4 Interlocking Directorate. Per Board Policy A-79, if Contractor is a non-profit corporation, Contractor shall not subcontract any work under this Agreement with a related for-profit subcontractor where an interlocking directorate, management, or ownership relationship exists, unless specifically authorized by the Board of Supervisors; and
- 8.12.5 Drug and Alcohol-Free Work Environment. The County of San Diego, in recognition of its responsibility to provide a safe, healthy, and productive work environment and perform services as safely, effectively, and efficiently as possible, has adopted a requirement for a work environment not adversely affected or impaired in any way by the use or presence of alcohol or drugs in Board Policy C-25 County of San Diego Drug and Alcohol Use Policy.
- 8.12.5.1 As a material condition of this Agreement, the Contractor agrees that Contractor and Contractor's employees, while performing services or using County equipment pursuant to Agreement:
- 8.12.5.1.1 Shall not be in any way impaired because of being under the influence of alcohol or a drug.
- 8.12.5.1.2 Shall not possess, consume, or be under the influence of alcohol and/or an illegal drug.
- 8.12.5.1.3 Shall not sell, offer, or provide alcohol or an illegal drug to another person; provided, however, that the foregoing restriction shall not be applicable to a Contractor or Contractor employee who as part of the performance of normal job duties and responsibilities prescribes or administers medically prescribed drugs.
- 8.12.5.2 Contractor shall inform all employees who are performing applicable services of the County's Board Policy C-25 and the above prohibitions.
- 8.13 Cartwright Act. Following receipt of final payment under the Agreement, Contractor assigns to the County all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright act (Chapter 2) (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County under this Agreement.
- 8.14 Hazardous Materials. Contractor shall comply with all Environmental Laws and all other laws, rules, regulations, and requirements regarding Hazardous Materials, health and safety, notices, and training. Contractor agrees that it will not store any Hazardous Materials at any County facility for periods in excess of ninety (90) days or in violation of the applicable site storage limitations imposed by Environmental Law. Contractor agrees to take, at its expense, all actions necessary to protect third parties, including, without limitation, employees, and agents of the County, from any exposure to Hazardous Materials generated or utilized in its performance under this Agreement. Contractor agrees to report to the appropriate governmental agencies all discharges, releases, and spills of Hazardous Materials that are required to be reported by any Environmental Law and to immediately notify the County of it. Contractor shall not be liable to the County for the County's failure to comply with, or violation of, any Environmental Law. As used in this section, the term "Environmental Laws" means any and all federal, state, or local laws or ordinances, rules, decrees, orders, regulations, or court decisions (including the so-called "common law"), including, but not limited to, the Resource Conservation and Recovery Act, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions or other similar substances or conditions. As used in this section the term "Hazardous Materials" means any chemical, compound, material, substance or other matter that: (a) is a flammable, explosive, asbestos, radioactive nuclear medicine, vaccine, bacteria, virus, hazardous waste, toxic, overtly injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (b) is controlled, referred to, designated in or governed by any Environmental Laws; (c) gives rise to any reporting, notice or publication requirements under any Environmental Laws, or (d) is any other material or substance giving rise to any liability, responsibility or duty upon the County or Contractor with respect to any third person under any Environmental Laws.
- 8.15 Clean Air Act and Federal Water Pollution Control Act.

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

8.15.1 Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, (42 U.S.C. §§ 7401 et seq.) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §§ 1251 et seq.). Contractor shall report each violation to the USDA and the appropriate EPA Regional Office as required.

8.16 Debarment, Exclusion, Suspension, and Ineligibility.

8.16.1 Contractor certifies that, to the best of its knowledge, and except as disclosed to County and acknowledged in writing by County prior to the execution of this Agreement, Contractor, its employees, directors, officers, agents, subcontractors, vendors, consultants, and volunteers:

8.16.1.1 Are not presently debarred, excluded, suspended, declared ineligible, voluntarily excluded, or proposed for debarment, exclusion, suspension, or ineligibility by any federal, state, or local department or agency; and

8.16.1.2 Have not within a 3-year period preceding this Agreement been convicted of, or had a civil or administrative judgment rendered against them for, the commission of fraud or a criminal offense or civil action in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction; violation of federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property; physical, financial or sexual abuse or misconduct with a patient or client, or medical negligence or malpractice;

8.16.1.3 Are not presently indicted or otherwise criminally, civilly, or administratively charged by a government entity (federal, State, or local) with commission of any of the offenses enumerated in the paragraph above; and

8.16.1.4 Are not presently the target or subject of any investigation, accusation, or charge related to the conduct of business by any federal, state, or local agency or law enforcement, licensing, certification, labor standards, occupational safety, ethics, or compliance body.

8.16.1.5 Are not proposed for debarment by any state, local, or federal department or agency.

8.16.1.6 Do not have a judgment rendered against them by a body described in 8.16.1.5 that is unsatisfied.

8.16.1.7 Have not within a three (3) year period preceding this Agreement (i) been found in violation or had a judgment rendered against them resulting from the type of investigation, accusation, or charge described in 8.16.1.5 or (ii) had one or more public transactions (federal, state, or local) terminated for cause or default.

8.16.2 Contractor shall have an ongoing duty during the term of this Agreement to disclose to the County any occurrence that would prevent Contractor from making the certifications contained in this section 8.16 on an ongoing basis. Such disclosure shall be made in writing to the COR and the County Office of Ethics and Compliance within five (5) business days of when Contractor discovers or reasonably believes there is a likelihood of such occurrence.

8.17 Display of Fraud Hotline Poster(s). As a material term and condition of this Agreement, Contractor shall:

8.17.1 Prominently display in common work areas within all business segments performing work under this Agreement County of San Diego Office of Ethics and Compliance Ethics Hotline posters;

8.17.2 Posters may be downloaded from the County Office of Ethics and Compliance website at: <http://www.sandiegocounty.gov/content/sdc/cao/oec.html>. Additionally, if Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website;

8.17.3 If Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, the Contractor need not display the County poster.

8.18 **False Claims Act Training.** Contractor shall, not less than annually, provide training on the Federal False Claims Act (31 USC 3729, et seq. or successor statutes) and State False Claims Act (California Government Code 12650, et seq. or successor statutes) to all employees, directors, officers, agents, Related Subcontractors, or volunteers providing services under this Agreement. Contractor shall maintain verification of this training. Contractor shall retain verifications in accordance with the Agreement requirement for retention of records

8.19 **Code of Ethics.** As a material term and condition of this Agreement, Contractor shall develop and implement a Code of Ethics or similar document and maintain it during the term of this Agreement. Additionally, Contractor shall train all employees and volunteers on the Code of Ethics, and all employees, volunteers, directors, officers, and agents shall certify that they have received training and have been provided an opportunity to ask questions of their employer regarding the Code of Ethics. Contractor shall retain these certifications in accordance with the Agreement's provision regarding retention of records

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

- 8.20 Compliance Program. Contractors with an agreement that exceeds more than \$250,000 in value annually shall establish, and maintain for the duration of this Agreement, a compliance program that meets the standards of Federal Sentencing Guidelines section 8B2.1 and 42 CFR 438.608, regardless of funding source or services.
- 8.21 Investigations. Unless prohibited by an investigating government authority, Contractor shall cooperate and participate fully in any investigation initiated by County relative to this Agreement. Upon County's request, Contractor shall promptly provide to County any and all documents, including any and all communications or information stored digitally, and make available for interviews any employee(s) of Contractor identified by County. Contractor further agrees to immediately notify County if any employee, director, officer, agent, subcontractor, vendor, consultant, or volunteer of Contractor comes under investigation by any federal, State, or local government entity with law enforcement or oversight authority over the Agreement or its funding for conduct arising out of, or related to, performance under this Agreement.

Contractor shall promptly make available to County all internal investigative results, findings, conclusions, recommendations, and corrective action plans pertaining to the investigation in its possession as requested by the County, unless otherwise protected by applicable law or privilege.

ARTICLE 9
CONFLICTS OF INTEREST; CONTRACTOR'S CONDUCT

- 9.1 Conflicts of Interest. Contractor presently has no interest, including but not limited to other projects or independent agreements, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor shall not employ any person having any such interest in the performance of this Agreement. Contractor shall not hire County's employees to perform any portion of the work or services provided for herein including secretarial, clerical, and similar incidental services except upon the written approval of County. Without such written approval, performance of services under this Agreement by associates or employees of County shall not relieve Contractor from any responsibility under this Agreement.
- 9.1.1 California Political Reform Act and Government Code Section 1090 Et Seq. Contractor acknowledges that the California Political Reform Act ("Act"), Government Code section 81000 et seq., provides that Contractors hired by a public agency, such as County, may be deemed to be a "public official" subject to the Act if the Contractor advises the agency on decisions or actions to be taken by the agency. The Act requires such public officials to disqualify themselves from participating in any way in such decisions if they have any one of several specified "conflicts of interest" relating to the decision. To the extent the Act applies to Contractor, Contractor shall abide by the Act. In addition, Contractor acknowledges and shall abide by the conflict-of-interest restrictions imposed on public officials by Government Code section 1090 et seq.
- 9.2 Conduct of Contractor.
- 9.2.1 Contractor shall inform the County of all Contractor's interests, if any, that are, or that Contractor believes to be, incompatible with any interests of the County.
- 9.2.2 Contractor shall not, under circumstances that might reasonably be interpreted as an attempt to influence the recipient in the conduct of his duties, accept any gratuity or special favor from individuals or organizations with whom the Contractor is doing business or proposing to do business, in accomplishing the work under this Agreement.
- 9.2.3 Contractor shall not use for personal gain or make other improper use of confidential information acquired in connection with this Agreement. In this connection, the term "confidential information" includes, but is not limited to, unpublished information relating to technological and scientific development; medical, personnel, or security records of individuals; anticipated materials requirements or pricing actions; and knowledge of selections of Contractors or subcontractors in advance of official announcement.
- 9.2.4 Contractor, its employees, directors, officers, agents, subcontractors, vendors, consultants, and volunteers shall not offer, directly or indirectly, any unlawful gift, gratuity, favor, entertainment, or other item(s) of monetary value to an employee or official of the County.
- 9.2.5 Referrals. Contractor further covenants that no referrals of clients through Contractor's intake or referral process shall be made to the private practice of any person(s) employed by the Contractor.
- 9.3 Prohibited Agreements. As required by section 67 of the San Diego County Administrative Code, Contractor certifies that it is not in violation of the provisions of section 67, and that Contractor is not, and will not subcontract with, any of the following:
- 9.3.1. Persons employed by County or of public agencies for which the Board of Supervisors is the governing body;
- 9.3.2. Profit-making firms or businesses in which employees described in sub-section 9.3.1, above, serve as officers, principals, partners, or major shareholders;

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

- 9.3.3. Persons who, within the immediately preceding twelve (12) months came within the provisions of the above sub-sections and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the Agreement, or (2) participated in any way in developing the Agreement or its service specifications; and
- 9.3.4. Profit-making firms or businesses, in which the former employees described in sub-section 9.3.3 above, serve as officers, principals, partners, or major shareholders.
- 9.4. Limitation of Future Agreements or Grants. It is agreed by the parties to the Agreement that Contractor shall be restricted in its future contracting with the County to the manner described below. Except as specifically provided in this section, Contractor shall be free to compete for business on an equal basis with other companies.
- 9.4.1 If Contractor, under the terms of the Agreement, or through the performance of tasks pursuant to this Agreement, is required to develop specifications or statements of work and such specifications or statements of work are to be incorporated into a solicitation, Contractor shall be ineligible to perform the work described within that solicitation as a prime or subcontractor under an ensuing County agreement. It is further agreed, however, that County will not, as additional work, unilaterally require Contractor to prepare such specifications or statements of work under this Agreement.
- 9.4.2 Contractor may not apply for nor accept additional payments for the same services contained in the Statement of Work.

ARTICLE 10
INDEMNITY AND INSURANCE

- 10.1 Indemnity. County shall not be liable for, and Contractor shall defend and indemnify County and the employees and agents of County (collectively "County Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Agreement or the work covered by this Agreement and arising either directly or indirectly from any act, error, omission or negligence of Contractor or its Contractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the sole passive negligent act or the concurrent negligent act, error or omission, whether active or passive, of County Parties. Contractor shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.

Without limiting the foregoing, Contractor's defense and indemnity obligations under this section shall specifically apply to any claim, suit, proceeding, demand, liability, loss, damage, or expense (including but not limited to attorneys' fees) arising from or relating to a claim that any work performed pursuant to this Agreement infringes a patent, copyright, moral right, trademark, trade secret, or other intellectual property right of a third party. Without limiting the generality of the foregoing, if any portion of any the same or County's use of the same is, or in Contractor's or County's opinion is likely to be, held to infringe the rights of any third party, Contractor shall at its expense either (i) procure the right for County to use the infringing item free of any liability or expense to County to the full extent contemplated by this Agreement; or (ii) replace it with a non-infringing equivalent reasonably satisfactory to County. Without limiting the County's other rights and Contractor's obligations under this section, County shall have the right to employ counsel at its own expense for, and participate in the defense of, any claim.

- 10.2 Insurance. Contractor shall, at its own cost and expense, obtain and keep in force and effect during the term of this Agreement, including all extensions, the insurance specified in Exhibit B Insurance Requirements. Evidence of insurance and any other documents or notices required to be provided to County pursuant to Exhibit B shall be submitted to the COR or as instructed by the COR. The provisions of section 10.1 are independent of, and shall in no way limit, Contractor's and its insurer's requirements under this section 10.2 and Exhibit B.

ARTICLE 11
AUDIT AND INSPECTION

- 11.1 Audit and Inspection.
- 11.1.1 Authorized federal, State and County representatives and their designated inspectors shall each have the following rights ("Audit and Inspection"):
- 11.1.1.1 to monitor, assess, and evaluate Contractor's performance under this Agreement;
- 11.1.1.2 to conduct audits, inspections, reviews of reports, and interviews of staff and participants involved with the services provided under this Agreement; and
- 11.1.1.3 to inspect the premises, services, materials, supplies, and equipment furnished or utilized in the performance of this Agreement and the workmanship of the work performed under this Agreement.

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

- 11.1.2 Contractor shall fully cooperate with any Audit and Inspection. County shall perform Audits and Inspections in a manner so as not to unduly interfere with Contractor's performance.
- 11.1.3 At any time during normal business hours and as often as County may deem necessary, Contractor shall make available to County, State or federal officials for examination all of its records with respect to all matters covered by this Agreement and will permit County, State or federal officials to examine and make excerpts or transcripts from such records, and to make audits of all invoices, materials, payrolls, records of personnel, information regarding clients receiving services, and other data relating to all matters covered by this Agreement.
- 11.1.4 If an audit is conducted, it will be done in accordance with generally accepted government auditing standards as described in "Government Auditing Standards," published for the United States General Accountability Office or the institute of Internal Auditors International Standards for the Professional Practice of Internal Auditing.
- 11.2 External Audits. Contractor shall provide the following to the COR:
- 11.2.1 a copy of all notifications of audits or pending audits by federal or State representatives regarding contracted services identified in this Agreement within three (3) business days of Contractor receiving notice of the audit.
- 11.2.2 a copy of the draft and final State or federal audit reports within twenty-four (24) hours of receiving them.
- 11.2.3 a copy of Contractor's response to the draft and final State or federal audit reports at the same time the response is provided to the State or federal representatives.
- 11.2.4 a copy of all responses made by a federal or State representative to a Contractor's audit response no later than three (3) business days after receiving it, unless prohibited by the government agency conducting the audit. This shall continue until the federal or State auditors have accepted and closed the audit.
- 11.3 Availability of Records. Contractor shall maintain and/or make available within San Diego County accurate books, accounting records, and other records related to Contractor's performance under this Agreement, including all records of costs charged to this Agreement during the term of this agreement and for the longer of: (i) a period of five (5) years after the date of final payment under this Agreement, (ii) for records that relate to appeals under Article 15 "Disputes," or litigation or the settlement of claims arising out of the performance of this Agreement, three (3) years after such appeals, litigation, or claims have been disposed of, and (iii) any retention period required by the funding source(s) of this Agreement. Contractor shall provide any requested records to County within two (2) business days of request. Contractor assertions of confidentiality shall not be a bar to full access to the records. County shall keep the materials described above confidential unless otherwise required by law.
- 11.3.1 Contractor shall maintain, and the records referred to in section 11.3 shall include, records sufficient to establish the reasonableness accuracy, completeness and currency of all cost or pricing data submitted to County in connection with this Agreement, including records of adequate price competition, negotiations, and cost or price analysis.
- 11.4 Outcome-Based Measures. Where outcome-based measures are set forth in the Statement of Work, Contractor shall maintain, and provide to County upon County's request as often as County deems necessary, complete, and accurate data documenting such outcome measures under this Agreement. Such data may include, but is not limited to, statistics on outcomes, rates of success, and completion rate of deliverables.
- 11.5 Full Cost Recovery. Contractor shall reimburse County for all direct and indirect expenditures incurred in conducting an audit, investigation, or inspection when Contractor is subsequently found to have violated terms of this Agreement.
- 11.6 Corrective Actions. If any services performed hereunder are found to have not been in conformity with the specifications and requirements of this Agreement, County shall have the right to (1) require the Contractor to perform the services in conformity with said specifications and requirements at no additional increase in total Agreement amount, (2) require Contractor immediately to take all necessary steps to ensure future performance of the services in conformity with requirements of the Agreement, (3) reduce payment to Contractor in accordance with Article 4, (4) have the services performed, by agreement or otherwise, in conformance with the specifications of this Agreement and recover from Contractor any costs incurred by County that are directly related to the performance of such services, and/or (5) pursue any other rights or remedies available to County under this Agreement.

ARTICLE 12
RECOVERY OF FUNDS

Where Contractor is required to reimburse County under any provision of this Agreement, or where County is otherwise owed funds from Contractor, County may, at its sole discretion and subject to funding source restrictions and State and federal law: (1) withhold such amounts from any amounts due to Contractor pursuant to the payment terms of this Agreement, (2) withhold such amounts from any other amounts due to Contractor from County, and/or (3) require Contractor to make payment to County for the total amount due (or a lesser amount specified by County) within thirty (30) days of request by

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

County. Notwithstanding the foregoing, County may allow Contractor to repay any such amounts owed in installments pursuant to a written repayment plan.

ARTICLE 13
USE OF DOCUMENTS AND REPORTS

- 13.1 Findings Confidential. Any reports, records, data, or other information given to or prepared or assembled by Contractor under this Agreement that the County requests to be kept confidential shall not be made available to any individual or organization by the Contractor without the prior written approval of the County except as may be required by law. Contractor shall not disclose to any individual or organization any reports, records, data, or other information received, prepared, or assembled by Contractor under this Agreement
- 13.2 Ownership, Publication, Reproduction and Use of Material. All reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other material or properties produced under this Agreement shall be the sole and exclusive property of County. No such materials or properties produced in whole or in part under this Agreement shall be subject to private use, copyright, or patent right by Contractor in the United States or in any other country without the express written consent of County. County shall have unrestricted authority to publish, disclose, distribute and otherwise use, copyright or patent, in whole or in part, any such reports, studies, data, statistics, forms or other materials or properties produced under this Agreement.
- 13.3 Confidentiality. Contractor agrees to maintain the confidentiality of and take industry appropriate and legally required measures to prevent the unlawful disclosure of any information that is legally required to be kept confidential. Except as otherwise allowed by local, State, or federal law or regulation and pursuant to this section 13.3, Contractor agrees to only disclose confidential records where the holder of the privilege, whether the County, or a third party, provides written permission authorizing the disclosure.
- 13.4 Public Records Act. The California Public Records Act (“CPRA”) requires County to disclose “public records” in its actual or constructive possession unless a statutory exemption applies. This generally includes contracts and related documents. If County receives a CPRA request for records relating to the Agreement, County may, at its sole discretion, either determine its response to the request without notifying Contractor or notify Contractor of the request. If County determines its response to the request without notifying Contractor, Contractor shall hold County harmless for such determination. If County notifies Contractor of the request, Contractor may request that County withhold or redact records responsive to the request by submitting to County a written request within five (5) business days after receipt of the County’s notice. Contractor’s request must identify specific records to be withheld or redacted and applicable exemptions. Upon timely receipt of Contractor’s request, County will review the request and at its sole discretion withhold and/or redact the records identified by Contractor. Contractor shall hold County harmless for County’s decision whether to withhold and/or redact pursuant to Contractor’s written request. Contractor further agrees that its defense and indemnification obligations set forth in section 10.1 of this Agreement extend to any Claim (as defined in section 10.1) against the County Parties (as defined in section 10.1) arising out of County’s withholding and/or redacting of records pursuant to Contractor’s request. Nothing in this section shall preclude Contractor from bringing a “reverse CPRA action” to prevent disclosure of records. Nothing in this section shall prevent the County or its agents or any other governmental entity from accessing any records for the purpose of audits or program reviews if that access is legally permissible under the applicable local, State, or federal laws or regulations. Similarly, County or its agent or designee may take possession of the record(s) where legally authorized to do so.
- 13.5 Custody of Records. Contractor shall deliver to County or its designee, at County’s request, all documentation and data related to Contractor’s work under this Agreement, including, but not limited to, County data and client files held by Contractor, at no charge to County. County, at its option, may take custody of Contractor’s client records upon Agreement termination, expiration, or at such other time as County may deem necessary. County agrees that such custody will conform to applicable confidentiality provisions of State and federal law and that retained records shall be available to Contractor for examination and inspection in accordance with applicable law. Contractor shall destroy records not turned over to County in accordance with applicable retention requirements and this Agreement. Notwithstanding the foregoing, Contractor may retain one (1) copy of the documentation and data for archival purposes or warranty support, and Contractor may maintain records that it is legally required to maintain.
- 13.6 Reports. Contractor shall submit reports required in Exhibit A and additional reports as may be requested by the COR and agreed to by the Contractor. Format for the content of such reports may be developed by County. The timely submission of these reports is a necessary and material term and condition of this Agreement and Contractor agrees that failure to meet specified deadlines will be sufficient cause to withhold payment. Contractor shall submit to County within thirty (30) days of the termination of this Agreement a report detailing all work done pursuant to this Agreement by Contractor.

ARTICLE 14
(RESERVED)

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

ARTICLE 15
DISPUTES

Notwithstanding any provision of this Agreement to the contrary, the Contracting Officer shall decide any dispute concerning a question of fact arising out of this Agreement that is not otherwise disposed of by the parties within a reasonable period of time. The decision of the Contracting Officer shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Contractor shall proceed diligently with its performance hereunder pending resolution by the Contracting Officer of any such dispute. Nothing herein shall be construed as granting the Contracting Officer or any other administrative official, representative or board authority to decide questions of law, or issues regarding the medical necessity of treatment or to pre-empt any medical practitioners' judgment regarding the medical necessity of treatment of patients in their care. The foregoing does not change the County's ability to refuse to pay for services rendered if County disputes the medical necessity of care.

ARTICLE 16
GENERAL PROVISIONS

- 16.1 Change of Control. Contractor shall notify County in writing of any change in majority ownership of Contractor (or all or substantially all of Contractor's assets) through a transaction or series of transactions including, without limitation, an acquisition, sale, reorganization, merger, or consolidation ("Change of Control") at least one hundred eighty (180) days prior to the effective date of a Change of Control or as soon as practicable thereafter if notice cannot legally be provided to County within such timeframe.
- 16.1.1 Without limiting any other rights or remedies of County, in the event of a pending or actual Change of Control, County may terminate this Agreement in accordance with section 7.5, Termination for Convenience, except that Contractor shall not be entitled to costs of termination set forth in section 7.5.2.
- 16.2 Assignment and Delegation. Contractor shall not assign any of its rights or delegate any of its obligations hereunder without the prior written consent of County, which shall not be unreasonably withheld; provided, however, that Contractor may assign or delegate its rights or obligations under this Agreement to the entity becoming a majority owner of Contractor's assets during a Change of Control, provided that notice is given in accordance with section 16.1 above. Any purported assignment or delegation in violation of this section shall be null and void
- 16.3 Entire Agreement. This Agreement, together with all Exhibits attached hereto and other agreements expressly referred to herein, constitute the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties, and statements, oral or written, including any proposals from Contractor and requests for proposals from County, are superseded.
- 16.4 Remedies Not Exclusive. The rights and remedies of County provided in this Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law, equity, or under resulting order.
- 16.5 Sections and Exhibits. All recitals, sections, and exhibits referred to in this Agreement are incorporated herein by reference.
- 16.6 Further Assurances. Parties agree to perform such further acts and to execute and deliver such additional documents and instruments as may be reasonably required in order to carry out the provisions of this Agreement and the intentions of the parties.
- 16.7 Governing Law. This Agreement shall be governed, interpreted, construed, and enforced in accordance with the laws of the State of California.
- 16.8 Headings. The article and section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit, or affect the construction or interpretation of any term or provision hereof.
- 16.9 Neither Party Considered Drafter. Despite the possibility that one party may have prepared the initial draft of this Agreement or played the greater role in the physical preparation of subsequent drafts, neither party shall be deemed the drafter of this Agreement and that, in construing this Agreement in case of any claim that any provision hereof may be ambiguous, no such provision shall be construed in favor of one party on the ground that such provision was drafted by the other.
- 16.10 No Other Inducement. The making, execution, and delivery of this Agreement by the parties hereto has been induced by no representations, statements, warranties, or agreements other than those expressed herein.
- 16.11 Notices. Notice to either party shall be in writing and personally delivered; sent by certified mail, postage prepaid, return receipt requested; or emailed to the County's or Contractor's designated representative (or such party's authorized representative). Any such notice shall be deemed received by the party (or such party's authorized representative) on the earliest of the date of personal delivery, three (3) business days after deposit in the U.S. Mail, or upon sending of an email from which an acknowledgement of receipt has been received other than an out of office, unavailable, or undeliverable reply.

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

- 16.12 Severability. If any term, provision, covenant, or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant, or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 16.13 Successors. Subject to the limitations set forth in sections 16.1 and 16.2 above, all terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.
- 16.14 Time. Time is of the essence for each provision of this Agreement.
- 16.15 Time Period Computation. All periods of time referred to in this Agreement shall be calendar days, unless the period of time specifies business days. Calendar days shall include all days of the week, including holidays. Business days shall be Monday through Friday, excluding County observed holidays.
- 16.16 Waiver. The waiver by one party of the performance of any term, provision, covenant, or condition shall not invalidate this Agreement, nor shall it be considered as a waiver by such party of any other term, provision, covenant, or condition. Delay by any party in pursuing any remedy or in insisting upon full performance for any breach or failure of any term, provision, covenant, or condition shall not prevent such party from later pursuing remedies or insisting upon full performance for the same or any similar breach or failure.
- 16.17 Third Party Beneficiaries Excluded. This Agreement is intended solely for the benefit of the County and its Contractor. Any benefit to any third party is incidental and does not confer on any third party to this Agreement any rights whatsoever regarding the performance of this Agreement. Any attempt to enforce provisions of this Agreement by third parties is specifically prohibited.
- 16.18 Publicity Announcements and Materials. All public announcements, including those issued on Contractor letterhead, and materials distributed to the community shall identify the County of San Diego as the funding source for contracted programs identified in this Agreement. Copies of publicity materials related to contracted programs identified in this Agreement shall be filed with the COR. County shall be advised at least twenty-four (24) hours in advance of all locally generated press releases and media events regarding contracted services identified in this Agreement. Alcohol and Drug Prevention Services Contractors shall notify COR or designee at least five (5) business days in advance of all Contractor generated media releases and media events regarding contracted services identified in this Agreement.
- 16.19 Critical Incidents. Contractor shall have written plans or protocols and provide employee training for handling critical incidents involving: external or internal instances of violence or threat of violence directed toward staff or clients; loss, theft or unlawful accessing of confidential client, patient or facility resident Personal Information (PI), Personally Identifiable Information (PII) and/or Personal Health Information (PHI); fraud, waste and/or abuse of Agreement funds; unethical conduct; or violation of any portion of San Diego County Board of Supervisors Policy C-25 "Drug and Alcohol Use Policy" while performing under this Agreement. Contractor shall report all such incidents to the COR within one business day of their occurrence. However, if this Agreement includes Article 14, Contractor must adhere to the timelines and processes contained in Article 14.
- 16.20 Responsiveness to Community Concerns. Contractor shall notify County within one business day of receipt of any material complaints submitted to Contractor orally or in writing related to Contractor's performance of work under this Agreement ("Complaints"), unless prohibited by applicable State, federal, or local law. Complaints include, but are not limited to, issues of abuse or quality of care, or issues regarding a program or facility applicable to this Agreement. Contractor shall take appropriate steps to acknowledge receipt of Complaint(s) from individuals or organizations and to address or resolve all Complaints. Contractor shall promptly notify the County of the status and disposition of all complaints and provide additional information or documentation upon request. Nothing in this provision shall be interpreted to preclude Contractor from engaging in any legally authorized use of its facility, property, or business as approved, permitted or licensed by the applicable authority.
- 16.21 Criminal Background Check Requirements. Contractor shall ensure that criminal background checks are required and completed prior to employment or placement of any employee, director, officer, agent, subcontractor, consultant, or volunteer who will be providing any services, accessing County or client data, or receiving compensation under this Agreement. Background checks shall be in compliance with any licensing, certification, funding, or Agreement requirements, including the Statement of Work, which may be higher than the minimum standards described herein. Furthermore, for any individuals identified above who will be assigned to sensitive positions funded by this Agreement, background checks shall be in compliance with Board of Supervisors Policy C-28, available on the County of San Diego website. Sensitive positions are those that: (1) physically supervise minors or vulnerable adults; (2) have unsupervised physical contact with minors or vulnerable adults; and/or (3) have a fiduciary responsibility to any County client, or direct access to, or control over, bank accounts or accounts with financial institutions of any client. If this Agreement includes Article 14, Contractor must also adhere to requirements contained in Article 14.

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

Contractor shall have a documented process for reviewing the information and determine if criminal history demonstrates behavior that could create an increased risk of harm to clients or risk to services to be performed under Agreement. Contractor shall document review of criminal background findings and consideration of criminal history in the selection of such persons listed above in this section.

16.21.1 Contractor shall utilize a subsequent arrest notification service or perform a criminal background check annually during the term of this Agreement for any employee, director, officer, agent, subcontractor, consultant, or volunteer who will be providing any services under this Agreement. Contractor shall keep the documentation of their review and consideration of the individual's criminal history on file in accordance with paragraph 11.4 "Maintenance of Records."

16.21.2 Definitions

16.21.2.1 Minor: Individuals under the age of eighteen (18) years old.

16.21.2.2 Vulnerable Adult: (1) Individuals age eighteen (18) years or older, who require assistance with activities of daily living and who may be put at risk of abuse during service provision; (2) Individuals age eighteen (18) years or older who have a permanent or temporary limited physical and/or mental capacity that may put them at risk of abuse during service provision because it renders them: unable to make decisions for themselves, unable to physically defend themselves, or unaware of physical abuse or other harm that could be perpetrated against them. Activities of daily living are defined as the basic tasks of everyday life, such as eating, bathing, dressing, toileting, and transferring.

16.21.2.3 Volunteer: A person who performs a service willingly and without pay.

16.22 Survival. The provisions of this Agreement necessary to carry out the intention of the parties as expressed herein shall survive the termination or expiration of this Agreement. Without limiting the foregoing, the following sections and articles of this Agreement shall survive the expiration or earlier termination of this Agreement: sections 8.1, 8.21, 10.1, 16.4, 16.7, and Articles 3, 4, 7, 11, 12, and 13.

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COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

SIGNATURE PAGE

AGREEMENT TERM. The initial term of this Agreement shall begin on the date of the last signature below and end on May 31, 2024 ("Initial Term").

Options to Extend for One to Six Additional Months at End of Agreement. County shall also have the option to extend the term of this Agreement, in one or more increments, for a total of no less than one (1) and no more than six (6) calendar months ("Incremental Options"). The County may exercise each Incremental Option by providing written notice to Contractor no fewer than fifteen (15) calendar days prior to expiration of this Agreement. The rates in effect at the time an Incremental Option is exercised shall apply during the term of the Incremental Option.

COMPENSATION: Pursuant to Exhibit C, Article 4, and other applicable provisions of this Agreement, County agrees to pay Contractor a sum not to exceed one hundred eighteen thousand five hundred dollars (\$118,500.00) ("Maximum Agreement Amount").

COR. The County designates the following individual as the Contracting Officer's Representative ("COR")

Nawras Hakak, Administrative Analyst II
Citizens' Law Enforcement Review Board (CLERB)
555 W. Beech Street, Suite 220
San Diego, CA 92101
Phone: (619) 813-5956
Fax: (619) 238-6775
Email: nawras.hakak@sdcounty.ca.gov

CONTRACTOR'S REPRESENTATIVE. Contractor designates the following individual as the Contractor's Representative.

Nayak Polissar, President and Principal Statistician
The Mountain-Whisper-Light, Inc.
1827 23rd Ave, East
Seattle, WA 98112
Phone: (206) 329-9325
Email: nayak@mwlight.com

IN WITNESS WHEREOF, County and Contractor execute this Agreement effective as of the date of the last signature below. The person(s) signing this Agreement for Contractor represent(s) and warrant(s) that they are duly authorized to bind Contractor and have the legal capacity to execute and deliver this Agreement.

CONTRACTOR:

By: Nayak Polissar
[Nayak Polissar \(Sep 12, 2023 15:09 PDT\)](#)
Name: Nayak Polissar
Title: Pres. & Principal Statistician
Email: nayak@mwlight.com
Date: Sep 12, 2023

COUNTY OF SAN DIEGO

JOHN M. PELLEGRINO, Director
Department of Purchasing and Contracting

By: David Robar
Name: David Robar
Title: Procurement Contracting Officer
Date: Sep 12, 2023

By electronically signing this document, all parties accept the use of electronic signatures.

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAbjXfuN6-UKbUw_BpV7GYMFglzt36eza

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A – STATEMENT OF WORK

1. SCOPE OF WORK/PURPOSE

The County of San Diego (County) has a requirement for a contractor to provide an independent analysis of in-custody deaths specific to the San Diego County Sheriff's Department (SDSD). In conducting this analysis, the Contractor shall utilize data and results already compiled in a Death Data Analysis Report that has been presented to the San Diego County Citizens' Law Enforcement Review Board (CLERB).

2. BACKGROUND

In 2021, the California State Auditor (CSA) conducted an audit of the SDSD to determine the reasons for in-custody deaths. The report was released on February 3, 2022. This audit addressed the San Diego Sheriff's Department SDSD rate of in-custody deaths. For information related to the findings, please refer to the link below:

<https://www.auditor.ca.gov/reports/2021-109/index.html>

In April 2022, Analytica Consulting, LLC (Analytica) completed an In-Custody Death Data Analysis specific to SDSD and presented its findings to the CLERB. This report reflected the collection and analysis of an extensive amount of data to examine the complex relationships between jail deaths and county mortality rates. Seven (7) critical findings were presented that resulted in or supported CLERB policy recommendations to the SDSD. For information related to these findings, please refer to the link below.

<https://www.sandiegocounty.gov/content/dam/sdc/clerb/docs/in-custody-death-study/Att.G-CLERB%20In-Custody%20Death%20Study.pdf>

The focus, however, had certain limitations that warranted additional research. While the analysis results delineated the differences in deaths among county jails, no explanation was given to explain the differences. This requires that the County analyze the operations and specific policies of other county jails, with the understanding that those operations are likely to vary. Additionally, the report did not touch upon the complex interactions between race and in-custody deaths. Analytica confirmed that arrest rates and jail populations are heavily skewed toward racial-ethnic minorities. The question remains as to how this disproportionality impacts the nature and events leading up to these deaths. It was determined that by expanding the analysis to discern differences in these deaths based on the race of victims, then CLERB could introduce another set of factors into this body of research.

3. DEFINITIONS

3.1. *In-Custody Death*: An event where an adult person has died in the custody or under the supervision of a San Diego County Adult Detention Facility or where a person who was previously in custody or under supervision died after being compassionately released.

4. GENERAL REQUIREMENTS

- 4.1. The contractor shall collect and analyze SDSD IN-CUSTODY DEATH data for the last ten (10) years, starting with the most current data available in 2023.
- 4.2. The Contractor shall conduct an independent analysis of IN-CUSTODY DEATH data specific to the San Diego County Sheriff's Department (SDSD) and provide an analysis and report that identifies when inmates are most vulnerable to IN-CUSTODY DEATH and which, at minimum, addresses the following:
 - 4.2.1. The role, if any, of mental illness
 - 4.2.2. Availability of mental health and medical services
 - 4.2.3. Homelessness
 - 4.2.4. Public housing
 - 4.2.5. SDSD staffing levels
 - 4.2.6. San Diego County's proximity to the U.S-Mexico border
 - 4.2.7. The relationship, if any, of institutional stressors related to the following:
 - 4.2.7.1. Race

**COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS**

EXHIBIT A – STATEMENT OF WORK

- 4.2.7.2. Gender
- 4.2.7.3. Age
- 4.2.7.4. California Public Safety Realignment in California in 2011 (AB109)
- 4.2.7.5. Type of crime charged
- 4.2.7.6. Conviction status upon the occurrence of IN-CUSTODY DEATHS.

- 4.3. The Contractor shall present its findings to the CLERB Board and provide clarification during the meeting.
 - 4.3.1. After the Board presentation, the Contractor shall be available for follow-up clarification requests through May 31, 2024.

5. SPECIFIC REQUIREMENTS

- 5.1. The contractor shall employ the agreed-to methodology to collect, analyze, and compare data so the County will be able to identify the correct metric(s). When applying this methodology, the Contractor shall incorporate the following considerations into their analysis:
 - 5.1.1. The circumstances under which SDSO assumes responsibility “at the onset of the booking process” for those booked into custody and if they differ in comparison to other agencies from Counties with similarly sized populations.
 - 5.1.1.1. If differences exist, the report shall describe what the differences are and how they impact the data.
 - 5.1.2. The policies and procedures by which SDSO conducts its jail operations, and if they differ in comparison to other agencies in Counties with similarly sized populations.
 - 5.1.2.1. If differences exist, the report shall describe what the differences are and how they impact the data.
- 5.2. The data collected will be utilized to address the following fifteen (15) identified areas:
 - 5.2.1. When are inmates most vulnerable to the risk of death? Is it after they are first admitted to jail after they are found guilty of the crime, or based on another important event?
 - 5.2.2. What are the IN-CUSTODY DEATH rates among inmates with a history of mental illness?
 - 5.2.3. What is the underlying relationship between mental health services in jails and IN-CUSTODY DEATHS? Does having more available mental health services and related staff reduce IN-CUSTODY DEATHS?
 - 5.2.4. What role do law enforcement staffing levels play in the number of IN-CUSTODY DEATHS?
 - 5.2.5. What institutional stresses are associated with in-custody deaths, including:
 - 5.2.5.1. Overcapacity of a jail facility
 - 5.2.5.2. Processing of new admissions and releases
 - 5.2.5.3. Frequency of assaults on staff
 - 5.2.5.4. Extraordinary events such as the COVID-19 pandemic
 - 5.2.6. Is there a relationship between re-admissions and IN-CUSTODY DEATHS at both an individual and facility level?
 - 5.2.7. Are IN-CUSTODY DEATHS more prevalent among those charged with a certain type of crime?
 - 5.2.8. Does the race, gender, or age of an inmate play a role in the circumstances surrounding IN-CUSTODY DEATHS and subsequent investigations?
 - 5.2.9. What has been the impact of programs enacted by the San Diego Sheriff’s Department ON IN-CUSTODY DEATHS over time?
 - 5.2.10. Why is there a lag in reporting the manner of an IN-CUSTODY DEATH in other counties, given the reporting requirement by the California Department of Justice?
 - 5.2.11. What is the role of county mental health services and other public services, such as public housing, on jail deaths?
 - 5.2.12. How does the fact that San Diego County’s proximity to the US-Mexico border impact IN-CUSTODY DEATHS? Are these issues present in other jurisdictions with international borders?
 - 5.2.13. What are the IN-CUSTODY DEATH rates among inmates with a history of homelessness?
 - 5.2.14. What is the impact of compassionate releases on the nature and number OF IN-CUSTODY DEATHS?
 - 5.2.15. How has realignment in California in 2011 shaped IN-CUSTODY DEATHS in county jails?
- 5.3. If the Contractor finds that one or more of the research items are infeasible because of data availability, consideration may be made to accept the Contractor’s recommended framework for data acquisition/analysis instead of a conclusive result. This decision shall be based on the approval of the Contracting Officer’s Representative (COR).
- 5.4. The contractor shall provide a report containing the results of the collection, analysis, and comparison data which shall include but is not limited to:

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A – STATEMENT OF WORK

- 5.3.1. A comprehensive representation of the results of the collection, analysis, and comparison data in Word format, with the data inserted in Excel format.
- 5.3.2. A narrative describing how SDSD is different as it pertains to the collection of “like-to-like” IN-CUSTODY DEATH data and the subsequent analysis and comparison of said data, to include:
 - 5.3.2.1. Current and rated capacity of each detention facility
 - 5.3.2.2. Number of assaults on detention facility personnel
 - 5.3.2.3. Utilization of medical and mental health services among incarcerated persons
 - 5.3.2.4. Number of medical and mental health care staff in detention facilities
 - 5.3.2.5. Individual-level booking data with a record of admissions and releases
 - 5.3.2.6. Rate of homelessness, mental illness, and other health-related conditions to add more granularity to estimated county mortality rates
 - 5.3.2.7. The impact of race, gender, and age on IN-CUSTODY DEATHS
 - 5.3.2.8. The impact of compassionate releases on IN-CUSTODY DEATHS
 - 5.3.2.9. The impact of conviction status on IN-CUSTODY DEATHS
 - 5.3.2.10. The impact of San Diego County’s proximity to the U.S.-Mexico border on IN-CUSTODY DEATHS.
 - 5.3.2.11. The impact of programs enacted by the San Diego Sheriff’s Department on IN-CUSTODY DEATHS over time.
 - 5.3.2.12. The report may be a mix of static reports and interactive web-based reporting tools.
- 5.5. The Contractor shall provide the final approved report to the COR, which shall address the following (15) questions:
 - 5.5.1. When are inmates most vulnerable to the risk of death? Is it after they are first admitted to jail after they are found guilty of the crime, or based on another important event?
 - 5.5.2. What are the IN-CUSTODY DEATH rates among inmates with a history of mental illness?
 - 5.5.3. What is the underlying relationship between mental health services in jails and IN-CUSTODY DEATHS? Does having more available mental health services and related staff reduce IN-CUSTODY DEATHS?
 - 5.5.4. What role do law enforcement staffing levels play in the number of IN-CUSTODY DEATHS?
 - 5.5.5. What institutional stresses are associated with IN-CUSTODY DEATHS, including:
 - 5.5.5.1. Overcapacity of a jail facility
 - 5.5.5.2. Processing of new admissions and releases
 - 5.5.5.3. Frequency of assaults on staff
 - 5.5.5.4. Extraordinary events such as the COVID-19 pandemic
 - 5.5.6. Is there a relationship between re-admissions and IN-CUSTODY DEATHS at both an individual and facility level?
 - 5.5.7. Are IN-CUSTODY DEATHS more prevalent among those charged with a certain type of crime?
 - 5.5.8. Does the race, gender, or age of an inmate play a role in the circumstances surrounding IN-CUSTODY DEATHS and subsequent investigations?
 - 5.5.9. What has been the impact of new programs enacted by the San Diego Sheriff’s Department on IN-CUSTODY DEATHS over time?
 - 5.5.10. Why is there a lag in reporting the manner of an IN-CUSTODY DEATH in several counties?
 - 5.5.11. What is the role of county mental health services and other public services, such as public housing, on jail deaths?
 - 5.5.12. How does the fact that San Diego is a border town impact IN-CUSTODY DEATHS? Are these issues present in other border towns?
 - 5.5.13. What are the IN-CUSTODY DEATH rates among inmates with a history of homelessness?
 - 5.5.14. What is the impact of compassionate releases on the nature and number of IN-CUSTODY DEATHS?
 - 5.5.15. How has realignment in California in 2011 shaped IN-CUSTODY DEATHS in county jails?
- 5.6. The contractor shall present the final report in person in a public Citizen’s Law Enforcement Review Board (CLERB) meeting to be held in San Diego County. Other regularly scheduled meetings may be attended virtually.

6. DELIVERABLES/TIMELINE

ITEM NO.	DESCRIPTION	TIME TO COMPLETION
1	Kickoff Meeting	Within five (5) business days after the contract is in effect

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A – STATEMENT OF WORK

2	Initial Project Plan Submitted to Project Manager	Within two (2) weeks after Kickoff Meeting
3	Project Plan Approval by COR	Within one (2) weeks after receipt of the Initial Project Plan
4	Draft development	Meet with the COR and a county staff weekly to review and approve the draft.
5	Present the Final Draft of the IN-CUSTODY DEATH Data Analysis Report to the Project Manager for Review and Further Development	Within four (4) months from the date of the project plan approval
6	Final Report Approval by Project Manager	Within one (1) week from receipt of the Final Draft Submission
7	Present the final Approved Report to the CLERB Board and the public to answer any questions	Within (2) weeks after the final report is submitted to the PM
8	Answer any further questions related to the report or submit future reporting recombination(s)	As needed through May 31, 2024, after presenting the report to the CLERB Board and public

6.2. On an as-needed basis, the contractor shall attend meetings to provide updates on project progress.

7. COUNTY PROVIDED SUPPORT

- 7.1. The Contracting Officer's Representative (COR) and other department staff will be available to provide guidance and suggested data sources. This may include the provision of data produced by the County. It is the Contractor's responsibility to identify the necessary databases from which to obtain the pertinent data.
- 7.2. The County may provide databases with relevant content and data dictionaries for such databases.
- 7.3. The County may write correspondence to other agencies within the county or the State of California to assist the Contractor with collecting data or information from other relevant authorities.

8. INVOICING

- 8.1. Send all invoices to:

Attn: Nawras Hakak
Email: nawras.hakak@sdcounty.ca.gov
County of San Diego, Citizens Law Enforcement Review Board
555 West Beech Street, Suite #220
San Diego, CA 92101

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

2. Technical Approach

2.1 Confirm (YES/NO) your agreement to the requirements in the SOW.

The Mountain-Whisper-Light (hereafter, TMWL) agrees to the requirements in the Statement of Work (SOW) as stated: Yes.

2.2 Provide a narrative response fully describing your technical approach to accomplishing Exhibit A - Statement of Work requirements. In your response, please be specific to the following in Section 5 – Specific Requirements:

Section 5.2 describes fifteen (15) identified areas to be addressed. In detail, describe your approach and how the report narrative you create will fully address these areas of importance.

Overview

This project addresses a continuing need for the County to understand the reasons behind jail deaths in the San Diego Sheriff’s Department (SDSD) as compared to the death rates of Sheriff’s Departments in California. Emphasis is placed on discerning the differences among the death rates as they relate to jail conditions, and in particular, to the race of the inmates, but to other factors too. Although the RFQ speaks mainly in terms of data specific to SDSD, only in the context of what is happening in comparable jails across CA counties, these questions can be properly addressed.

The Mountain-Whisper-Light has carried out many analyses that are directly relevant to this study in terms of methodology and magnitude. This is, to a significant extent, a statistical study of rates (inmate death rates), and our team’s experience with both complex and simple studies over four decades and over 240 peer-reviewed articles successfully published in scientific journals has prepared us well for this project.

Our team includes expertise in identifying issues of law, policy and practices that may be predictive of death rates, such as admission practices, staffing levels, training of staff, and other jail-specific characteristics. These characteristics must be included in the analyses in order to compare “apples to apples”. For example, it is not appropriate to compare the death rate in a large, overcrowded, under-staffed jail to the death rate in a smaller, appropriately staffed jail. Our analysis will control for these and other factors that may influence death rates.

We also have experience as expert witnesses and are prepared to defend our research findings in court, deposition or other legal proceedings.

Our key analyses, based on data that we will collect, will include the following:

- 1) Determine statistically significant differences (if any) in in-custody death rates within San Diego Sheriff’s Department (SDSD), and compared to other California Sheriff’s Departments

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

- (individually or combined), controlling for available factors that may influence death rates, such as jail size, staffing/inmate ratio, timing of deaths, mental and medical assessment at booking, etc.
- 2) Determine features of policy, laws, practices of jail operations and bookings that may have an impact on death rates, across the state. Use these findings in statistical analyses to determine their impact on in-custody death rates. A useful aspect of this analysis is that the statistical analysis can be used to estimate the reduction in deaths that would be obtained if certain factors or jail operations were changed.

It is important fact that the TMWL staff includes a researcher and distinguished lecturer that specializes in independent oversight of correctional institutions, prison and jail conditions (Michele Y. Deitch, University of Texas School of Law), an experienced attorney (Cheryl Brown Hill, JD, Esq.), and a well-published Princeton-educated statistician who has been an expert witness numerous times (Nayak Polissar, PhD, Principal Investigator). TMWL is prepared to stand behind its work in court or other legal settings. Our goal is to make our work bullet-proof, which includes advanced statistical methodology that recognizes and quantifies uncertainties in the data, where they exist.

Introduction

TMWL will use its expertise in subjects of in-custody death and statistical methodology to collect, analyze and compare datasets that can be provided to us by the County, the data sources that were used by the previous contractor as explained in their 2022 report, and the generally available data sources as known to our staff. Also, we expect to get in touch with California jails and Sheriff’s Departments to obtain data on jail procedures and practices.

The “apples-to-apples” approach is a statistical consideration that allows a fair comparison to be made. Our main metric is death rates, which is a metric that relates deaths to the amount of exposure to death in a jail, namely, jail population (average number of inmates in the specific jail). It is a step toward apples-to-apples to compare death rates rather than just death counts. However, other factors—for which we shall collect descriptive data, will affect death rates, and apples-to-apples means that differences among jails—differences that affect risk of death—will be collected and used in the statistical analysis. This kind of “control” of extraneous factors is very common in statistical analysis, and that method of analysis aims to isolate a particular relationships in the data from interfering factors present elsewhere in the data.

As an example, if understaffing is a risk factor for increased death rates, then the staffing per inmate becomes a variable in the analysis. The analysis using a staff/inmate ratio variable adjusts the risk of death in different jails to a level mimicking the situation where jails have similar staffing ratios. This adjustment does not eliminate a difference in death rates among jails, but it converts it to an apples-to-apples comparison. Of course, there will be other adjustments (using other variables that can affect death rates), but the principle is to adjust—to the extent possible—and then see what is left over as a more “apples-to-apples” measure of real differences in death rates between jails. In statistics, controlling for factors in a complex multivariate analysis is somewhat of an art, and requires caution and experience.

It would be worthwhile to mention a certain level of disagreement we have with the statistical methodology applied in the 2022 report by Analytica Consulting. This report is based on comparing jail populations to the general populations of their respective counties. The report quotes

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

SDSD about jails being “a microcosm of the communities in which they are located” (page 2), and states that jail populations have been standardized based on their distributions of gender, age, race/ethnicity and four manners of death, to look more like their county populations (page 2). There are two aspects of why this approach may lead to misleading conclusions:

(a) Even after being standardized as described, a jail population is still very different from their county population. Life circumstances of an average 40 year old white male in jail are quite different from life circumstances of an average 40 year old white male not being in jail, and living in that same county. And, since the report makes comparisons across counties, we need to look at differences between pairs of individuals. Two average 40 years old white males, one in jail in Alameda, the other in jail in San Diego will experience life differently. Two average 40 years old males, one living in Alameda not in jail, the other living in San Diego not in jail will also experience life differently. However, the first difference is the difference between two individuals whose lifestyles are makes them prone to jail. The second difference is the difference among two individuals whose lifestyles are not making them prone to jail.

Using the general population as a benchmark to discern small differences between specific groups in population is a useful approach when those groups are similar to the general population in most aspects of life. For example, to assess whether the police stop drivers that are Black comparably more than drivers that are White, the proper benchmark is the general population of drivers that are Black and of those that are White. This is an example of the general population standardized by race and used as a benchmark to discern differences among groups of people. However, stopped drivers are fairly similar to average drivers, as being stopped is not a major offense. Being in jail or not being in jail is not a small lifestyle difference. Comparing internal events across different jails, while using (typically) standardized general, non-jailed populations as a benchmark is risky, to say the least. The differences that are found in this way may have little to do with different conditions inside jails. They may easily reflect different conditions outside jails.

For example, imagine two counties having their jails in about equal conditions, inmates being treated the same, and thus in-jail death rates being about the same. Let the first county have a high death rate in the general population due to poverty. Let the second county be prosperous and with fewer deaths in the general population. This method will conclude that jails in the poorer county are having better conditions. Compared to their respective general populations, people of the poorer county will die in jails less often than the people of the richer county. The method will confuse what is happening in the general population with what is happening inside jails.

(b) For discerning differences which incarcerated individuals experience in different jails, what is of primary importance is what is happening inside those jails, once they have been incarcerated. What was happening before they were incarcerated is not directly related to the differences among jails. Analyses of differences of in-jail deaths being facilitated by differences among the jails themselves is best to start from the moment in time when these differences are being experienced.

For example, to estimate how different jail conditions affect death rates of homeless inmates, it is not needed to know levels of homelessness in the general populations of the involved counties. What is needed is to estimate, given that a homeless person is incarcerated in jail A, how likely is that the person will die, as compared to a homeless person incarcerated in jail B. Homeless

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

individuals that are not in jails in the involved counties at that time, do not directly affect this estimate.

The email from Dr. Elisabeth Carson (the PhD level statistician at BJS) attached to the 2022 report (page 46) is not in collision with our point of view. She explains that standardization helps to compare death rates in the jail population and in the general population. This, in effect, equates to selecting a sample from the general population that is of same age, gender and race as the jail population. Then death rates in jail populations are compared to death rates in such selected sample to present a picture of the chances of a person dying while in jail versus the person dying while not in jail. Again, this speaks not only of what is happening inside jails (how jails differ on the inside), but also what is happening with the general populations (how populations differ outside of jails).

Statistical Methodology

Basics

The most fundamental metric for the analysis and comparison would be the rate of in-custody deaths in San Diego Sheriff’s Department (SDSD) compared to rates in other similarly-sized agencies in CA. The results of the comparison will be presented as the ratio of two selected rates: San Diego jails and other specified jails—one jail or a pooled collection of jails. Death rates would be expressed in conveniently chosen universal units, for example, deaths per inmate-day (or per 10,000 inmate-days, or inmate-year, etc.), so that they can be compared across jails and Sheriffs’ Departments with differing numbers of jailed individuals in each jail or county or collection of jails.

For example, the SDSD rate can be compared to the collective rate of all other agency taken together, or compared to each individual agency. A rate ratio of 1.0 would mean that the two rates are equal, and a rate ratio of 1.5 would mean that one rate is larger 50% larger than the other. That is, on the average, it would be 50% more likely that a given individual in custody of the first Department may experience death than if in custody of the second department.

Statistical significance and Margin of Error

When comparisons are made there will be a need to determine if a noted difference is “statistically significant” (unlikely to be due to chance). In-custody death is a relatively rare event, as compared to the size of the total jail population. Even though the data may be accrued over 10 years, still the actual counts are relatively small numbers, and chance can play a role. Because there is chance at play, uncertainty must be accurately quantified just as the rates and rate ratios are accurately quantified.

Uncertainty will be shown by reporting an upper and lower limit that serves as upper and lower plausible bounds for each reported rate or ratio of rates. These are technically referred to as 95% confidence intervals, and these intervals will be reported for every major rate and rate ratio in the final report. The 95% confidence interval gives us 95% confidence that it includes the true value.

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

For example, if the calculated rate ratio is 1.5 (Sherriff A’s Department compared to Sherriff B) and its 95% confidence interval is: (1.4, 1.6), we can be 95% confident that the true ratio is between 1.4 and 1.6. Because this interval of 1.4 to 1.6 does not include 1.0 (equality of rates), we are also confident that Sherriff A has a higher in-custody death rate than Sherriff B. However, as another example, if the calculated rate ratio is 2.0 (Sherriff C compared to Sherriff D) , and the confidence interval is: (0.7, 4.0), there is a lot of uncertainty, as indicated by the wide confidence interval. The interval includes values both below and above 1.0, so we really do not know which Sherriff has the higher death rate. Thus, confidence intervals are of great importance, and we will take care to present them for key results.

Comparing “apples to apples”

Comparing “apples-to-apples” is a major issue. Comparing death rates in two jails (or comparing San Diego jails to a group or other jails) is valid if the jails compared are similar in all features that affect death rates. We will collect data on and determine impact on death rates of jail features, such as population size, average occupancy, number of bookings per month, crowding, staff-to-inmate ratio, extent of medical support, and other features. Our statistical analysis will determine which of these features affects the in-custody death rate, and, when comparing jails, we will control for the features that do impact death rates.

We will use a method known as “regression” to compare San Diego death rates to other counties while taking account of death-impact features (variables). In the language of formal Statistics, we will employ a Poisson regression mixed-effect model, incorporating selected fixed effects (the recognized jail features) and a single random-intercept effect (accounting for data correlation inside individual jails). One important obvious feature will be binary: SD county vs. another county or group of counties. This model will provide us with rates and rate ratios that embody comparisons when important features are controlled for (“apples-to-apples”), and with accurate 95% confidence intervals to express the uncertainty of the analysis.

Addressing General Requirements

SOW, General Requirements

4.1 The contractor shall collect and analyze SDSD IN-CUSTODY DEATH data for the last ten (10) years starting with the most current data available in 2023.

SOW, General Requirements

4.2 The Contractor shall conduct an independent analysis of IN-CUSTODY DEATH data specific to the San Diego County Sheriff’s Department (SDSD) and provide an analysis and report that identifies when inmates are most vulnerable to IN-CUSTODY DEATH; and which at minimum addresses the following:

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

Limited only by the availability and quality of data, all the factors listed in SOW General Requirements 4.2 will become numerical variables in a multivariate regression analysis. They can be continuous (for example age as an integer), or categorical. Examples of categorical variables: gender as a binary M/F, race as having several categories of White, Black, Asian, etc. Also, a continuous variable can be transformed into a categorical one, as necessity or efficiency demands, for example age as categories: younger than 20yrs, 21-30, 31-40, etc.

The following text speaks of comparisons between conditions in different jails and in-jail deaths in general terms. What is assumed is that one of these jails is always SDSD, being compared to any other jail or a group of jails with sufficient data acquired.

The role, if any, of mental illness

The data may indicate a presence or suspicion of mental illness either in the overall jail population, or in death cases. Or this presence may be estimated from some meaningfully related parameters or reported numbers. At minimum, it can become a binary Yes/No, allowing a comparison of the rates of deaths equal in everything else except having (or suspected) mental illness or not. Also, how this correlates with other parameters in the overall statistical model, or with particular jails/counties.

Availability of mental health and medical services

The data may allow a quantification of a level of these services in a particular jail, even as a rough estimate, for example a binary: available/not available, or a trinary: poor/medium/good. This would allow a comparison of the rates of deaths equal in everything else except the level of these services. Also, how this correlates with other parameters in the overall statistical model, or with particular jails/counties.

Homelessness/Public housing

The data may allow a quantification of a prevalence of entering the jail from a homelessness status (or from public housing) in some jails, even as a rough estimate, for example a binary: high/low homelessness (in public housing vs. other housing). Also, a notion of how many in-jail deaths involve homelessness (or public housing) in these jails. Then the rates of homeless (or previously publicly housed) inmates dying in these jails can be compared, and we can examine if the data suggests that these rates correlate with other parameters in the overall model.

SDSD staffing levels

For the jails and counties where the staffing level (# staff per inmate) can be quantified or estimated, this also becomes a variable in the overall statistical model, to be contrasted across jails on its possible correlation with in-jail deaths. This will also likely serve as a strong control variable, that in-jail deaths may be compared only in the context of having similar staffing levels.

San Diego County’s proximity to the U.S-Mexico border

Each jail from which we can acquire data is directly (using publicly available maps and GIS software, which is part of our general expertise) associated with the distance to Mexican border, either air distance,

**COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS**

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

or nearest driving distance. This distance thus becomes a continuous variable in our regression model, to assess if the in-jail death rates and rate ratios across jails can be correlated with the distance to the border in a statistically significant way. It is expected that the proximity to the border will reflect the racial composition of the inmates. Proper statistical modelling must be able to disentangle these changes in racial composition from variations of the internal conditions in jails. It needs to be able to say, for example, to what extent are the higher death rates of Mexican inmates due to their higher presence in the jail population versus to what extent are they due to poorer jail conditions.

The relationship, if any, of institutional stressors related to the following: race, gender, age, California Public Safety Realignment in California in 2011, type of crime charged, conviction status upon the occurrence of in-custody deaths

Race, gender and age, are the most standard demographic variables used in statistics. Type of crime charged (categorical), and conviction status upon in-jail deaths (convicted Yes/No) are rather similar from the viewpoint of statistics. Limited only by the availability of the data, our statistical model will be able to use these in an efficient way to assess in what amount these (isolated or acting together, in a multivariate setup) can be associated with in-jail deaths, and particularly in the context of race of jail populations.

The data to be collected is for the last ten years, so after the realignment in 2011. To the extent of the County being interested in analyzing the data prior to that, one parameter in our model will be pre- or post- realignment time variable, allowing us to contrast the two periods and attach a statistical significance to the observed effects of changed jail populations (in size and composition), as facilitated by the realignment bill.

Addressing Specific Requirements

SOW, Specific Requirements

5.1 The contractor shall employ the agreed-to methodology to collect, analyze, and compare data so the County will be able to identify the correct metric(s). When applying this methodology the Contractor shall incorporate the following considerations into their analysis:

SOW, Specific Requirements

5.1.1 The circumstances under which SDSD assumes responsibility “at the onset of the booking process” for those booked into custody, and if they differ in comparison to other agencies from Counties with similarly sized populations.

A comparative analysis will be conducted of the similarly sized California counties with jails and a review of their policies, procedures, booking-related processes and any administrative or operational procedures surrounding this process that are identified during this review. The objective is to determine any factors, including but not limited to, staffing and facilities that may contribute or discourage jail deaths. A report will be prepared to describe any anomalies.

**COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS**

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

SOW, Specific Requirements

5.1.2 The policies and procedures by which SDSD conducts its jail operations, and if they differ in comparison to other agencies in Counties with similarly sized populations.

If differences exist, the report shall describe what the differences are and how they impact the data.

An analysis of policies and procedures across California Counties with similarly sized populations will be conducted to assess what role of operations plays and if any differences exist. This is, in part, a historical analysis to determine if changes over a finite period of time as a result of legal, legislative, policy, geography/location or organizational structure factors resulted in differences and the impact of the differences. A report will be prepared to describe the differences and how they impact the data.

SOW Specific Requirements

5.2 The data collected will be utilized to address the following fifteen (15) identified areas:

1. When are inmates most vulnerable to the risk of death? Is it after they are first admitted to jail after they are found guilty of the crime, or based on another important event?

After a survey of available data related to in-jail deaths, out staff will determine what can be seen as an important event. After that, the timing of the observed deaths will become a categorical variable (A: after first admitted, B: after found guilty, C: after a specific important event, etc.) Each of these categories will then be associated with a rate of in-jail death, and associated with other parameters in the model, primarily race, but also any other. How these rates and their rate ratios compare across jails will be the next aspect to observe and report.

2. What are the IN-CUSTODY DEATH rates among inmates with a history mental illness?

3. What is the underlying relationship between mental health services in jails and IN-CUSTODY DEATHS?

4. What role do law enforcement staffing levels play in the number of IN-CUSTODY DEATHS?

5. What institutional stresses are associated with in-custody deaths including: overcapacity of a jail facility, processing of new admissions and releases, frequency of assaults on staff.

In full analogy with what we wrote so far, all these will become variables in our multivariate regression model, some categorical (history of mental illness: Yes/No) some potentially continuous (jail over capacity). Each will result in its own in-jail death rate, be potentially associated (by some amount and with a level of statistical significance) with other variables in the model which describe the internal setup of jails and jail populations. In all this, jails from other counties will be contrasted with SDSD.

(5.) Extraordinary events such as the COVID-19 pandemic.

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

Here the main issue is timing of events, and contrasting data before COVID-19 hit in spring 2019, observing the evolution of in-jail death rates throughout 2020 and till today, expecting things to return, if only partially, to their pre-COVID values. This analysis involves time resolution of data, so it is still more dependent on the quality and the amount of data that can be acquired. At minimum, we would compare pre- versus post- spring 2019 rates.

6. Is there a relationship between re-admissions and IN-CUSTODY DEATHS at both an individual and facility level?

From the 2022 Analytica Consulting report, and their email communication with Dr. Elizabeth Carson (page 47), we understand that getting the individual-level records on the admitted individuals may be a problem, in general. As much as possible our staff will try to obtain individual-level data specific to SDSD and, if possible, some other CA jails. At the minimum, to be able to estimate the relationship between re-admissions and in-jail deaths, we would need at least some individual-level data concerning re-admissions (datasets from which re-admissions might be extracted or estimated from) of SDSD inmates, with at least some of those individuals dying in jail, and at least some not dying. If we can acquire such data from a limited sample of inmates, we would need to understand how, under what particular circumstances, was the sample selected. Then an unbiased statistical estimation could be made.

If, on the other hand, such re-admission data is more readily available for SDSD and other counties, re-admission will become another categorized variable to enter the overall statistical model, and much could be revealed about its association with both deaths and other variables, demographics, jail conditions, etc. In theory, that is not all. We can imagine re-admission data being easily available for many inmates and in fine detail, at least in case of SDSD. Then, a survival analysis (a standard statistical technique) could be applied to answer detail questions such as: how is the likelihood of dying in-jail evolving with the number of days spent in jail, throughout the first time being in jail, throughout the second time being in jail, third time, etc. It is a job of the statistician to extract, as much as possible, all the information contained the available, often scarce, data.

7. Are IN-CUSTODY DEATHS more prevalent among those charged with a certain type of crime?

8. Does the race, gender, or age of an inmate play a role in the circumstances surrounding IN-CUSTODY DEATHS and subsequent investigations?

This will be addressed in analogy with the previously explained.

9. What has been the impact of programs enacted by the San Diego Sheriff’s Department ON IN-CUSTODY DEATHS over time?

Our staff will first carefully analyze the impact of these programs to understand how to translate this impact into relevant numbers, to then inform the statistical analysis. Statistically, this will be approached in analogy with the way that the impact COVID-19 will be assessed, as described above, as this is also an analysis that involves time resolution of data.

**COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS**

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

10. Why is there a lag in reporting the manner of an IN-CUSTODY DEATH in other counties, given the reporting requirement by the California Department of Justice?

A detailed review of the other counties will be conducted. It will include an analysis of their policies, reporting procedures, whether in-custody deaths are categorized as priority reporting, California, Department of Justice requirements, whether waivers are granted, whether there is more than one venue for receipt of in-custody death reports, staffing responsibilities and training, other parties involved in reporting and their roles. A report will be prepared with the findings of the investigation.

11. What is the role of county mental health services and other public services such as public housing on jail deaths?

12. How does the fact that San Diego County’s proximity to the US-Mexico border impact IN-CUSTODY DEATHS? Are these issues present in other jurisdictions with international borders?

This was largely addressed above, when we addressed the general requirements.

To address potential border issues, as they compare to other jurisdictions with international borders, we would need, at the minimum, to collect similar in-jail data from jails outside CA, some of them close to an international border (with Mexico or Canada), some of them not close to an international border, to allow a comparison. It might also happen that jails within CA would be enough to present a coherent picture on the impact of the border being nearby. If we acquire data from a sufficient number of CA jails, at least of them some close to the Mexico border, and some farther away, and if this data shows clear trends concerning distance to the border, then this might be enough. If the trends are weak and uncertain (not statistically significant), they would need to be corroborated with jails outside CA.

13. What are the IN-CUSTODY DEATH rates among inmates with a history of homelessness?

14. What is the impact of compassionate releases on the nature and number of IN-CUSTODY DEATHS?

15. How has realignment in California in 2011 shaped IN-CUSTODY DEATHS in county jails?

The impact of a history of homelessness upon jail deaths will be assessed using the factors described above, when we addressed the general requirements. (Please see above.) Additionally, the analysis will ascertain whether there is a direct or indirect pathway from homelessness to jail and if public housing plays a role.

Compassionate release, or resentencing, is available to California inmates who are terminally ill. It allows a court to recall the sentence of someone who has a fatal illness or who is medically incapacitated or functionally impaired and resentence them so that they can spend the balance of their life in the community. The inmate must apply for it and the release is subject to certain restrictions and requirements.

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

An analysis will be conducted of the number of inmates in San Diego jails who applied for compassionate release and were accepted or rejected. They will be compared with the other state jails to assess the rate of deaths among inmates who were released under this program or denied release. Factors such as age, race, gender, location, etc. will be reviewed.

The goal of the 2011 realignment program will be analyzed to determine if it is being met and whether transferring lower-level offenders to county jails has resulted in fewer or greater jail deaths across counties and considering the demographic factors mentioned above. The role of staff, training, crowding, will be included in the analysis also.

Planning and Preparation

We believe there are several elements that will be the cornerstones of project design and execution:

- 1) Strong communication with San Diego County so that we intimately understand the decisions that need to be made. Up-front and effective communication and planning is vital for research success to appropriately meet your objectives and be technically sound. This requires active involvement by TMWL and the San Diego County project team in the initial phases of development. These meetings and discussions establish and highlight full credibility, accuracy and effectiveness of the research collected.
- 2) Listening to the staff at jails. The focus of this project is about the process and procedures at jails, and we need to ensure that we ask the right questions and capture accurate data.
- 3) TMWL will also review all data and other evidence about matters of law, policy, and law-related practices relevant to conducting the data collection and other materials.
- 4) A Project Plan is designed following an initial kick-off meeting. This working document helps to focus the project goals, timelines, and research requirements. This record tracks and documents such items as:
 - a. Study objectives.
 - b. Methodological descriptions, tasks and subtasks, responsible parties, and key milestones.
 - c. Data collection processes, protocol, and procedures.
 - d. Full descriptions of all deliverables, including all required documentation.
 - e. Data processing plan (such as data entry protocols, data cleaning procedures, file format specifications, etc.)
 - f. Expected needs, nature, format and timing of the final reports and presentations.

Kick-off Calls/Meetings

This will provide San Diego County and our team the opportunity to establish the groundwork for a close, collaborative working relationship throughout the study. We recommend spending adequate time immediately following contract award to establish a clear Project Plan and to discuss the issues that are

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

critical to the transition and ongoing success of this research. If needed, we will suggest a similar meeting takes place with just our internal team to make sure all parties are clear and on the same page. Among the topics that will be discussed include:

- 1) A review of the methodological protocol undertaken on similar research conducted on this subject matter. This review will involve a discussion of learnings and takeaways from designing and conducting such research and what approach should best be applied to the current study insure validity and reliability.
- 2) A review of the data collected in those other research projects and a discussion of the information to be collected on this project.
- 3) A review of the contracting documents to ensure that San Diego County and our understanding of methodological details and contractual requirements are identical with one another.
- 4) A discussion with Agency staff to ensure that we are addressing all project concerns and capturing all necessary data during the data collection process.
- 5) A reiteration of the need for consistency in results between past studies and assurance that the protocols and methods employed for the current research will result in an aligned set of findings and that the datasets will match up in analysis.
- 6) A review of the proposed project schedule and sharing of critical dates for San Diego County project staff.
- 7) The establishment of cadence for regular and ongoing project meetings between San Diego County and our project staff.

Quality Assurance Standards

Our team is committed to providing the highest quality data, analysis, and reporting to our client as possible. In order to achieve this, every project is carefully checked and processed with standardized systems, processes, and procedures.

Our QA/QC program includes reviews of major results documents by two statisticians, sometimes running parallel analyses independently to verify that we get the same result, running the analysis on pseudo data (where the result is known) to verify that we do get the known result, and using the statistician’s wisdom of examining results for reasonableness, given the research issue at hand.

Working with San Diego County, TMWL will integrate Quality Assurance measure throughout the project timeline:

- 1) Implement a Project Plan which is thorough, concise, detailed, and clear. The Plan will be the tool that all people working on the project will use to ensure that we are properly executing the project.
- 2) Design and thoroughly review instruments to ensure we are capturing all data needed for the study
- 3) Obtain, organize, standardize, and prepare government relevant databases for statistical analysis and data collection.

**COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS**

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

- 4) Execute QA on data several times throughout the fielding of the project, and across all methodologies.

Proactive management includes addressing potential issues, problems and concerns as soon as possible. Careful planning, oversight, and quality control procedures, along with effective communication, help prevent many potential problems from ever becoming actual issues. This allows for swift and structured processes to find, correct, and address implications to budgets, schedules, and research results, providing a swift recovery strategy.

SOW, Specific Requirements

5.3 The contractor shall provide a report containing the results of the collection, analysis, and comparison data which shall include but is not limited to...

In TMWL’s experience, the best way to respond to this requirement is to offer a draft report outline, as follows.

Title page and Table of contents

Preface (if needed)

Acknowledgments

Executive Summary

Summarize sections: introduction, methods, results, discussion, conclusions

Introduction

Purpose of study

Brief description of contents of the report

Methods

Collecting information per jail or per county jail system

- Our inquiry template for circumstances under which each Sheriff’s Department assumes responsibility for those booked
- Our inquiry template for features of jail operations.

Data collection on deaths and jail populations: description of the origin and contents of datasets.

Statistical methods: description of methods used for each analysis

- estimating death rates
- estimating uncertainty (confidence intervals, margin of error)
- determine if a difference is statistically significant (p-values)
- regression analysis: controlling for death risk factors
- comparing San Diego County death rates to other counties

Results (includes extensive tables and graphics)

- Descriptive statistics on inmate populations, number of deaths
- Death rates per jail & per county

The Mountain-Whisper-Light: Statistics & Data Science - Response to RFQ 12532

Page **25** of **31**

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

- Jail-specific, inmate-specific and time-specific factors (variables) predictive of death (showing impact of variables, as required in RFQ, or identified from contact with jails and Sheriff’s Departments or from online searches
- Comparison of SDSD death rates to other Sheriffs’ jurisdictions

Results of legal analysis and analysis of policies and practices in jails (including anecdotal accounts). Legal strengths and vulnerabilities in jail practices and procedures in San Diego County.

Discussion

- Recap major findings
- Comparison of this study’s findings to other studies
- Study strengths
- Limitations
- Recommendations, including potential follow-up studies

Conclusions

References

Appendices (primarily technical material and supplementary detail).

SOW, Specific Requirements

5.4 The Contractor shall provide the final approved report to the COR, which shall address the following (15) questions...

TMWL is committed to meeting the final report deadline. Based on 4 months of full operation prior to October 1, the following schedule is proposed.

Month 1-2: initiate and complete data collection (deaths, inmate populations, laws and jail practices, jail administration).

Month 2-3: Initiate and complete statistical analysis.

Month 3: Share tables and graphics of main findings with sponsor. Complete any requested additional analyses. Finalize tables and graphics for final report.

Month 4: Write and circulate first draft of final report to sponsor Requested turnaround from sponsor 7-10 days, all comments and suggested revisions to be returned to TMWL by the mutually agreed deadline for revisions.

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

(2. Technical Approach)

2.3 Provide the roles and responsibilities of proposed team members, including an organization chart that details the project team personnel assigned to support this project with a general statement of work responsibility.

Include lines of reporting that will ensure sufficient project management and effective communication.

2.4 For each deliverable proposed, detail the specific assigned project team personnel who will be responsible for the deliverable and the estimated hours to be expended on each activity.

TMWL will conduct the study in three phases as described below. Table 1 summarizes the tasks needed to carry out this study, as well as the timeline and responsible staff.

Phase 1: Data Collection and Planning (months 1-2)

The first step is to get the data in place to do the analyses. Given the short timeline (approximately 4 months) TMWL has chosen to start with the datasets that can be provided to us by the County, the dataset that were used by the previous contractor as explained in their 2022 report, and the generally available data sources as known to our staff. As part of the assignment, we also need to know more about jail operations and practices and how those may affect death rates. We expect to get in touch with California jails and Sheriff’s Departments to obtain data on jail procedures and practices. The final scope of the data that can be acquired, will determine the level of reliability with which each specific requirement (as given in SOW) can be fulfilled.

Phase 2: Data Analysis (months 2-3)

After the quantitative and qualitative data have been collected in Phase 1, the statistical analysis will begin. The qualitative data on jail operations and jail characteristics will be converted to variables that can be used in the statistical analysis, as well as being used for our narrative on jail issues that relate to in-custody deaths. For example, the presence vs. absence of certain booking and intake procedures (e.g., medical assessment) may have an impact on death rates. The presence or absence of an intake medical assessment can be converted to a binary variable which can be used as a control variable in the statistical analysis. These variables will allow the County to learn what practices might be changed in a way that could affect death rates.

During Phase 2, established statistical models will be used to estimate and compare in-custody death rates among San Diego County inmates and inmates of other Sheriff’s jail systems. As much as the data proves available, TMWL will identify other factors which are predictive of death, including County-specific, jail-specific and inmate-specific characteristics. TMWL will also seek to identify the nature of these characteristics (for example identifying deeply entrenched practices vs. those that are easily changed). Based on our statistical analysis, TMWL will estimate the reduction in death rates that might be obtained from a change in jail practice. For example, instituting new best practices could potentially result in a 20% reduction in in-custody deaths. This is obviously a hopeful outcome, but such estimates can and will be made. Based on the qualitative and quantitative analysis of jail practices and laws and policies, SDSO may wish to implement some of the changes that TMWL will propose in its final report.

Phase 3: Prepare draft, submit for review and finalize report (months 3-4)

The Mountain-Whisper-Light: Statistics & Data Science - Response to RFQ 12532

Page 27 of 31

**COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS**

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

In Phase 3, TMWL will bring the data collection, statistical analysis and recommendations together in a user-friendly and communicable form—a narrative plus displays. TMWL is highly interactive with clients, and the input of the County representatives over the course of many weeks will be carefully considered. We have been hired by every client to be independent and to give our best science back to the client. That is our ethic for this study.

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

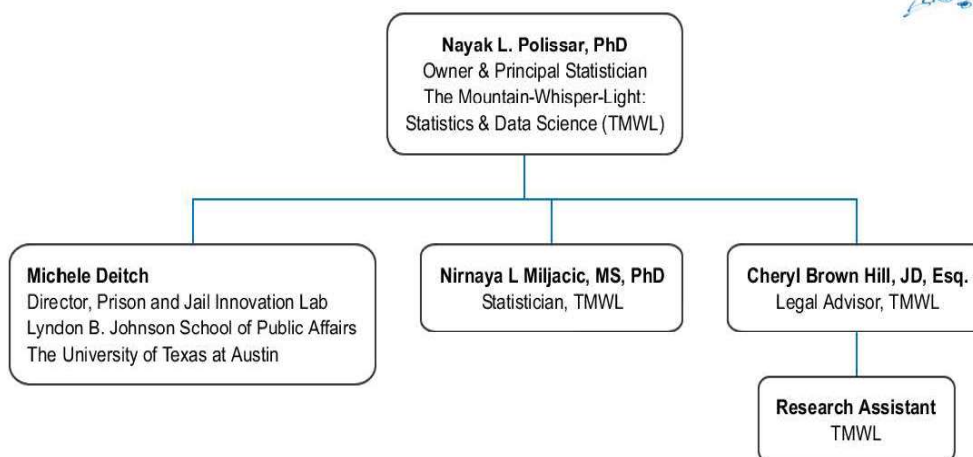
Table 1. Three phases (periods) of activity; use of staff during these periods. Includes timeframes and total hours of staff time per section.

<i>Activity</i>	<i>Nayak Polissar, Ph.D.</i>	<i>Nirnaya Miljacic, Ph.D., M.S.</i>	<i>Cheryl Brown Hill, JD, Esq.</i>	<i>Legal Research Assistant</i>	<i>Michele Y. Deitch, JD, M.Sc.</i>	<i>Total hours</i>
Phase 1: Kick-off; thorough data collection and planning (Months 1-2)	Overall direction, statistical methods, planning	Data collection, cleaning, preliminary analysis. Statistical methodology	Quantitative and qualitative data collection: Jail practices, policies, laws	Jail data collection, directed by Cheryl Brown Hill	Advise on data sources, data collection from jails. Key data items to collect	126
Phase 2: Data analysis: qualitative and quantitative statistical analysis; legal and jail practice analysis (Months 2-3)	Overall direction, interpretation of results, tune-ups to bring out major features. QA/QC	Statistical computing, display graphic and tables. QA/QC	Analyze jail data and information: Jail practices, policies, laws	Assist Cheryl Brown Hill in creating dataset for analysis	Interpretation of statistical findings	414
Phase 3: Draft final report, submit to County. Receive feedback from County and revise final report. Final tune-ups. (Months 3-4)	Final report, writing and overall direction	Final report drafts	Final report, legal, policy, jail admin issues	Assist Cheryl Brown Hill	Contribution to and review of final report	246

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT A-1 – CONTRACTOR’S TECHNICAL APPROACH

The Mountain-Whisper-Light Team
Organizational Chart



COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT B – INSURANCE REQUIREMENTS

Without limiting Contractor's indemnification obligations to County, Contractor shall provide at its sole expense and maintain for the duration of this contract, or as may be further required herein, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of the work by the Contractor, his agents, representatives, employees or subcontractors.

1. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- A. Commercial General Liability, Occurrence form, Insurance Services Office form CG0001.
- B. Workers' Compensation, as required by State of California and Employer's Liability Insurance.
- C. Professional Liability (Errors & Omissions) appropriate to the professional services provided by Contractor under this contract.

2. Minimum Limits of Insurance

Contractor shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, and Independent Contractors Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$4,000,000.
- B. Employer's Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of County of San Diego.
- C. Professional Liability (Errors & Omissions): \$2,000,000 per claim with an aggregate limit of not less than \$2,000,000. Coverage shall include contractual liability. This coverage shall be maintained for a minimum of three years following termination or completion of Contractor's work pursuant to the Contract.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. As a requirement of this contract, any available insurance proceeds in excess of the specified minimum limits and coverage stated above, shall also be available to the County of San Diego.

3. Self-Insured Retentions

Any self-insured retention must be declared to and approved by County Risk Management. At the option of the County, either: the insurer shall reduce or eliminate such self-insured retentions as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

4. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

A. Additional Insured Endorsement

The County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively are to be covered as additional insureds on the General Liability 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 and automobiles owned, leased, hired or borrowed by or on behalf of the Contractor. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO from CG 2010 11 85 or **both** CG 2010, CG 2026, CG 2033, or CG 2038; **and** CG 2037 forms if later revisions used).

B. Primary Insurance Endorsement

For any claims related to this Contract, Contractor's insurance coverage, including any excess liability policies, shall be primary insurance at least as broad as ISO CG 20 01 04 13 as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT B – INSURANCE REQUIREMENTS

maintained by the County, its officers, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

C. Notice of Cancellation

Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

D. Severability of Interest Clause

Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.

General Provisions

5. Qualifying Insurers

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County Risk Management.

6. Evidence of Insurance

Prior to commencement of this Contract, but in no event later than the effective date of the Contract, Contractor shall furnish the County with a copy of the policy declaration and endorsement pages along with the certificates of insurance and amendatory endorsements effecting coverage required by this clause. Policy declaration and endorsement pages shall be included with renewal certificates and amendatory endorsements submissions and shall be furnished to County within thirty days of the expiration of the term of any required policy. Contractor shall permit County at all reasonable times to inspect any required policies of insurance. The Contract/Project Number should be noted in the "Description of Operations" box located near the bottom of the form. Additionally, the "Certificate Holder" box should designate the address of the responsible department or department representative to ensure the documents are received by the appropriate party.

7. Failure to Obtain or Maintain Insurance; County's Remedies

Contractor's failure to provide insurance specified or failure to furnish certificates of insurance and amendatory endorsements or failure to make premium payments required by such insurance shall constitute a material breach of the Contract, and County may, at its option, terminate the Contract for any such default by Contractor.

8. No Limitation of Obligations

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by the County are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to the Contract, including, but not limited to, the provisions concerning indemnification.

9. Review of Coverage

County retains the right at any time to review the coverage, form and amount of insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

10. Self-Insurance

Contractor may, with the prior written consent of County Risk Management, fulfill some or all of the insurance requirements contained in this Contract under a plan of self-insurance. Contractor shall only be permitted to utilize such self-insurance if in the opinion of County Risk Management, Contractor's (i) net worth, and (ii) reserves for payment of claims of liability against Contractor, are sufficient to adequately compensate for the lack of other insurance coverage required by this Contract. Contractor's utilization of self-insurance shall not in any way limit liabilities assumed by Contractor under the Contract.

11. Claims Made Coverage

COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS

EXHIBIT B – INSURANCE REQUIREMENTS

If coverage is written on a “claims made” basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

- A. The policy retroactive date coincides with or precedes Contractor’s commencement of work under the Contract (including subsequent policies purchased as renewals or replacements).
- B. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Contract.
- C. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least three years to report claims arising in connection with the Contract.
- D. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

12. Subcontractors’ Insurance

Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors. Such Additional Insured endorsement shall be attached to the certificate of insurance in order to be valid and on a form at least as broad as ISO from CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038; and CG 2037 forms if later revisions used. If any sub contractor’s coverage does not comply with the foregoing provisions, Contractor shall defend and indemnify the County from any damage, loss, cost, or expense, including attorneys’ fees, incurred by County as a result of subcontractor’s failure to maintain required coverage.

13. Waiver of Subrogation

Contractor hereby grants to County a waiver of their rights of subrogation which any insurer of Contractor may acquire against County by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers’ Compensation policy shall be endorsed with a waiver of subrogation in favor of the County for all work performed by the Contractor, its employees, agents and subcontractors.

**COUNTY CONTRACT NUMBER 569176
AGREEMENT WITH THE MOUNTAIN WHISPER LIGHT, INC. FOR
INDEPENDENT STUDY AND REPORT FOR IN-CUSTODY DEATHS**

EXHIBIT C – PRICING SCHEDULE

TERM: DATE OF AWARD THROUGH MAY 31, 2024

ITEM NO.	DESCRIPTION	PRICE
1	Deliverable: Acceptance of the Approved Project Plan by the Contracting Officer Representative (COR)	\$25,000.00
2	Deliverable: Receipt of the Approved Final Draft In-Custody Death Data Analysis Report by the Contracting Officer Representative (COR)	\$75,000.00
3	Deliverable: Presentation of the Final Draft In-Custody Death Data Analysis Report to the CLERB Board (includes up to four [4] weeks after Board presentation for follow-up clarifications).	\$18,500.00
GRAND TOTAL :		\$118,500.00

Payment will be made upon completion of each deliverable within the fixed pricing in accordance with Article 4. The deliverables listed must be clearly defined in the proposed approach to be eligible for payment. The fixed prices shall be complete payment for the independent study and report for in-custody deaths, including all expenses.

No Reimbursable Expenses will be paid for work included in the independent study and report for in-custody deaths.

****TAX NOT INCLUDED****

ATTACHMENT B

CATEGORY	September 2023	October 2023	November 2023	December 2023	January 2024	February 2024	March 2024	April 2024	May 2024	June 2024	July 2024	August 2024	September 2024	October 2024	November 2024	December 2024	January 2025	February 2025	ALL MONTHS
Receipt & Reviewing of Documents	\$ -	\$ 546	\$ 297	\$ 324	\$ 1,125	\$ 982	\$ 1,168	\$ 1,265	\$ -	\$ 1,650	\$ 163	\$ 257	\$ 894	\$ 884	\$ 650	\$ 757	\$ 693	\$ 450	\$ 12,106
Drafting Documents	\$ 210	\$ 2,156	\$ 1,540	\$ 553	\$ 695	\$ 1,526	\$ 663	\$ 528	\$ 226	\$ 1,576	\$ 1,717	\$ 1,290	\$ 325	\$ 435	\$ 1,928	\$ 1,374	\$ 666	\$ 108	\$ 17,516
Editing & Finalizing Documents	\$ -	\$ 255	\$ 821	\$ 503	\$ 942	\$ 1,049	\$ 1,381	\$ 974	\$ 1,937	\$ 895	\$ 738	\$ 463	\$ 1,205	\$ 1,004	\$ 725	\$ 1,588	\$ 2,560	\$ 1,039	\$ 18,078
Attending Meetings	\$ 2,263	\$ 3,623	\$ 2,433	\$ 2,948	\$ 2,285	\$ 1,803	\$ 4,289	\$ 1,543	\$ 2,640	\$ 6,800	\$ 2,716	\$ 1,586	\$ 2,348	\$ 3,165	\$ 2,116	\$ 2,955	\$ 1,357	\$ 738	\$ 47,607
Preparing for Meetings & Reviewing Meeting Notes & Debriefing	\$ -	\$ 1,483	\$ 240	\$ 793	\$ -	\$ 749	\$ 920	\$ 96	\$ 1,009	\$ 1,237	\$ 473	\$ 325	\$ 697	\$ 498	\$ 122	\$ 261	\$ 862	\$ 342	\$ 10,106
Reviewing and responding to E-mails	\$ 159	\$ 355	\$ 137	\$ 12	\$ 233	\$ 62	\$ 526	\$ 452	\$ 58	\$ 619	\$ 258	\$ 628	\$ 732	\$ 540	\$ 798	\$ 415	\$ 313	\$ 554	\$ 6,851
Telephone Conference Re: Project	\$ -	\$ 660	\$ 67	\$ 176	\$ 1,037	\$ 1,426	\$ 1,141	\$ 655	\$ 86	\$ 1,880	\$ 1,481	\$ 1,091	\$ 1,681	\$ 1,206	\$ 1,620	\$ 1,572	\$ 1,090	\$ 557	\$ 17,426
Literature Review	\$ -	\$ -	\$ 27	\$ -	\$ 285	\$ -	\$ 142	\$ -	\$ -	\$ 6	\$ 81	\$ -	\$ 86	\$ 146	\$ 39	\$ -	\$ -	\$ -	\$ 811
Research	\$ -	\$ 596	\$ 1,575	\$ 863	\$ 432	\$ 162	\$ 9	\$ 207	\$ -	\$ 215	\$ 739	\$ 182	\$ -	\$ 118	\$ 124	\$ -	\$ -	\$ -	\$ 5,222
Data Analysis Reviewing & Reporting on Data Analysis	\$ -	\$ -	\$ 50	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,300	\$ 889	\$ 1,585	\$ 161	\$ 3,528	\$ 300	\$ 78	\$ 1,684	\$ 339	\$ 12,914
Consultations with CLERB Attorneys Preparing Documents for Attorneys	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 460	\$ -	\$ 230	\$ -	\$ -	\$ -	\$ -	\$ 690
Administrative: Preparing Invoices, Discussing and reviewing Contract Amendments, Funding, Database Updates, Insurance Review	\$ -	\$ -	\$ 836	\$ 611	\$ 183	\$ -	\$ 74	\$ 36	\$ -	\$ 3,561	\$ 180	\$ -	\$ 903	\$ 143	\$ 231	\$ 1,167	\$ 555	\$ 581	\$ 9,062
ALL CATEGORIES	\$ 2,633	\$ 9,674	\$ 8,022	\$ 6,783	\$ 7,217	\$ 7,760	\$ 10,314	\$ 5,757	\$ 5,955	\$ 22,738	\$ 9,435	\$ 7,868	\$ 9,032	\$ 11,897	\$ 8,651	\$ 10,167	\$ 9,780	\$ 4,708	\$ 158,388

ATTACHMENT C

Time-task matrix.

Covering: March 1st until the end of the study.

Activity	Cheryl	Nirnaya	Patricia	Nayak	Michele	Total Cost per Activity
Administrative	6	6	6	6		\$ 4,500
PRA team: Analysis and Review of SDSO responses and of Any Outstanding Items from PRAs	10		15			\$ 3,750
PRA team: Review and evaluation of Additional Data	8		12			\$ 3,000
PRA team: Submission to Final Report	25		35			\$ 9,100
Statistical team: Evaluation and Analysis of Additional Data		25		5		\$ 4,750
Consultations within TMWL team Regarding additional data Analysis and Procedures	4	4	4	4		\$ 3,000
Statistical team: Report Concerning Review & Analysis of Additional Data		6		2		\$ 1,380
Statistical team: Statistical parts submission to Final Report		6		2		\$ 1,380
Expert comentary on the data analysis and submission for Final Report (Michele)					6	\$ 1,860
TMWL internal team meetings concerning final report, including: additional analysis, appendices, charts and diagrams, story telling.	3	3	3	3	3	\$ 3,180
Final report updates after CLERB comments	10	10	10	10	1	\$ 7,810
Total hours this person	66	60	85	32	10	\$ 43,710
Retail rate of person per hour	\$ 210	\$ 130	\$ 110	\$ 300	\$ 310	
Labor cost, this person	\$ 13,860	\$ 7,800	\$ 9,350	\$ 9,600	\$ 3,100	\$ 43,710
Making the PowerPoint presentation for CLERB	2	12	4	2		\$ 3,020
The presentation at the CLERB meeting in San Diego	2	3	2	2	2	\$ 2,250
Travel to San Diego: plane ticket, one night hotel, etc. (Nirnaya)						\$ 1,000
Total Cost						\$ 49,980