

Grants & Contracts - Transmittal Memo

DATE: March 5, 2019

FROM: Purchasing Division, Contracts

TO: Anthony Louise

CONTRACT #: 11208

VENDOR: BI Incorporated

DESCRIPTION: #11208 BI Incorporated Electronic Monitoring Service Agreement, Agreement No. 011019MV1

APPROVED BY: Board of County Commissioners

APPROVAL DATE: February 26, 2019

RECEIVED ON: March 5, 2019

TERM START: February 26, 2019

TERM END: September 30, 2019

AMOUNT: \$122,000.00

RFP/BID #: N/A

GMW: N/A

POR #
(ENCUMBERANCE): N/A

ACTIONS REQUIRED: Please forward a copy to the vendor & retain a copy for your files.

**ELECTRONIC MONITORING SERVICE AGREEMENT – U.S. COMMUNITIES
BETWEEN ALACHUA COUNTY AND BI INCORPORATED**

Agreement No. 011019MV1

This Electronic Monitoring Service Agreement – U.S. Communities ("Agreement") is made between BI INCORPORATED ("BI"), a Colorado corporation with its principal place of business at 6265 Gunbarrel Avenue, Suite B, Boulder, CO 80301 and ALACHUA COUNTY BOARD OF COUNTY COMMISSIONERS ("Agency") with its principal place of business at 14 NE 1st Street, Gainesville, FL 32601. Collectively hereinafter the Agency and BI are referred to as the "Parties."

This Agreement outlines responsibilities of each party relative to the operation of an electronic monitoring program.

WHEREAS, Agency has registered with U.S. Communities Government Purchasing Alliance ("U.S. Communities") as a Participating Public Agency under the terms and conditions of the U.S. Communities Master Intergovernmental Cooperative Purchasing Agreement; and

WHEREAS, BI is a Party to a Master Agreement No. 20184499 by and between the City and County of Denver Colorado and BI ("Master Agreement") through U.S. Communities; and

WHEREAS, Agency desires to procure products and services in accordance with the terms and conditions of the Master; and

WHEREAS, the Agency is authorized to enter into this Agreement by the laws and regulations to which the Agency is subject; and

WHEREAS, the Parties wish to incorporate the terms and conditions of the Master Agreement.

NOW, THEREFORE, In consideration of the promises contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto, desiring to be legally bound, hereby agree as follows:

1. **Terms and Conditions.** Except as specifically set forth herein, this Agreement is subject to the terms and conditions of the Master Agreement 20184499¹ all of which are by this reference made part and incorporated in this Agreement.
2. **Equipment and Services.** BI shall provide equipment and services as set forth in the Master Agreement - Exhibit A - Scope of Work, Technical Specifications and Warranty.
3. **Compensation and Payment.** The Maximum Contract Amount to be paid by the Agency to BI shall in no event exceed the sum of ONE HUNDRED AND TWENTY-TWO THOUSAND DOLLARS (\$122,000.00), paid in accordance with the rates set forth in Schedule A of the Master Agreement. Payment terms may be changed by a duly authorized and written amendment to this Agreement executed by the Parties in the same manner as this Agreement. Payments shall be in accordance with the terms and conditions of the Master Agreement.
 - a. All applications for payment shall be processed and paid in accordance with the provisions of Chapter 218, Part VII Florida Statutes ("Local Government Prompt Payment Act").

¹ Also referred to as: SAFTY-201844994-00

4. **Term.** The Agreement shall be effective, upon execution, March 1, 2019 continuing through September 30, 2019 to comply with the Agency's Fiscal Year. The Agency has the option of renewing this Agreement for additional one year terms coinciding with the Agency's Fiscal Year, October 1 through September 30. No term extension shall extend the term past the term of the Master Agreement, January 31, 2022.

The Agency's performance and obligation to pay under this Agreement is contingent upon a specific annual appropriation by the Alachua County Board of County Commissioners ("Board"). The Parties hereto understand that this Agreement is not a commitment of future appropriations. Therefore, the continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes, and that the failure of the Board to do so shall not constitute a breach or default of this Agreement.

5. **Notice.** Except as otherwise provided in this Agreement, all notices to be provided under this Agreement from either party to the other party must be by one of the following methods: (i) in writing and sent by certified mail, return receipt requested, (ii) by personal delivery with receipt, or (iii) via electronic mail. All notices shall be deemed two (2) business days after mailing, unless personally delivered in which case delivery shall be deemed to occur upon actual receipt by the other party. For purposes of all notices, Agency and BI's representatives are:

Alachua County Department of Court Services
14 NE 1st St.
Gainesville, FL 32601
ATTN: Anthony Louise, Fiscal Assistant

BI Incorporated
6265 Gunbarrel Avenue
Suite B
Boulder, CO 80233
ATTN: Todd Porter, Business Development Director

6. Project Records

a. General Provisions

- i. Any document submitted to the Agency may be a public record and is open for inspection or copying by any person or entity. "Public records" are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency per §119.011(11), Florida Statutes. Any document is subject to inspection and copying unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law.
- ii. In accordance with §119.0701, Florida Statutes, BI, *when acting on behalf of the Agency*, as provided under §119.011(2), Florida Statutes, shall keep and maintain public records as required by law and retain them as provided by the General Record Schedule established by the Department of State. Upon request from the Agency's custodian of public records, provide the Agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time unless exempted under Chapter 119, Florida Statutes, or as otherwise provided by law. Additionally, BI shall provide the public records at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- iii. BI shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if BI does not transfer the records to the Agency.

b. Confidential Information

- i. During the term of this Agreement or license, BI may claim that some or all of BI's information, including, but not limited to, software documentation, manuals, written methodologies and processes, pricing, discounts, or other considerations (hereafter collectively referred to as "Confidential Information"), is, or has been treated as confidential and proprietary by BI in accordance with §812.081, Florida Statutes, or other law, and is exempt from disclosure under the Public Record Act. BI shall clearly identify and mark Confidential Information as "Confidential Information" or "CI" and the Agency shall use its best efforts to maintain the confidentiality of the information properly identified by BI as "Confidential Information" or "CI."
- ii. The Agency shall promptly notify BI in writing of any request received by the Agency for disclosure of BI's Confidential Information and BI may assert any exemption from disclosure available under applicable law or seek a protective order against disclosure from a court of competent jurisdiction. BI shall protect, defend, indemnify, and hold the Agency, its officers, employees and agents free and harmless from and against any claims or judgments arising out of a request for disclosure of Confidential Information. BI shall investigate, handle, respond to, and defend, using counsel chosen by BI, at BI's sole cost and expense, any such claim, even if any such claim is groundless, false, or fraudulent. BI shall pay for all costs and expenses related to such claim, including, but not limited to, payment of attorney fees, court costs, and expert witness fees and expenses. Upon completion of this Agreement or license, the provisions of this paragraph shall continue to survive. BI releases Agency from claims or damages related to disclosure by Agency

c. **Project Completion:** Upon completion of, or in the event this Agreement is terminated, BI, when acting on behalf of the Agency as provided under §119.011(2), Florida Statutes, shall transfer, at no cost, to the Agency all public records in possession of BI or keep and maintain public records required by the Agency to perform the service. If BI transfers all public records to the Agency upon completion or termination of the Agreement, it must destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If BI keeps and maintains public records upon the completion or termination of the Agreement all applicable requirements for retaining public records shall be met. The retention rate for all records associated with this Agreement will be five (5) fiscal years after the completion of the Agreement if the records are not transferred. All records stored electronically shall be provided to the Agency, upon request from the Agency's custodian of public records, in a mutually agreed upon format.

d. **Compliance:** If BI fails to provide the public records to the Agency within a reasonable time may be subject to penalties under §119.10, Florida Statutes.

7. **Insurance.** BI will procure and maintain insurance throughout the entire term of this Agreement of the types and in the minimum amounts detailed in Exhibit B. A current Certificate of Insurance showing coverage of the types and in the amounts required shall be provided to the Agency.

8. **Governing Law and Venue.** This Agreement shall be governed in accordance with the laws of the State of Florida. Sole and exclusive venue for all actions arising under this Agreement shall be in the state court in Alachua County, Florida.

SIGNATURES ON THE NEXT PAGE

IN WITNESS WHEREOF, the parties have executed this Amendment by their duly authorized representatives.

BI INCORPORATED

Ruth Skerjanec
Signature

Ruth Skerjanec
Printed Name

Vice President, Financial Planning
Printed Title

1/28/19
Date

ALACHUA COUNTY BOARD OF COUNTY COMMISSIONERS

Charles S. Chestnut, IV
Signature

Charles S. Chestnut, IV
Printed Name

Chair
Printed Title

02/26/19
Date

ATTEST

Debra L. Neary
Signature

Debra L. Neary
Printed Name

Admin Asst SR
Printed Title

ATTEST

Steve Donahay, D.C.
Signature

Steve Donahay
Printed Name

Deputy Clerk
Printed Title

APPROVED AS TO FORM

Michael Duchman
Signature

Michael Duchman
Printed Name

Assoc. Secy
Printed Title

SCHEDULE A

TO THE
ELECTRONIC MONITORING SERVICE AGREEMENT – U.S. COMMUNITIES
Agreement No. 011019MV1 ("Agreement")
between
BI INCORPORATED ("BI")
and
ALACHUA COUNTY BOARD OF COUNTY COMMISSIONERS ("Agency")

Pursuant to Master Agreement No. 201844994, the cost to Agency for the services rendered by BI shall be as follows:

Service – Standard Automated

HOMEGUARD 200 UNIT VOLUME PRICING AND ADDITIONAL SERVICES:

Unit Quantity	Rental / Spare Charge Per Unit / Per Day	Monitoring Service Charge Per Unit / Per Active Day	Total Charge Per Unit / Per Active Day
1 - 25	\$1.05	\$0.90	\$1.95
26 - 50	\$1.05	\$0.90	\$1.95
51 - 75	\$1.05	\$0.90	\$1.95
76 - 100	\$1.05	\$0.90	\$1.95
101 - 125	\$0.85	\$0.75	\$1.60
126 - 150	\$0.85	\$0.75	\$1.60
151 - 175	\$0.85	\$0.75	\$1.60
176 - 200	\$0.85	\$0.75	\$1.60
201 - 500	\$0.85	\$0.75	\$1.60
501+	\$0.85	\$0.75	\$1.60

ADDITIONAL SERVICES:

Thirty Percent (30%) HomeGuard 200 Unit No-charge Spares: Each month during the term of this Agreement, Agency is entitled to keep a quantity of HomeGuard 200 Units equal to, but not to exceed, 30% of that month's average number of active HomeGuard 200 Units per day in its possession at no charge (not subject to the Unit Rental Charge while not in use). For any inactive HomeGuard 200 Units in excess of the 30% allowance, Agency will incur a spare charge per unit per day based on the applicable tier charge for Rental/Spare Charge per Unit/Per Day listed in the table above. Following execution of this Agreement, Agency will be granted a sixty (60) day ramp-up period before billing of spares will commence.

No HomeGuard 200 Unit Loss or Damage: Agency is not entitled to a loss or damage allowance. Agency will be responsible for all costs related to lost, stolen or damaged HomeGuard 200 Units.

Replacement costs: HomeGuard 200 Base Station - \$850.00 each and HomeGuard 200 Transmitter - \$350.00 each.

SL2 UNIT VOLUME PRICING AND ADDITIONAL SERVICES:

Unit Quantity	Rental / Spare Charge Per Unit / Per Day	Monitoring Service Charge Per Unit / Per Active Day	Total Charge Per Unit / Per Active Day
1 - 25	\$2.85	\$2.60	\$5.45
26 - 50	\$2.85	\$2.60	\$5.45
51 - 75	\$2.85	\$2.60	\$5.45
76 - 100	\$2.85	\$2.60	\$5.45
101 - 125	\$2.85	\$2.60	\$5.45
126 - 150	\$2.85	\$2.60	\$5.45
151 - 175	\$2.85	\$2.60	\$5.45
176 - 200	\$2.85	\$2.60	\$5.45
201 - 500	\$2.75	\$2.50	\$5.25
501+	\$2.60	\$2.35	\$4.95

ADDITIONAL SERVICES:

Thirty Percent (30%) SL2 Unit No-charge Spares: Each month during the term of this Agreement, Agency is entitled to keep a quantity of inactive SL2 Units equal to, but not to exceed, 30% of that month's average number of active Units per day in its possession at no charge (not subject to the Unit Rental Charge while not in use). For any inactive SL2 Units in excess of the 30% allowance, Agency will incur a spare charge per unit per day based on the applicable tier charge for Rental/Spare Charge per Unit/Per Day listed in the table above.

No SL2 Unit Loss or Damage: Agency is not entitled to a loss or damage allowance. Agency will be responsible for all costs related to lost, stolen or damaged SL2 Units. **Replacement cost:** SL2 Unit - \$650.00 each.

SL2 Telco Service Charge: Agency-owned SL2 Units are not subject to a Rental/Spare Charge when they are inactive; however, they continue to incur telecom fees. Therefore, the fees listed below will be applied based on the total Inactive Unit Days in a month. "Inactive Unit Days" are the total purchased units times the number of days in the month, minus the total Active Unit Days for the month and the Spare Allowance. An "Active Unit Day" is any day in which a purchased unit is active in the system. The "Spare Allowance" is 20% of all purchased units times the number of days in the month. Units reported lost or damaged beyond repair can be removed from the total inventory. This calculation is performed on a monthly basis with no carryover from one month to the next. Credit will not be provided in connection with this calculation.

Purchased Unit Volume
0 – 25 Purchased Units --- \$0.60 Telco Fee
26 – 50 Purchased Units --- \$0.55 Telco Fee
51 – 100 Purchased Units --- \$0.50 Telco Fee
101 - 200 Purchased Units --- \$0.45 Telco Fee
201 – 300 Purchased Units --- \$0.40 Telco Fee
300+ Purchased Units --- \$0.35 Telco Fee

TAD UNIT AND TAD PLUS CELLULAR VOLUME PRICING AND ADDITIONAL SERVICES:**TAD ALCOHOL ONLY:**

Unit Quantity	Rental / Spare Charge Per Unit / Per Day	Monitoring Service Charge Per Unit / Per Active Day	Total Charge Per Unit / Per Active Day
1 - 25	\$4.35	\$2.00	\$6.35
26 - 50	\$4.35	\$2.00	\$6.35
51 - 75	\$4.35	\$2.00	\$6.35
76 - 100	\$4.35	\$2.00	\$6.35
101 - 125	\$4.25	\$1.95	\$6.20
126 - 150	\$4.25	\$1.95	\$6.20
151 - 175	\$4.25	\$1.95	\$6.20
176 - 200	\$4.25	\$1.95	\$6.20
201 - 500	\$4.10	\$1.80	\$5.90
501+	\$4.10	\$1.80	\$5.90

TAD WITH RF:

Unit Quantity	Rental / Spare Charge Per Unit / Per Day	Monitoring Service Charge Per Unit / Per Active Day	Total Charge Per Unit / Per Active Day
1 - 25	\$4.35	\$2.00	\$6.35
26 - 50	\$4.35	\$2.00	\$6.35
51 - 75	\$4.35	\$2.00	\$6.35
76 - 100	\$4.35	\$2.00	\$6.35
101 - 125	\$4.25	\$1.95	\$6.20
126 - 150	\$4.25	\$1.95	\$6.20
151 - 175	\$4.25	\$1.95	\$6.20
176 - 200	\$4.25	\$1.95	\$6.20
201 - 500	\$4.10	\$1.80	\$5.90
501+	\$4.10	\$1.80	\$5.90

ADDITIONAL SERVICES:

Thirty Percent (30%) TAD Unit No-charge Spares: Each month during the term of this Agreement, Agency is entitled to keep a quantity of TAD Units equal to, but not to exceed, 30% of that month's average number of active Units per day in its possession at no charge (not subject to the Unit Rental Charge while not in use). For any inactive TAD Units in excess of the 30% allowance, Agency will incur a spare charge per unit per day based on the applicable tier charge for Rental/Spare Charge per Unit/Per Day listed in the table above.

No TAD Unit Loss or Damage: Agency is not entitled to a loss or damage allowance. Agency will be responsible for all costs related to lost, stolen or damaged TAD Units.

Replacement costs: TAD Ankle Bracelet - \$1,250.00 each; TAD HomeBase - \$1,250.00 each.

Ankle Bracelet and HomeBase = TAD Complete Unit.

TAD PLUS CELLULAR – ALCOHOL ONLY:

Unit Quantity	Rental / Spare Charge Per Unit / Per Day	Monitoring Service Charge Per Unit / Per Active Day	Cellular HomeBase Rental / Spare Charge Per Unit / Per Day	Total Charge Per Unit / Per Active Day
1 - 25	\$4.35	\$2.00	\$1.35	\$7.70
26 - 50	\$4.35	\$2.00	\$1.35	\$7.70
51 - 75	\$4.35	\$2.00	\$1.35	\$7.70
76 - 100	\$4.35	\$2.00	\$1.35	\$7.70
101 - 125	\$4.25	\$1.95	\$1.35	\$7.55
126 - 150	\$4.25	\$1.95	\$1.35	\$7.55
151 - 175	\$4.25	\$1.95	\$1.35	\$7.55
176 - 200	\$4.25	\$1.95	\$1.35	\$7.55
201 - 500	\$4.10	\$1.80	\$1.32	\$7.22
501+	\$4.10	\$1.80	\$1.32	\$7.22

TAD PLUS CELLULAR - WITH RF MONITORING:

Unit Quantity	Rental / Spare Charge Per Unit / Per Day	Monitoring Service Charge Per Unit / Per Active Day	Cellular HomeBase Rental / Spare Charge Per Unit / Per Day	Total Charge Per Unit / Per Active Day
1 - 25	\$4.35	\$2.00	\$1.35	\$7.70
26 - 50	\$4.35	\$2.00	\$1.35	\$7.70
51 - 75	\$4.35	\$2.00	\$1.35	\$7.70
76 - 100	\$4.35	\$2.00	\$1.35	\$7.70
101 - 125	\$4.25	\$1.95	\$1.35	\$7.55
126 - 150	\$4.25	\$1.95	\$1.35	\$7.55
151 - 175	\$4.25	\$1.95	\$1.35	\$7.55
176 - 200	\$4.25	\$1.95	\$1.35	\$7.55
201 - 500	\$4.10	\$1.80	\$1.32	\$7.22
501+	\$4.10	\$1.80	\$1.32	\$7.22

ADDITIONAL SERVICES:

Thirty Percent (30%) TAD Cellular HomeBase Unit No-charge Spares: Each month during the term of this Agreement, Agency is entitled to keep a quantity of TAD Cellular HomeBase Units equal to, but not to exceed, 30% of that month's average number of active Units per day in its possession at no charge (not subject to the Unit Rental Charge while not in use). For any inactive TAD Cellular HomeBase Units in excess of the 30% allowance, Agency will incur a spare charge per unit per day based on the applicable TAD Cellular HomeBase Unit Quantity tier.

No TAD Cellular HomeBase Unit Loss or Damage: Agency is not entitled to a loss or damage allowance. Agency will be responsible for all costs related to lost, stolen or damaged TAD Cellular HomeBase Units.

Replacement cost: TAD Cellular HomeBase Unit - \$1,550.00 each.

EXACUTRACK ONE SERVICE VOLUME PRICING AND ADDITIONAL SERVICES:**EXACUTRACK ONE WITH 1.30.A30 ZX SERVICE:**

ET One - GPS Point Collection every 1 minute, Data Transmission every 30 minutes, AFLT Collection every 30 minutes if needed, with Zone Crossing Notification.

Unit Quantity	Rental / Spare Charge Per Unit / Per Day	Monitoring Service Charge Per Unit / Per Active Day	Total Charge Per Unit / Per Active Day
1 - 25	\$2.20	\$1.30	\$3.50
26 - 50	\$2.20	\$1.30	\$3.50
51 - 75	\$2.20	\$1.30	\$3.50
76 - 100	\$2.20	\$1.30	\$3.50
101 - 125	\$2.10	\$1.20	\$3.30
126 - 150	\$2.10	\$1.20	\$3.30
151 - 175	\$2.05	\$1.20	\$3.25
176 - 200	\$2.05	\$1.20	\$3.25
201 - 500	\$2.00	\$1.15	\$3.15
501+	\$2.00	\$1.15	\$3.15

ADDITIONAL SERVICES:

Thirty Percent (30%) ExacuTrack One Unit No-charge Spares: Each month during the term of the Agreement, Agency is entitled to keep a quantity of ExacuTrack One Tracking units equal to, but not to exceed, 30% of that month's average number of active Units per day in its possession at no charge (not subject to the Rental Charge while not in use). For any inactive ExacuTrack One Units in excess of the 30% allowance, Agency will incur a spare charge per unit per day based on the applicable tier charge for Rental/Spare Charge per Unit/Per Day listed in the table above.

No ExacuTrack One Unit Loss or Damage: Agency is not entitled to a loss or damage allowance. Agency will be responsible for all costs related to lost, stolen or damaged ExacuTrack One Equipment.

Replacement costs: ExacuTrack One Beacon - \$250.00 each; ExacuTrack One Tracking Unit - \$1,550.00 each.

LOC8 SERVICE VOLUME PRICING AND ADDITIONAL SERVICES:

OPTION A: LOC8 WITH 1.30.W5.C30 ZX SERVICE:

LOC8 - GPS Collection Rate once (1) per minute, Data Transmission every 30 minutes, Wi-Fi Locate every 5 minutes (If GPS not found), Cell Tower Locate every 30 minutes (If GPS not found), with Data Transmission at Zone Crossing.

Unit Quantity	Rental / Spare Charge Per Unit / Per Day	Monitoring Service Charge Per Unit / Per Active Day	Total Charge Per Unit / Per Active Day
1 - 25	\$2.30	\$1.35	\$3.65
26 - 50	\$2.30	\$1.35	\$3.65
51 - 75	\$2.30	\$1.35	\$3.65
76 - 100	\$2.30	\$1.35	\$3.65
101 - 125	\$2.20	\$1.25	\$3.45
126 - 150	\$2.20	\$1.25	\$3.45
151 - 175	\$2.20	\$1.25	\$3.45
176 - 200	\$2.20	\$1.25	\$3.45
201 - 500	\$2.15	\$1.10	\$3.25
501+	\$2.15	\$1.10	\$3.25

ADDITIONAL SERVICES:

Thirty Percent (30%) LOC8 Unit No-charge Spares: Each month during the term of the Agreement, Agency is entitled to keep a quantity of LOC8 units equal to, but not to exceed, 30% of that month's average number of active Units per day in its possession at no charge (not subject to the Rental Charge while not in use). For any inactive LOC8 Units in excess of the 30% allowance, Agency will incur a spare charge per unit per day based on the applicable tier charge for Rental/Spare Charge per Unit/Per Day listed in the table above. Following execution of this Agreement, Agency will be granted a sixty (60) day ramp-up period before billing of spares will commence.

No LOC8 Unit Loss or Damage: Agency is not entitled to a loss or damage allowance. Agency will be responsible for all costs related to lost, stolen or damaged LOC8 Equipment.

Replacement costs: LOC8 Tracking - \$1,950.00 each; LOC8 Beacon - \$250.00 each.

BI SMARTLINK™ VOLUME PRICING AND ADDITIONAL SERVICES:

BI SmartLINK™ is a software application designed to be installed on a smart phone. Upon acceptance of the BI SmartLINK Terms of Use, designated Clients may download and use the application on their smartphones. It provides clients with supervision related calendaring and community resource information. Clients can also be required to use the app's check-in capabilities to verify their location or periodically report their status. During each check-in, the client's identity is verified using biometric technology. The application's modular design allows officers to control what functionality and information is delivered to the client's phone from within TotalAccess.

Requirements: Apple iOS or Android (Operating System powered) smartphone. Specific Requirements available.

BI SmartLINK™ Suite: (Package – Check In, Self Report, Community Resources, Calendar, Messaging, Document Capture)

Unit Quantity	Charge per Assigned Day
1 - 150	\$1.00
151 - 500	\$0.95
500+	\$0.90

As an option, the Agency may individually select from the following BI SmartLINK™ Service Plans:

BI SmartLINK™ Basic Check In (requires Biometric Facial Recognition):

Unit Quantity	Charge per Assigned Day
1 - 150	\$0.46
151 - 500	\$0.44
500+	\$0.41

BI SmartLINK™ Self Report (requires Biometric Facial Recognition):

Unit Quantity	Charge per Assigned Day
1 - 150	\$0.17
151 - 500	\$0.16
500+	\$0.15

BI SmartLINK™ Community Resources:

Unit Quantity	Charge per Assigned Day
1 - 150	\$0.12
151 - 500	\$0.11
500+	\$0.11

BI SmartLINK™ Calendar:

Unit Quantity	Charge per Assigned Day
1 - 150	\$0.40
151 - 500	\$0.38
500+	\$0.36

BI SmartLINK™ Messaging:

Unit Quantity	Charge per Assigned Day
1 - 150	\$0.20
151 - 500	\$0.15
500+	\$0.10

BI SmartLINK™ Document Capture:

Unit Quantity	Charge per Assigned Day
1 - 150	\$0.10
151 - 500	\$0.10
500+	\$0.10

There is No Charge for the BI SmartLINK™ Supervision Terms when used in conjunction with Check In, Self Report, Community Resources, Calendar, Messaging, or Document Capture.

BI ANALYTICS™ TERMS AND CHARGES:

The BI Analytics™ software package supports managers and officers in making informed decisions quickly and effectively by providing graphical and textual representations of analyses derived from an agency's electronic monitoring data.

BI Analytics can be used with RF and GPS clients. After the first month the agency will be billed at the contractual rate for BI Analytics on all RF and GPS active days.

BI Analytics™ Charge: \$0.25

BI Analytics™ – Module I (Priority Analytics)

Features:

- Risk-Based Dashboard
- Alert Action Analyses (7 Analyses)

- ◆ Alert Comparison Analysis (Client – 1 & Officer – 2)
- ◆ Alert Detail Analysis (Client – 1 & Officer – 1)
- ◆ Alert Trend Analysis (Client – 1 & Officer – 1)

BI Analytics™ – Module II (Proximity Analytics)

Features:

- Absconder Analysis
- Address Proximity Analysis
- Enhanced Stops Analysis
- Risk-Based Group Zones

GENERAL TERMS:

Supplies: All accessories, including replacement batteries, straps, waist packs, carrying bags, clips, and other related equipment necessary for proper operation shall be provided by BI at no additional cost, throughout the term of the contract. Install and deactivation tools/equipment shall be provided at no additional cost throughout the term of the contract.

Training. BI shall provide initial training, refresher training as needed, and weekly or ad hoc online training. BI shall provide training at no additional cost.

Freight. BI will pay for the cost of shipping Units and other Equipment, Supplies and accessories to and from Agency via ground delivery. Agency may request shipping methods other than ground delivery, in which event Agency will pay for the additional cost of such alternative shipping method.

EXHIBIT B

INSURANCE REQUIREMENTS "Professional or Consulting Services"

BI shall procure and maintain for the duration of the contract 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 by BI, its agents, representatives, employees or subcontractors.

I. COMMERCIAL GENERAL LIABILITY.

Coverage must be afforded under a per occurrence form policy for limits not less than \$1,000,000 General Aggregate, \$1,000,000 Products / Completed Operations Aggregate,

\$1,000,000 Personal and Advertising Injury Liability, \$1,000,000 each Occurrence, \$50,000 Fire Damage Liability and \$5,000 Medical Expense.

II. AUTOMOBILE LIABILITY.

Coverage must be afforded including coverage for all Owned vehicles, Hired and Non-Owned vehicles for Bodily Injury and Property Damage of not less than \$1,000,000 combined single limit each accident.

III. WORKERS COMPENSATION AND EMPLOYER'S LIABILITY.

A Coverage to apply for all employees at STATUTORY Limits in compliance with applicable state and federal laws; if any operations are to be undertaken on or about navigable waters, coverage must be included for the USA Longshoremen & Harbor Workers Act.

B Employer's Liability limits for not less than \$100,000 each accident; \$500,000 disease policy limit and \$100,000 disease each employee must be included.

IV. PROFESSIONAL LIABILITY or ERRORS AND OMISSIONS LIABILITY (E&O).

Professional (E&O) Liability must be afforded for not less than \$1,000,000 each claim, \$1,000,000 policy aggregate

V. OTHER INSURANCE PROVISIONS.

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

B Commercial General Liability and Automobile Liability Coverages

1 The Alachua County Board of County Commissioners, its officials, employees and volunteers are to be covered as an Additional Insured as respects: Liability arising out of activities performed by or on behalf of BI; products and completed operations of BI; or automobiles owned, leased, hired or borrowed by BI.

2 BI's insurance coverage shall be considered primary insurance as respects the Agency, its officials, employees and volunteers. Any insurance or self-insurance maintained by the Agency, its officials, employees or volunteers shall be excess of BI's insurance and shall be non-contributory.

C All Coverages

1 BI shall provide a Certificate of Insurance to the Agency with a notice of cancellation. The certificate shall indicate if cover is provided under a "claims made" or "per occurrence" form. If any cover is provided under claims made from the certificate will show a retroactive date, which should be the same date of the contract (original if contract is renewed) or prior.

VI. SUBCONTRACTORS

BI shall include all subcontractors as insured under its policies. All subcontractors shall be subject to the requirements stated herein.

CERTIFICATE HOLDER:

Alachua County Board of County Commissioners

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("City"), and **B.I. Incorporated**, a Colorado corporation, with a principal place of business as 6265 Gunbarrel Avenue, Suite B, Boulder, Colorado 80301 ("Contractor" and collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, the City desires the Contractor to perform offender monitoring services for various City agencies; and

WHEREAS, the Contractor has the present capacity and is experienced and qualified to provide such services.

NOW THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the Parties agree as follows:

1. WORK TO BE PERFORMED:

A. Services: The Contractor shall diligently and professionally, under the general direction of the Executive Director of the Department of Safety ("City Representative"), perform offender monitoring and related services, all as more particularly described in **Exhibit A**, the **Scope of Work and Pricing** ("Work"), incorporated herein by this reference and made a part of this Agreement as if set forth in full herein. The Contractor shall faithfully perform the work required under this Agreement in accordance with the standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement. Any professional services specified under this Agreement which requires the employment of licensed or registered personnel shall be performed by licensed or registered personnel.

B. Oversight: The Contractor shall conduct the work under the general direction of and in coordination with the City Representative, or other designated City officials and make every reasonable effort to fully coordinate all services with any City agency or any person or firm under contract with the City doing work which affects the Contractor's work. All records, data, specifications and documentation prepared by the Contractor under this Agreement, when delivered to and accepted by the City Representative, shall become the property of the City. The Contractor agrees to allow the City to review any of the procedures

used by it in doing the work under this Agreement and to make available for inspection all notes and other documents used in performing the work.

C. **Conflict of Interest:** The Contractor shall provide the services under this Agreement with the highest ethical standards. In the event that the Contractor determines to provide similar services to other parties not previously disclosed to the City, the Contractor shall first notify the City Representative of the proposed undertaking. In the event that the proposed undertaking creates a conflict of interest or a potential for conflict of interest, as may be determined in the sole discretion of the City Representative, the City may terminate this Agreement immediately. The Contractor shall notify the City Representative immediately upon becoming aware of any circumstances that create a conflict of interest or potential for conflict of interest. In the event that during the term of this agreement, circumstances arise to create a conflict of interest or a potential for conflict of interest, the City may terminate this Agreement immediately.

2. **TERM:** The term of the Agreement is from **February 1, 2019**, until **January 31, 2022**, or until the Maximum Contract Amount specified in sub-section 3.A. below is expended and all of the Services specified in **Exhibit A** has been satisfactorily performed, whichever is sooner, unless this Agreement is terminated earlier as provided in this Agreement or is extended as provided in a separate amendment to this Agreement ("**Term**"). Subject to the City Representative's prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term of the Agreement will extend until the work is completed or earlier terminated by the City Representative. The City may elect, in its sole and absolute discretion, to extend the Term for up to two (2) additional one (1) year periods. Any extension of the Term shall be in writing and shall be executed in the same manner as this Agreement.

3. **COMPENSATION AND PAYMENT:**

A. **Maximum Contract Amount:** The Maximum Contract Amount to be paid by the City to the Contractor for the performance of the work set out in **Exhibit A** shall in no event exceed the sum of **Five Million Dollars and Zero Cents (\$5,000,000.00)**, unless this

Agreement is modified to increase said amount by a duly authorized and written amendment to this Agreement executed by the Parties in the same manner as this Agreement.¹

B. Payments: Monthly payments shall be made to the Contractor in accordance with the progress of the work as set out in **Exhibit A** attached hereto and incorporated herein by this reference. Monthly invoices submitted by the Contractor to the City Representative must fully document services rendered and hours spent providing the specified services, and any other authorized and actually incurred expenses, and must be approved by the City Representative in writing in order to be eligible for compensation under this Agreement. All invoicing and payments are subject to the City's Prompt Payment Ordinance, §§ 20-107 through 20-118, D.R.M.C.

C. Subject to Appropriation; No Multiple Year Obligation: It is understood and agreed that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Agreement, encumbered for the purpose of the Agreement and paid into the Treasury of the City. The Contractor acknowledges that (i) the City does not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

D. Amendment: The Contractor acknowledges that the City is not obligated to execute an amendment to this Agreement for any further phase of work by the Contractor other than the work described in **Exhibit A**, and that any further phase of work performed by Contractor beyond that specifically described or without an amendment to this Agreement is performed at Contractor's risk and without authorization under this Agreement.

4. TERMINATION:

A. Termination for Convenience of the City: The City Representative, upon giving twenty (20) calendar days written notice (unless a longer period is given), may terminate this Agreement, in whole or part, when it is in the best interest of the City as determined by the City Representative. Any unfinished portion of the work shall be faithfully and timely performed by the Contractor to the extent directed by the City Representative (in the City

¹ This maximum contract amount is specific to the City and County of Denver, and does not limit other participating U.S. Communities jurisdictions from increasing or decreasing their contract amounts.

Representative's discretion), and compensation for all such authorized Work performed shall be paid to the Contractor in accordance with this Agreement.

B. Termination for Cause: The City and the Contractor shall each have the right to terminate this Agreement, with cause, upon written notice to the other party. A termination shall be deemed "with cause" when it is based on a material breach of the covenants or a substantial default under this Agreement which has not been corrected or resolved to the satisfaction of the non-breaching or non-defaulting party within a reasonable time specified by the non-breaching or non-defaulting party in a written notice to the breaching or defaulting party. In addition, the City shall have the right to terminate this Agreement immediately for cause if the Contractor or any of its officers or employees are convicted, plead *nolo contendere*, enter into a formal agreement in which they admit guilt, enter a plea of guilty, or otherwise admit culpability to criminal offenses of bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, theft, racketeering, extortion or any offense of a similar nature, in connection with the Contractor's business. Nothing herein shall be construed as giving the Contractor the right to continue performing work under this Agreement beyond the time when the City Representative notifies the Contractor that the Contractor's work has become unsatisfactory to the City Representative and the City Representative is terminating the Agreement, except to the extent that the City Representative specifies certain work to be completed prior to terminating this Agreement.

C. Compensation: If this Agreement is terminated by the City for cause, the Contractor shall be compensated for all work satisfactorily completed and delivered to the City, and such compensation shall be limited to: (1) the sum of the amounts contained in invoices already submitted and approved by the City Representative and (2) the cost of any work which the City Representative authorizes in writing which the City Representative determines is needed to accomplish an orderly termination of the work. If this Agreement is terminated by the City without cause or by the Contractor with cause, the Contractor shall also be compensated for any reasonable costs the Contractor has actually incurred in performing authorized work hereunder prior to the date on which all work is terminated. Upon termination of this Agreement by the City, the Contractor shall have no claim of any kind whatsoever against the City by reason of such termination or by reason of any act incidental thereto, except for compensation for work satisfactorily performed as described herein.

D. Product Delivery: If this Agreement is terminated for any reason, the City shall take possession of all materials, equipment, tools and facilities owned by the City which the Contractor is using by whatever method the City deems expedient. The Contractor shall deliver to the City all drafts or other documents the Contractor has completed or partially completed under this Agreement, together with all other items, materials and documents which have been paid for by the City. These documents and materials shall be the property of the City. Copies of work product incomplete at the time of termination shall be marked "DRAFT-INCOMPLETE".

5. RIGHTS AND REMEDIES NOT WAIVED: In no event shall any action or inaction, including any payments to the Contractor, by the Contractor constitute or be construed to be a waiver by the City of any breach of covenant or default which may then exist on the part of the Contractor, and the City's action or inaction when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the City with respect to such breach or default. No assent, expressed or implied, to any breach or default shall be deemed or taken to be a waiver of any other breach or default.

6. INDEPENDENT CONTRACTOR: It is understood and agreed that the status of the Contractor shall be that of an independent contractor and an entity or person retained on a contractual basis to perform professional or technical services for limited periods of time as described in Section 9.1.1.E.x. of the Charter of the City. It is not intended, nor shall it be construed, that the Contractor or the Contractor's employees, agents, or subcontractors are employees or officers of the City under Chapter 18 of the Denver Revised Municipal Code or for any purpose whatsoever. The Contractor is responsible for the operational management, errors and omissions of the Contractor's employees, agents, and subcontractors. Without limiting the foregoing, the Contractor understands and acknowledges that the Contractor and the Contractor's employees, agents and subcontractors: a) are not entitled to workers' compensation benefits through the City; b) are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by the Contractor or some other entity besides the City; and c) are obligated to pay federal and state taxes on any monies earned pursuant to this Agreement. Furthermore, it is understood and agreed that nothing in this Agreement is intended, or shall be construed, to constitute a joint venture between the Parties.

7. COMPLIANCE WITH M/WBE REQUIREMENTS: Agreement is subject to Article III, Divisions 1 and 3 of Chapter 28, Denver Revised Municipal Code (D.R.M.C.),

designated as Sections 28-31 to 28-36 and 28-52 to 28-90 D.R.M.C. (the "M/WBE Ordinance") and any Rules or Regulations promulgated pursuant thereto. Under § 28-72 D.R.M.C., a Consultant has an ongoing, affirmative obligation to maintain for the duration of this Agreement, at a minimum, compliance with its originally achieved level of MBE and WBE participation upon which this Agreement was awarded, unless the City initiates a material alteration to the scope of work affecting MBEs or WBEs performing on this Agreement through change order, contract amendment, force account, or as otherwise described in § 28-73 D.R.M.C.

8. INSURANCE:

A. General Conditions: The Contractor agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. The Contractor shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-VIII" or better. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies is canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the Parties identified in the notices section of this Agreement. Such notice shall reference the City contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, the Contractor shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. The Contractor shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Contractor. The Contractor shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

B. Proof of Insurance: The Contractor shall provide a copy of this Agreement to its insurance agent or broker. The Contractor may not commence services or work relating to the Agreement prior to placement of coverage. The Contractor certifies that the certificate of insurance attached as **Exhibit B**, preferably an ACORD certificate, complies with all insurance requirements of this Agreement. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

C. Additional Insureds: For Commercial General Liability, Professional Liability and Business Auto Liability, the Contractor and subcontractor's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

D. Waiver of Subrogation: For Commercial General Liability, Business Automobile Liability, and Workers Compensation; the Contractor's insurer shall waive subrogation rights against the City.

E. Subcontractors: All subcontractors (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Contractor. The Contractor shall include all such subcontractors and as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and maintain the required coverages. The Contractor agrees to provide proof of insurance for all such subcontractors upon request by the City.

F. Workers' Compensation/Employer's Liability Insurance: The Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 per occurrence for each bodily injury claim, \$100,000 per occurrence for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. The Contractor expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of the Contractor's officers or employees who may be eligible under any

statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date the Contractor executes this Agreement.

G. Commercial General Liability: The Contractor shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each claim made, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate.

H. Business Automobile Liability: The Contractor shall maintain Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing services under this Agreement.

I. Technology Errors & Omissions including Cyber Liability: Contractor shall maintain Technology Errors and Omissions insurance including cyber liability, network security, privacy liability and product failure coverage with limits of \$250,000 per occurrence and \$250,000 policy aggregate.

J. Additional Provisions:

(1) For Commercial General Liability the policy must provide the following:

- (i) That this Agreement is an Insured Contract under the policy;
- (ii) Defense costs in excess of policy limits;
- (iii) A severability of interests, separation of insureds or cross liability provision; and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(3) The Contractor shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At the Contractor's own expense, where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, the Contractor shall procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

9. DEFENSE & INDEMNIFICATION:

A. The Contractor hereby agrees to defend, indemnify, and hold harmless the City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“Claims”), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of the Contractor or its sub-Contractors or subcontractors either passive or active, irrespective of fault, including the City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

B. The Contractor’s duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether an action has been filed in court on the Claim. The Contractor’s duty to defend and indemnify the City shall arise even if the City is the only party sued and/or it is alleged that the City’s negligence or willful misconduct was the sole cause of the alleged damages.

C. The Contractor will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to City and shall not be considered the City’s exclusive remedy.

D. Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of the Contractor under the terms of this indemnification obligation. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the City’s protection.

E. This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

10. COLORADO GOVERNMENTAL IMMUNITY ACT: The Parties hereto understand and agree that the City is relying upon, and has not waived, the monetary limitations

and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S.

11. **PERMITS, LICENSES, TAXES, CHARGES AND PENALTIES:** The Contractor agrees to pay promptly all taxes, excises, license fees, and permit fees of whatever nature applicable to its operations or activities under this Agreement, and to take out and keep current all required licenses or permits (federal, state, or local) required for the conduct of its business hereunder, and further agrees not to permit any of said taxes, excises or license or permit fees to become delinquent. The Contractor further agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operations and the performance of this Agreement and not to permit the same to become delinquent. The City shall not be liable for the payment of taxes, late charges or penalties of any nature, except for any additional amounts which the City may be required to pay under § 20-107 to § 20-115, D.R.M.C. The City is a tax exempt entity.

12. **EXAMINATION OF RECORDS:** The Contractor agrees that any duly authorized representative of the City, including the City Auditor, shall, until the expiration of three (3) years after the final payment under this Agreement, have access to and the right to examine any books, documents, papers and records of the Contractor, involving transactions related to this Agreement.

13. **ASSIGNMENT & SUBCONTRACT:** Unless otherwise expressly provided in this Agreement, the Contractor covenants and agrees that the Contractor will not assign, transfer or subcontract the Contractor's rights and obligations hereunder without first obtaining the written consent of the City Representative. Any assignment or subcontract approved by the City Representative may require new or extended insurance being provided by the Contractor or the Contractor's assignee or subcontractor, as specified in the City Representative's written consent. Any attempt by the Contractor to assign, transfer or subcontract the Contractor's rights and obligations hereunder without such prior written consent of the City Representative may, at the option of said City Representative, terminate this Agreement and all rights of the Contractor hereunder. Such consent may be granted or denied at the sole and absolute discretion of said City Representative.

A. **Approved Subcontract.** With prior written consent of the City Representative, the Contractor may subcontract portions of the Work. The Contractor is

prohibited from hiring any subcontractor currently debarred by the City under section 20-77 of the Denver Revised Municipal Code. A subcontract does not create, and shall not be interpreted as creating, any contractual relationship or privity of contract between the City and any subcontractor. The acceptance or rejection of a proposed subcontractor shall not create in that subcontractor a right to any subcontract nor shall said acceptance or rejection relieve the Contractor of its responsibilities for the Work of any subcontractor. The Contractor shall be responsible for any acts or omissions of its subcontractors, suppliers and personnel. In addition, all Work performed for the Contractor by a subcontractor or supplier shall be pursuant to an agreement between the Contractor and the subcontractor or supplier which shall contain provisions that:

1. Require the subcontractor or supplier to be bound to the Contractor by the terms of this Agreement;
2. Require all subcontracted Work to be performed in accordance with the requirements of the Agreement, and, that with respect to the Work the subcontractor or supplier performs, that the subcontractor or supplier assume toward the Contractor all the obligations and responsibilities which the Contractor assumes toward the City;
3. Preserve and protect the rights of the City with respect to the Work to be performed so that the subcontracting thereof will not prejudice those rights;
4. Require each of its subcontractors or suppliers to include in their contracts with lower tier subcontractors or suppliers these same requirements; and
5. Require each subcontractor or supplier to make copies of this Agreement available to the subcontractor's or supplier's subcontractors or suppliers. The Contractor shall make available to each proposed subcontractor or supplier, prior to the execution of the subcontract, copies of this Agreement.

B. Performance and Payment Bond. If the Contractor subcontracts any of the Work, the Contractor, at the sole discretion of the City, may be required to issue one or more performance or payment bonds in favor of the City

14. **NO THIRD PARTY BENEFICIARY:** The Parties understand and expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. Nothing contained in this Agreement shall give or allow any such claim or right of action by any third person. It is the express intention of the Parties that any person other than the City or the Contractor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

15. **NO AUTHORITY TO BIND CITY TO CONTRACTS:** The Contractor has no authority to bind the City on any contractual matters. Final approval of all contractual matters which obligate the City must be executed by the City, as required by Charter and ordinance.

16. **INTEGRATION & AMENDMENTS:** This Agreement, including the exhibits and attachments hereto (each of which is specifically incorporated herein), is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other modification hereto shall have any force or effect, unless embodied in this Agreement in writing. No subsequent novation, renewal, addition, deletion, or other modification shall have any force of effect unless embodied in a written amendment to this Agreement properly executed by the Parties. Any oral representation by any officer or employee of the City at variance with terms and conditions of this Agreement or any written amendment to this Agreement shall not have any force or effect nor bind the City.

17. **SEVERABILITY:** The Parties agree that if any provision of this Agreement or any portion thereof is held by a court of competent jurisdiction to be invalid, illegal, unenforceable, or in conflict with any law, except for the provisions of the Agreement requiring prior appropriation of funds and limiting the total amount payable by the City, the validity of the remaining portions or provisions shall not be affected, if the intent of the Parties can be fulfilled.

18. **CONFLICT OF INTEREST:**

A. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement; and the Contractor shall not hire, or contract for services with, any employee or officer of the City in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

B. The Contractor shall not engage in any transaction, activity or conduct which would result in a conflict of interest under this Agreement. The Contractor represents that the Contractor has disclosed any and all current or potential conflicts of interest. A conflict of

interest shall include transactions, activities or conduct that would affect the judgment, actions or work of the Contractor by placing the Contractor's own interests, or the interests of any party with whom the Contractor has a contractual arrangement, in conflict with those of the City. The legislative agenda, priorities, actions, and needs of the City shall take precedence over any other obligations (contractual or otherwise, direct or indirect) of the Contractor. The City, in its sole discretion, shall determine the existence of a conflict of interest and may terminate this Agreement in the event such a conflict exists after the City has given the Contractor written notice which describes the conflict.

19. **NOTICES:** Notices concerning the termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and other notices of similar importance, including changes to the persons to be notified or their addresses, shall be made:

By City to: B.I. Incorporated
6265 Gunbarrel Avenue, Suite B
Boulder, CO 80301

By Contractor to: Community Corrections Division
City and County of Denver
303 West Colfax Avenue, Suite 1700
Denver, Colorado 80204

All notices shall be in writing and provided by either personal delivery, certified mail, return receipt requested, or overnight courier. All notices are effective upon personal delivery or upon placing in the United States mail or with the courier service.

20. **DISPUTES:** All disputes of whatsoever nature between the City and the Contractor regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code ("D.R.M.C."), § 56-106(b), *et seq.* For the purposes of that procedure, the City official rendering a final determination shall be the City Representative.

21. **GOVERNING LAW; COMPLIANCE WITH LAW; VENUE:**

A. **Governing Law:** This Agreement shall be construed and enforced in accordance with applicable federal law, the laws of the State of Colorado, and the Charter and Revised Municipal Code of the City and County of Denver, and the ordinances, regulations and Executive Orders enacted and/or promulgated pursuant thereto, including any amendments. The

Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference.

B. Compliance with Law: The Contractor shall perform or cause to be performed all services and Work under this Agreement in full compliance with all applicable laws, ordinances, codes, rules, regulations and executive orders of the United States of America, the State of Colorado, and the City and County of Denver.

C. Venue: Venue for any legal action relating to this Agreement shall lie in the District Court in and for the City and County of Denver.

22. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of Work under this Agreement, the Contractor agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.

23. SMALL BUSINESS ENTERPRISES: The Contractor shall make a good faith effort to utilize qualified and available Small Business Enterprises (SBE) to the extent required by § 28-205, *et seq.*, D.R.M.C.

24. PREVAILING WAGES: Employees of the Contractor or the Contractor's subcontractors are subject to the payment of prevailing wages pursuant to § 20-76, D.R.M.C., depending upon the nature of their work. By executing this Agreement, the Contractor covenants and affirms that the Contractor is familiar with the prevailing wages provisions and is prepared to pay or cause to be paid prevailing wages required by the scope of work of the Contractor or the Contractor's subcontractors. A copy of the City's latest update to Prevailing Wage Schedules is attached hereto and incorporated herein as **Exhibit D**.

25. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS: The Contractor shall cooperate and comply with the provisions of Executive Order 94 concerning the use, possession or sale of alcohol or drugs. Violation of this provision or refusal to cooperate with implementation of the policy can result in the City barring the Contractor from City facilities or participating in City operations.

26. **PROPRIETARY OR CONFIDENTIAL INFORMATION; OPEN RECORDS:**

A. **City Information:** The Contractor acknowledges and accepts that, in performance of all Work under the terms of this Agreement, the Contractor may have access to proprietary data or confidential information that may be owned or controlled by the City, and that the disclosure of such proprietary data or confidential information may be damaging to the City or third parties. The Contractor agrees that all information designated or marked as proprietary data or confidential information and provided or otherwise disclosed by the City to the Contractor shall be held in confidence and used only in the performance of the Contractor's obligations under this Agreement. The Contractor shall exercise the same standard of care to protect such proprietary data and confidential information as a reasonably prudent Contractor would to protect the Contractor's own proprietary data or confidential information. Proprietary data and confidential information shall include, but not limited to, any materials or information which is designated or marked "Proprietary" or "Confidential" by the City or its agents, provided to or made available to the Contractor by the City subject to a confidentiality agreement or notice of confidentiality, or used by the City under a licensing agreement or other authorization by the owner of the materials or information. Proprietary data and confidential information may be in hardcopy, printed, digital or electronic format.

(1) **Use of Proprietary Data or Confidential Information:** Except as expressly provided by the terms of this Agreement and subject to written permission of the City Representative, the Contractor agrees that the Contractor shall not disclose, disseminate, transmit, license, sublicense, assign, lease, release, publish, post on the internet, transfer, sell, permit access to, distribute, allow interactive rights to, or otherwise make available the proprietary data or confidential information, or any part thereof, or any repackaged form of the proprietary data or confidential information, or any part thereof, to any other person, party or entity in any form or media for any purpose other than performing the Contractor's obligations under this Agreement. The Contractor further acknowledges that by providing this proprietary data or confidential information, the City is not granting to the Contractor any right or license to use such data or information except as provided in this Agreement.

The Contractor agrees that any ideas, concepts, knowledge, computer programs, or data processing techniques provided by the City in connection with this Agreement,

including any proprietary data or any confidential information, shall be deemed to be the sole property of the City and all rights, including copyright, shall be reserved to the City. The Contractor agrees, with respect to the proprietary data and confidential information, that: (1) the Contractor shall not copy, recreate, reverse, engineer or decompile such data, in whole or in part, unless authorized in writing by the City Representative; (2) the Contractor shall retain no copies, recreations, compilations, or decompilations, in whole or in part, of such data or information; (3) the Contractor shall, upon the expiration or earlier termination of the Agreement, destroy (and, in writing, certify destruction) or return all such data or information or work products incorporating such data or information to the City.

(2) **Employees and Subcontractors:** The Contractor shall inform the Contractor's employees and officers of the obligations under this Agreement, and all requirements and obligations of the Contractor under this Agreement shall survive the expiration or earlier termination of this Agreement. The Contractor shall not disclose proprietary data or confidential information to subcontractors unless such subcontractors are bound by non-disclosure and confidentiality provisions at least as strict as those contained in this Agreement.

(3) **Disclaimer:** Notwithstanding any other provision of this Agreement, the City is furnishing proprietary data and confidential information on an "as is" basis, without any support whatsoever, and without representation, warranty or guarantee, including but not in any manner limited to, fitness, merchantability or the accuracy and completeness of the proprietary data or confidential information. The Contractor is hereby advised to verify the Contractor's Work performed in reliance upon the proprietary data or confidential information. The City assumes no liability for any errors or omissions herein. Specifically, the City is not responsible for any costs including, but not limited to, those incurred as a result of lost revenues, loss of use of data, the costs of recovering such programs or data, the cost of any substitute program, claims by third parties, or for similar costs. If discrepancies are found, the Contractor agrees to contact the City immediately.

B. Contractor's Information: The Parties understand that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act., § 24-72-201, *et seq.*, C.R.S., and that in the event of a request to the City for disclosure of such information, the City shall advise the Contractor of such request in order to give the Contractor the opportunity to object to the disclosure of any of the Contractor's proprietary or confidential

material. In the event of the filing of a lawsuit to compel such disclosure, the City will tender all such material to the court for judicial determination of the issue of disclosure and the Contractor agrees to intervene in such lawsuit to protect and assert the Contractor's claims of privilege and against disclosure of such material or waive the same. The Contractor further agrees to defend, indemnify and save and hold harmless the City, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the Contractor's intervention to protect and assert the Contractor's claim of privilege against disclosure under this subsection including, but not limited to, prompt reimbursement to the City of all reasonable attorney fees, costs and damages that the City may incur directly or may be ordered to pay by such court.

27. INTELLECTUAL PROPERTY RIGHTS: The Parties intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, plans, drawings, prints, photographs, specifications, software, data, products, ideas, inventions, and any other work or recorded information created by the Contractor and paid for by the City pursuant to this Agreement, in preliminary or final forms and on any media whatsoever (collectively, "Materials"), shall belong to the City. The Contractor shall disclose all such Materials to the City. To the extent permitted by the U.S. Copyright Act, 17 USC § 101, *et seq.*, the Materials are a "work made for hire" and all ownership of copyright in the Materials shall vest in the City at the time the Materials are created. To the extent that the Materials are not a "work made for hire," the Contractor hereby sells, assigns and transfers all right, title and interest in and to the Materials to the City, including the right to secure copyright, patent, trademark, and other intellectual property rights throughout the world and to have and to hold such copyright, patent, trademark and other intellectual property rights in perpetuity.

28. SOFTWARE PIRACY PROHIBITION: The Contractor shall perform no work under this Agreement that results in or from the acquisition, operation, maintenance, or use of computer software in violation of United States copyright laws or applicable licensing restrictions. The Contractor hereby covenants and agrees that, for the term of this Agreement and any extensions, the Contractor has in place appropriate systems and controls to prevent such violations of federal law and licensing restrictions. If the City determines that the Contractor is in violation of this provision, the City may exercise any remedy available at law or equity or under this Agreement, including immediate termination of the Agreement and any remedy consistent

with United States copyright laws or applicable licensing restrictions. The indemnification provision of this Agreement shall be applicable to any such violations by the Contractor.

29. NO EMPLOYMENT OF ILLEGAL ALIENS.

A. The Agreement is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and as amended hereafter (the "Certification Statute") and the Contractor is liable for any violations as provided in the Certification Statute.

B. The Contractor certifies that:

1) At the time of its execution of this Agreement, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.

2) It will participate in either the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., or the employment verification program established by the Colorado Department of Labor and Employment under § 8-17.5-102(5)(c), C.R.S. (the "Department Program"), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

C. The Contractor also agrees and represents that:

1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

2) It shall not enter into a contract with a sub-Contractor or subcontractor that fails to certify to the Contractor that it shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in either the E-Verify Program or the Department Program.

4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement.

5) If it obtains actual knowledge that a sub-Contractor or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such sub-Contractor or subcontractor and the City within three days. The Contractor will also then terminate such sub-Contractor or subcontractor if within three days after such notice the sub-Contractor or subcontractor does not stop employing or contracting

with the illegal alien, unless during such three day period the sub-Contractor or subcontractor provides information to establish that the sub-Contractor or subcontractor has not knowingly employed or contracted with an illegal alien.

6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

D. The Contractor is liable for any violations as provided in the Certification Ordinance. If Contractor violates any provision of this section or the Certification Ordinance, the City may terminate this Agreement for a breach of the Agreement. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Contractor from submitting bids or proposals for future contracts with the City.

30. LEGAL AUTHORITY: The Contractor assures and guarantees that the Contractor possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

The person or persons signing and executing this Agreement on behalf of the Contractor, do hereby warrant and guarantee that he/she or they have been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor and to validly and legally bind the Contractor to all the terms, performances and provisions herein set forth.

The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the Contractor or the person(s) signing the Agreement to enter into this Agreement.

31. NO CONSTRUCTION AGAINST DRAFTING PARTY: The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any party merely because this Agreement or any of its provisions have been prepared by a particular party.

32. SURVIVAL OF CERTAIN PROVISIONS: The Parties understand and agree that all terms and conditions of this Agreement, together with the exhibits and attachments hereto, which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or earlier termination of this Agreement, shall survive such expiration or

termination and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Contractor's obligations for the provision of insurance and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

33. **INUREMENT**: The rights and obligations of the Parties herein set forth shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns permitted under this Agreement.

34. **TIME IS OF THE ESSENCE**: The Parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.

35. **PARAGRAPH HEADINGS**: The captions and headings set forth herein are for convenience of reference only and shall not be construed so as to define or limit the terms and provisions hereof.

36. **CITY EXECUTION OF AGREEMENT**: This Agreement shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

37. **COUNTERPARTS OF THIS AGREEMENT**: This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

38. **ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**: The Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

(signature pages and exhibits to follow)

Contract Control Number: SAFTY-201844994-00

Contractor Name: B.I. Incorporated

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of December 13, 2018.

SEAL



CITY AND COUNTY OF DENVER

ATTEST:

Juan Guzman
Juan Guzman, Deputy Clerk &
Recorder

By Michael B. Hancock
Michael B. Hancock, Mayor

APPROVED AS TO FORM:

Attorney for the City and County of
Denver

REGISTERED AND COUNTERSIGNED:

By Nicole D. Shoemaker
Nicole D. Shoemaker, Assistant City
Attorney

By Beth Machann
Beth Machann, City Controller

By Timothy M. O'Brien
Timothy M. O'Brien, Auditor



Contract Control Number: SAFTY-201844994-00

Contractor Name: B.I. Incorporated

By: Ruth Skerjanc

Name: Ruth Skerjanc
(please print)

Title: VP, Financial Planning
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

