



WENDY STILL, MAS
Chief Probation Officer

ALAMEDA COUNTY PROBATION DEPARTMENT

P.O. Box 2059
1111 Jackson Street
Oakland, CA 94604-2059

October 20, 2020

Honorable Board of Supervisors
County Administrator Building
1221 Oak Street, Suite 536
Oakland, CA 94612-4305

SUBJECT: APPROVE A STANDARD SERVICES AGREEMENT WITH VITALSMARTS, LC TO PROVIDE CRUCIAL CONVERSATIONS TRAINING; PROCUREMENT CONTRACT NO. 21246; AMOUNT: \$75,820

Dear Board Members:

RECOMMENDATION:

Approve a Standard Services Agreement (Procurement Contract No. 21246) with VitalSmarts, LC (Principal: Troy Giles; Location: Provo, Utah) to provide Crucial Conversations Training for the Alameda County Probation Department staff, with a term of 11/15/2020 – 11/14/2021, in the amount of \$75,820.

DISCUSSION/SUMMARY:

VitalSmarts, LC (VitalSmarts) provides training courses that teach leaders to motivate others, improve performance, and transform work cultures. The Crucial Conversations training teaches skills for communications, improves dialogue and engagement, and creates behavior change. ACPD is seeking this training to develop the necessary skills in all supervisors (tenured and new) on effectively having crucial conversations with staff, colleagues, and external stakeholders in order to enhance oral and written communication.

VitalSmarts' Crucial Conversation training teaches eight powerful skills grounded in decades of social science research. The virtual live instructor led training helps learners develop vital skills through instruction, application, practice, and coaching.

VitalSmarts is the only vendor that provides this training, all materials and facilitation pertaining to the program are copyrighted and registered and are not distributed through any other individual or company other than VitalSmarts.

SELECTION CRITERIA/PROCESS:

The General Services Agency (GSA) approved Sole Source No. 7005 and issued a Finding Memo of Non-Competition on October 13, 2020 for VitalSmarts in the amount of \$75,820. VitalSmarts is the only Standard and Training for Corrections (STC) certified training contractor qualified to provide training as required and no subcontracting opportunities are available because their material is copyrighted. As a result, the Small Local Emerging Business (SLEB) requirements have been waived by the GSA-Office of Acquisition Policy (SLEB Waiver No. 7108, Expiring: 11/14/2021).

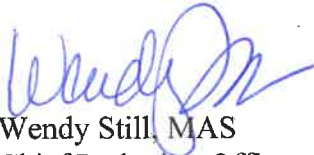
FINANCING:

Funding for this contract is included in the ACPD FY 2020-2021 Approved Budget. No additional appropriations are necessary, and there will be no impact in net County cost as a result of approving the above recommendation.

VISION 2026 GOAL:

The Crucial Conversations training meets the County's 10X goal pathways of a **Crime Free County** in support of the County's shared visions of a **Thriving and Resilient Population** and **Safe and Livable Communities**.

Respectfully submitted,



Wendy Still, MAS
Chief Probation Officer

WS/ss

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of October 27, 2020, is by and between the County of Alameda, hereinafter referred to as the "County", and VitalSmarts, LLC, hereinafter referred to as the "Contractor".

WITNESSETH

Whereas, County desires to obtain crucial conversations tools for talking when stakes are high training services, which are more fully described in Exhibit A hereto ("Services"); and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore it is agreed that County does hereby retain Contractor to provide training services and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- Exhibit A Services
- Exhibit B Payment Terms
- Exhibit C Insurance Requirements
- Exhibit D Debarment and Suspension Certification
- Exhibit E Mutual Non-Disclosure Agreement

The term of this Agreement shall be from November 15, 2020 through November 14, 2021.


The compensation payable to Contractor hereunder shall not exceed seventy-five thousand and eight hundred and twenty dollars (\$75,820) for the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF ALAMEDA

VITALSMARTS, LLC

By: 
Signature

By: 
Signature

Name: Richard Valle
(Printed)

Name: Troy Giles
(Printed)

Title: President of the Board of Supervisors

Title: Chief Financial Officer

Date: 11/18/2020

Date: 10/27/2020

Approved as to Form:
Donna R. Ziegler, County Counsel

By: 
K. Joon Oh, Deputy County Counsel

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

GENERAL TERMS AND CONDITIONS

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

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

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

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

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

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

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is in any way connected with the

performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.

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

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the County maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Contractor's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Contractor's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Contractor's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self-insurance shall be called upon to protect it as a named insured.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.
5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.
6. **CONFORMITY WITH LAW AND SAFETY:**

- a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.
 - b. Accidents: If a death, serious personal injury, or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.
 - c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.
7. DEBARMENT AND SUSPENSION CERTIFICATION: (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).
- a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
 - b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.

8. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. TRAVEL EXPENSES: Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.
11. OWNERSHIP OF DOCUMENTS: Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

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

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

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

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

12. CONFLICT OF INTEREST; CONFIDENTIALITY: The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.

Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

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

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

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

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

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

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
1111 Jackson Street, 7th Floor
Oakland, CA 94607
Attn: Sadaf Siddiq

To Contractor: VitalSmarts, LC

282 River Bend Lane
Provo, UT 84604
Attn: Troy Giles

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

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

14. **USE OF COUNTY PROPERTY:** Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
15. **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:** Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.

- f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.
16. **DRUG-FREE WORKPLACE:** Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
17. **AUDITS; ACCESS TO RECORDS:** The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

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

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's last payment to Contractor under this Agreement.

19. TIME OF ESSENCE: Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. TERMINATION: The County has and reserves the right to suspend, terminate, or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its Services shall not exceed \$75,820 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.
21. SMALL LOCAL EMERGING BUSINESS PARTICIPATION: Contractor has been approved by County to participate in contract without SLEB participation (SLEB Waiver No. 7108). As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

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

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

Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).

- e. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

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

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

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

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

33. **PATENT AND COPYRIGHT INDEMNITY:** Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software (“Contractor Products”) provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, “Losses”) arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit, or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County’s prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.
- a. If Contractor is obligated to defend County pursuant to this Section 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney’s fees and costs) incurred in relationship with County’s defense and/or settlement of such proceeding.
 - b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
34. **OTHER AGENCIES:** Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
35. **EXTENSION:** This agreement may be extended for an additional one year by mutual agreement of the County and the Contractor.
36. **SIGNATORY:** By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

[END OF GENERAL TERMS AND CONDITIONS]

ADDITIONAL PROVISIONS

Section 11 (OWNERSHIP OF DOCUMENTS) is amended as follows:

Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) first developed under this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, first developed under this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

If applicable, in Contractor's contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the County the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify, and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors regarding Documents and Materials first developed under this Agreement.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into any Documents and Materials first developed under this Agreement" or any curriculum or other works provided to the County pursuant to this Agreement, and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of such selection. The County's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

For clarity, the Parties anticipate that Contractor will not create new curriculum constituting Documents and Materials as defined in this Agreement (including any Documents and Materials incorporating Contractor's pre-existing intellectual property). Contractor anticipates that the Crucial Conversations training delivered to the County, including during training and facilitation sessions, will consist of Contractor Pre-Existing Intellectual Property ("Contractor IP") which are subject to copyright protection and are licensed for the limited internal use by employees of the County for whom participant fees have been paid, on a non-exclusive, non-transferable basis. The County will not sell, sublicense, or otherwise make Contractor IP available to third parties for any reason, and will not reproduce, alter, or create derivative works

from Contractor IP unless otherwise permitted under this Agreement, including in particular Exhibit A and Exhibit E, without Contractor's prior written permission. Where Contractor is expected to produce new curriculum constituting Documents and Materials owned by the County as provided in Section 11, it must be expressly defined as such in Exhibit A.

Section 17 (AUDITS; ACCESS TO RECORDS) is amended as follows:

The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. Contractor shall, upon request of the County, make copies of such books and records and provide them to the County, and certify the authenticity and completeness of such copies as may be required by the County. County reserves the option to inspect the original books and records as they are kept and maintained in the normal course of business. Contractor shall provide such assistance as may be reasonably required in the course of such inspection of the original or copies of Contractor's books and records. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

Section 30 (SUBCONTRACTING/ASSIGNMENT) is amended as follows:

Contractor shall not subcontract, assign, or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.

- a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void. Notwithstanding the foregoing, a party to this Agreement may transfer or assign this Agreement, without consent of the other party, to an entity controlled by, controlling, or under common control with such party or to any third party succeeding to its business by acquiring substantially all of its stock or assets through sale, merger, consolidation, or affiliation, provided the succeeding party is not a competitor of the non-assigning/non-transferring party; Contractor shall provide either 15-day prior written notice of any such transfer or assignment to County or written notice to County at the earliest time as permitted by applicable laws and regulations.

- b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.
- c. Contractor shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including, without limitation, Exhibit C. Contractor shall verify subcontractor's compliance.
- d. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.

County Counsel Signature: _____

DocuSigned by:
K. Joon Oh
EFDCE3E661894A0

K. Joon Oh, Deputy County Counsel

**EXHIBIT A
SERVICES**

I. DEFINITION OF SERVICES

- A. Contractor shall provide Alameda County Probation (ACPD) with Crucial Conversations training services, meeting the requirements of this Agreement, including this Exhibit A, consisting of the following:
 - 1. This Exhibit A has been drafted to include the requirements contained in the proposal response of Contractor (Response), which is incorporated in to this Agreement by this reference, and additional services that the County obtained through negotiations, if any.
 - 2. The approval of County to a requested change shall not release Contractor from its obligations under this Agreement.

II. PROJECT TEAM

- A. Contractor project team will consist of the following Key Personnel, as applicable during the contract term:

Name	Title
Vendor Name: VitalSmarts, LLC	
Troy Giles	Chief Financial Officer
Michael Rodman	Senior Client Advisor
Brooke Silvester	Customer Services Specialist

- 1. Contractor agrees that it shall not transfer or reassign the individuals identified above as Key Personnel without the express written agreement of the County, which agreement shall not unreasonably be withheld.

Should such an individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make good faith effort to present the County and individual with greater or equal qualifications as a replacement subject to County's Approval, which approval shall not be unreasonably withheld.

III. SCOPE OF SERVICES

- A. At minimum, the Contractor shall provide the following services:

1. Crucial Conversations training that teaches skills for creating alignment and agreement by fostering open dialogue around high stakes, emotional, and risky topics.
 2. Courses must have clear instructions and meet performance objectives.
 3. All dates and times for training courses shall be set by mutual agreement between the ACPD and Contractor.
- B. Contractor's Services shall meet and/or address the following requirements, which must take into consideration the diversity of clients overall.
1. Contractor shall maintain a pool of trainers that are qualified and able to facilitate trainings. Trainers may be employees of the Contractor or independent consultants. Trainers are not subcontractors.
 2. Contractor shall have their own training content, be certified or authorized to train on third-party content, and/or be willing to create content without charging fees for curriculum design.
 3. Contractor shall maintain a staff of qualified Subject Matter Expert (SME) instructors(s) – appropriate to the trainings provided.
 4. Contractor shall have experience in working with diverse participants from varied education, ethnic/cultural backgrounds and industries.
 5. Contractor shall provide training classes for County employees that are scheduled in coordination with the ACPD's Training Unit based upon its needs.
 6. Contractor must comply with County and ACPD policies and guidelines.
 7. Contractors must provide a minimum of 30-day cancellation notice to the ACPD. Emergencies will be dealt with on a case by case basis.
- C. Contractor to provide each participant course materials, including but not limited to the following:
1. Digital toolkit

2. Cue cards and model card
 3. New York Times bestseller Crucial Conversations eBook (delivered as an electronic book file)
 4. Audio Companion (delivered as MP3 file)
 5. Digital course completion certificate
- D. Trainer shall request attendees complete a class evaluation (provided by the ACPD) for each session taught that will address and provide to the ACPD:
1. Timeliness of class beginning and ending schedule;
 2. Attendees being able to identify how training will be incorporated in their jobs;
 3. How knowledgeable training was on subject;
 4. Trainer’s ability to resolve problems quickly;
 5. Trainer’s responsiveness to questions;
 6. Was training effective and beneficial; and
 7. Was training clear and concise.
- E. Contractor shall provide live online training classes according to the County’s schedule below for up to 120 participants:

Dates	Time
January 4, 2021 – January 8, 2021	9:00am – 11:00am
January 4, 2021 – January 8, 2021	1:00pm – 3:00pm
February 1, 2021 – February 5, 2021	9:00am – 11:00am
February 1, 2021 – February 5, 2021	1:00pm – 3:00pm

IV. DELIVERABLES/REPORTS

- A. Contractor shall have plans in place to report on the following:
1. Contractor shall provide accurate reporting and attestation to course attendance and shall provide the ACPD with participant evaluations from

each course. Rosters and evaluations shall be submitted at the end of end of every training class.

V. CANCELLATION

- A. If ACPD cancels or reschedules an event, ACPD is responsible for all non-refundable travel costs incurred, regardless of cancellation date. If the ACPD cancels an event with more than 30 calendar days' notice to Contractor, there is no cancellation fee and any fees previously paid will be credited to ACPD's next event or purchase (except non-refundable travel costs mentioned above). If ACPD cancels with 30 or fewer calendar days' notice to Contractor, ACPD is responsible for 100% of the day fee for the event. The day fee is the charge for Contractor's Master Trainers to deliver the courses.
- B. An event is considered "rescheduled" only if the new event date is within 5 business days of the last day of the original event and ACPD signs an amended Event Confirmation Form (or equivalent). If the event is rescheduled with the same Master Trainer, there is no cancellation fee. However, if a new Master Trainer is used for the rescheduled event, ACPD is responsible for 20% of the day fee to compensate the original Master Trainer for the lost opportunity. If the new event is not rescheduled within the time limits above or ACPD has not signed an amended Event Confirmation Form (or equivalent), the reschedule will be considered a cancellation and the cancellation terms above will apply.
- C. If a Virtual Event with a VitalSmarts Producer is cancelled or rescheduled with 6 or more business days' notice there is no cancellation/reschedule fee. If ACPD cancels or reschedules with 5 or fewer business days, ACPD is responsible for 100% of the Producer Fee.
- D. Notice of cancellation/reschedule must be in writing and will be deemed given when received by Contractor. Notice may be given via e-mail to the Client Success Specialist or Client Advisor or overnight courier addressed to: Attn: Customer Service, 282 River Bend Lane, Provo, UT 84604, USA.

VI. VIRTUAL TERMS

- A. ACPD will take all measures necessary to ensure only the ACPD employees for whom the ACPD has paid the applicable participant fee are given access to the Virtual Training content. If the ACPD discovers that an individual has accessed the Virtual Training content in contravention of the foregoing, the ACPD will end the unauthorized access and inform Contractor. Unauthorized access includes, but is not limited to, recording the sessions by screen capture or any other modality and any inappropriate distribution or sharing of a computer during sessions. The

ACPD shall not record training without Contractor's advance written permission. The County agrees to abide by registration instructions and procedures for Virtual Training provided by Contractor from time to time. The ACPD acknowledges and agrees that a participant in Virtual Training may not cancel his/her registration once registration for a Virtual Training course has been confirmed. Even if a participant does not attend the course at all, or in its entirety, the registration fee will be earned by Contractor. Any access to Contractor's online training platforms shall be subject to an end-user license agreement, terms of use, privacy policy or other similar agreement provided on the online training platform site.

**EXHIBIT B
PAYMENT TERMS**

1. County will use its best efforts to make payment to Contractor upon successful completion and acceptance of the following services listed within thirty (30) days upon receipt, review, and approval of invoice.
2. Contractor shall invoice the County at the following rate:
 - a. Upon completion of each training course, Professional Service Fee: Virtual Crucial Conversation @ \$11,500 per course at a maximum of 4 courses
 - b. Contractor shall invoice the County for the Crucial Conversation: Virtual Participant Suite for 120 participants at a maximum total of \$23,400 at the end of each training course.
 - c. Sales Tax for this contract shall not exceed \$6,420.
3. Invoices will be reviewed for accuracy and approval by the Alameda County Probation Department. Invoices shall be submitted via e-mail to: sasiddiq@acgov.org.
4. Total payment under the terms of this Agreement will not exceed the total amount of \$75,820.
5. No Supplanting of Funds: Contractor agrees that funds awarded under this contract will not be used to supplant expenditures from other contracts or programs

EXHIBIT C

MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements:

	TYPE OF INSURANCE COVERAGES	MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability, Abuse, Molestation, Sexual Actions, and Assault and Battery	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease
D	Professional Liability/Errors and Omissions Includes endorsements of contractual liability	\$1,000,000 per occurrence \$2,000,000 aggregate
E	Directors and Officers Liability Including Employment Practices Liability	\$1,000,000 per occurrence
F	Employee Dishonesty (ED) and Crime (C) (ED) Required only if a significant amount of funding is advanced to contractor. (C) Required only if contractor keeps significant sums of money at premises	(ED) Minimum of 75% of the Funding (C) Minimum daily amount kept on premises
G	<p>Endorsements and Conditions:</p> <ol style="list-style-type: none"> ADDITIONAL INSURED: All insurance required above with the exception of Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, and Professional Liability shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. Employee Dishonest and Crime Insurance Policy shall be endorsed to name as Loss Pay (as interest may arise): County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 04 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods: <ul style="list-style-type: none"> Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured". CANCELLATION OF INSURANCE: All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision. 	

EXHIBIT D

COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION

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

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

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

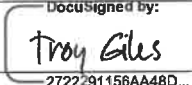
If there are any exceptions to this certification, insert the exceptions in the following space.

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

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

CONTRACTOR: vitalSmarts

PRINCIPAL: Troy Giles TITLE: CFO

SIGNATURE:  DATE: 10/27/2020

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EXHIBIT E

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (the "NDA" or "Exhibit E") is made by and between VitalSmarts, LLC ("Contractor"), a Utah limited liability company, located at 282 River Bend Lane, Provo, UT 84604 and the County of Alameda, California, on behalf of its Alameda County Probation Department ("Probation") located at 1111 Jackson Street, Oakland, CA 94604, each a party and collectively the parties.

WHEREAS each party may disclose, or may have already disclosed, information to the other that relates to the disclosing party's Confidential Information (as defined below) for the purpose of evaluating and/or conducting a business relationship between the parties (the "Business Purpose"). In consideration of the mutual promises set forth herein, the parties agree as follows:

1. Definition of Confidential Information. As used in the NDA, "Confidential Information" shall mean any and all technical and non-technical information including trade secrets and proprietary information, data, techniques, sketches, drawings, models, inventions, know-how processes, apparatus, equipment, manufacturing specifications, algorithms, software programs, software source documents, pricing, quotes, customer technical requirements, hardware configuration information, sales methodologies and associated materials, program training workbooks and worksheets, on-line e-learning programs, best practices, marketing or other business information related to the past, current, future and proposed products and services of each of the parties, and includes without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising, and marketing plans and information which the Discloser has marked or stamped as "Confidential Information." Confidential Information may also include proprietary or confidential information of any third party who may disclose such information to either party in the course of the other party's business. For purpose of this NDA, Confidential Information shall include VitalSmarts's copyrighted Crucial Conversations curriculum provided to Probation under this NDA, whether or not such curriculum is marked or stamped as "Confidential Information." Discussions between the parties under this NDA may also be deemed to be Confidential Information. Subject to Section 3 below, all information disclosed by the disclosing party ("Discloser") that meet the requirement for Confidential Information above will be considered Confidential Information by the receiving party ("Recipient"). Either party hereto may be a Discloser or a Recipient and such terms shall include that party's affiliate, parent, and subsidiary entities controlled by, controlling, or under common control with such party.

The provisions in this NDA are subject to, and in no way affects each party's obligation to comply with, all applicable laws and regulations, including without limitation the California Public Records Act.

2. Non-Disclosure and Non-Use Obligations. Recipient shall not disclose Confidential Information of Discloser to any third party, except for those of its employees, officers, directors, agents, attorneys, accountants, or advisors who need to know such information solely for the Business Purpose. Recipient represents and warrants that such employees, officers, directors, agents, attorneys, accountants and advisors have previously agreed, either as a condition to employment or in order to obtain the Discloser's Confidential Information, to be bound by terms and conditions substantially similar to or exceeding those of this NDA. Recipient shall not otherwise use, disseminate, copy, reproduce, distribute or in any way disclose any Confidential Information of Discloser to any third party whatsoever, including employees of Recipient who do not have a need to know for the Business Purpose. Each of the parties agrees that it shall treat all Confidential Information of the other party with the same degree of care as it accords to its own Confidential Information, but in any event no less than reasonable care. Recipient will immediately give notice to Discloser of any unauthorized use or disclosure of Discloser's Confidential Information. Recipient agrees to use all commercially reasonable efforts available to assist Discloser in remedying any such unauthorized use or disclosure of the Confidential Information, without limitation of any other rights or remedies of Discloser.

3. Exclusions from Non-Disclosure and Non-Use Obligations. Recipient's obligations under Section 2 above with respect to any portion of Discloser's Confidential Information shall terminate when Recipient can document that such information was: (i) in the public at or subsequent to the time it was communicated to Recipient by Discloser through no fault of Recipient, (ii) lawfully in Recipient's possession free of any obligations of confidence at or subsequent to the time it was communicated to Recipient by Discloser, (iii) communicated by the Discloser to an unaffiliated third party free of any obligation of confidence, or (iv) required to be disclosed in response to a valid order by a court or other governmental body or to establish the rights of either party under this NDA.

Further Exclusions. Confidential Information does not include information that is (i) not exempt from disclosure under the California Public Records Act (Calif. Gov. Code sec. 6250 et seq.); (ii) independently developed by Probation; (iii) previously known to Probation; or (vi) produced when required by law.

4. Disclosure of Third Party Information. No party to this NDA shall communicate any information to the other in violation of the proprietary rights of any third party.

5. Return of Confidential Information. At any time during or after the term of this NDA, at the Discloser's request, or upon termination or expiration of this NDA, Recipient shall

promptly return to Discloser or destroy all copies, whether in written or electronic or other form or media, and any notes created by Recipient, and certify in writing to Discloser that such Confidential Information has been either returned or destroyed.

6. No Warranty. All Confidential Information is provided "AS IS" and without any warranty, express or implied or otherwise, regarding its accuracy or performance.

7. No Export. No party to this NDA shall export, directly or indirectly, any technical data acquired from the other pursuant to this NDA or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other government approval without first obtaining such license or approval. Each party shall comply with the applicable United States export and re-export laws relative to the information exchanged hereunder.

8. Term. This NDA shall govern all disclosures and communications between the parties that are made for a period of one (1) year from the date the Agreement is executed by the County, provided, however, that each party's obligations under Section 2 above with respect to Confidential Information of the other party which it has previously received shall continue for the life of the copyright for copyrighted materials or, for other materials, for a period of ten (10) years after expiration of the NDA unless terminated pursuant to Section 3 above or otherwise amended or modified by the parties by mutual agreement.

9. Waiver. The waiver by Discloser of a breach of any provision of this NDA by Recipient shall not operate or be constructed as a waiver of any other or subsequent breach by Recipient.

10. Injunctive Relief. A breach of any of the promises or agreements contained herein by one party may result in irreparable and continuing damage to the other party to this NDA for which there will be no adequate remedy at law. The non-breaching party shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).

11. Conflicting Terms. To the extent that there are any conflicting terms or provision of this NDA and the General Terms and Condition or the Additional Provisions of the Agreement, the General Terms and Condition or the Additional Provisions of the Agreement shall control.