

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201

CONTRACT AWARD COVERPAGE

TO: THE BERWYN GROUP, INC.	DATE ISSUED:	<u>DECEMBER 15, 2020</u>
2 SUMMIT PARK DRIVE, SUITE 610	CONTRACT NO:	<u>20-238-SLA</u>
INDEPENDENCE, OH 44131	CONTRACT TITLE:	<u>MORTALITY DATABASE OF</u> <u>INDIVIDUALS</u>

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

The contract documents consist of the terms and conditions of AGREEMENT No. 20-238-SLA including any attachments or amendments thereto.

EFFECTIVE DATE: DECEMBER 1, 2020

EXPIRES: NOVEMBER 30, 2021

RENEWALS: FOUR (4), TWELVE-MONTH RENEWAL OPTIONS, DECEMBER 1, 2021 – NOVEMBER 30, 2025

COMMODITY CODE(S): 20837, 20938

LIVING WAGE: N

ATTACHMENTS:

CONTRACT 20-238-SLA

EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: SCOTT NIESE, PRESIDENT **VENDOR TEL. NO.:** (216) 765-8818

EMAIL ADDRESS: SNIESE@BERWYNGROUP.COM

COUNTY CONTACT: AMY ROZIER (HRD) **COUNTY TEL. NO.:** (703) 228-3489

COUNTY CONTACT EMAIL: AROZIER@ARLINGTONVA.US

PURCHASING DIVISION AUTHORIZATION

DocuSigned by:

Arlene Palmer

Title Buyer

Date 12/30/2020

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**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201**

AGREEMENT NO. 20-238-SLA

THIS AGREEMENT is made, on December 1, 2020 by the County, between **The Berwyn Group, Inc.**, located at 2 Summit Park Drive, Suite 610, Independence, Ohio 44131 ("Contractor"), a Ohio Corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The "Contract Documents" consist of:

- This Agreement
- Exhibit A - Statement of Work # 1 Death Check Services - Fee Schedule

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties' agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the "Contract" or the "Agreement".

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (the "Work"). As detailed in the "Scope of Work" (Exhibit A), the primary purpose of the Work is: The County will submit data ("Data"), inclusive of a data file loaded and marked for audit via a secured internet connection. The Contractor will compare County's Data to the Contractor's proprietary database to assist the County in verifying the mortality of individuals. The Contractor will provide a Report of Findings to the County within 15 days of the receipt of the Data ("Report"). It will be the Contractor's responsibility to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract. County will keep Contractor apprised with the name and contact information for the County Project Officer.

4. CONTRACT TERM

Time is of the essence. The Work will commence on December 1, 2020 and must be completed no later than November 30, 2021 ("Initial Contract Term"), subject to any modifications provided in the Contract Documents. Upon satisfactory performance by the Contractor the County may, through issuance of a unilateral Notice of Award, authorize continuation of the Agreement under the same contract prices for not more than four (4) additional twelve (12) month periods. From December 1, 2021 to November 30, 2025 (Each a "Subsequent Contract term). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

The County will not compensate the Contractor for any goods or services beyond those included in Exhibit A unless those additional goods or services are covered by a fully executed amendment to this Contract.

5. PRICE ADJUSTMENTS

The Contract unit price(s) shall remain firm throughout the Contract Term, unless the Contractor requests a price adjustment, and the County approves such an adjustment, in accordance with the following procedure:

- A. The Contractor may submit a written request for price adjustment to the County not less than sixty (60) days prior to (insert date) of any given year of the contract ("Anniversary Date").
- B. Requests for adjustment(s) to unit price(s) shall not exceed the percentage of escalation/de-escalation in the U.S. Department of Labor, Consumer Price Index, All Items, Unadjusted, Urban Areas ("CPI-U") for the twelve (12) month period ending on the JULY of each year of the Contract.

Any adjustment(s) to unit price(s) approved by the County as a result of the procedure set forth in A and B above, shall become effective the day after the current Anniversary Date and shall be binding on both parties for the remainder of the Contract Term unless an adjustment is approved by both the County and Contractor in a subsequent year, as set forth above. If the Contractor and the County do not agree on the requested adjustment using the procedure set forth in A and B above by the thirtieth (30th) calendar day prior to the Anniversary Date, the County may in its sole discretion terminate the Contract.

6. PAYMENT

The Contractor must submit invoices to the County's Project Officer, who will either approve the invoice or require corrections. Each invoice must certify that the invoice submitted is a true and accurate accounting of the work performed and goods and/or services provided and must be signed and attested to by the Contractor or authorized designee. The County will pay the Contractor within forty-five days after receipt of an invoice for completed work that is reasonable and allocable to the Contract and that has been performed to the satisfaction of the Project Officer. The number of the County Purchase Order pursuant to which goods or services have been delivered or performed must appear on all invoices.

7. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

8. NO WAIVER OF RIGHTS

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

9. NON-APPROPRIATION

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

10. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; and the County is under no obligation to buy that or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The County may require more goods and/or services than the estimated annual quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this Contract. The items or services covered by this Contract may be or become available under other County contract(s), and the County may determine that it is in its best interest to procure the items or services through those contract(s).

11. COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

12. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating specifically to this Contract so that the provisions will be binding upon each subcontractor or vendor.

13. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

14. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating specifically to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

15. TERMINATION

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County. The Contractor may terminate this Contract at any time if it is determined through the dispute resolution process or by a court of competent jurisdiction that the County has violated Sections 20 and 28 of this Agreement. The Contractor may suspend services until such determination is made or the County corrects any defaults.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. The Contractor must submit any request for termination costs, with all supporting documentation, to the County Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for termination costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek termination costs.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 30 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to termination costs, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

16. INDEMNIFICATION

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

17. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

18. COPYRIGHT

By this Contract, the Contractor irrevocably transfers, assigns, sets over and conveys to the County all rights, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created solely for Customer and pursuant to this Contract. The Contractor will execute any documents that the County requests to formalize such transfer or assignment.

The rights granted to the County by this section are irrevocable and may not be rescinded or modified, including in connection with or as a result of the termination of or a dispute concerning this Contract. The Contractor may not use subcontractors or third parties to develop or provide input into any copyrightable materials produced sole for and pursuant to this Contract without the County's advance written approval and unless the Contractor includes this Copyright provision in any contract or agreement with such subcontractors or third parties related to this Contract.

19. OWNERSHIP OF WORK PRODUCT

This Contract does not confer on the Contractor any ownership rights or rights to use or disclose the County's data or inputs.

All work product, in any form, that results solely from this Contract is the property of the County and must be destroyed, or in the alternative provided or returned to the County upon completion, termination, or cancellation of this Contract. The Contractor will not use or allow others to use the work product for any purpose other than performance of this Contract without the written consent of the County.

The work product is confidential, and the Contractor may neither release the work product nor share its contents. The Contractor will refer all inquiries regarding the status of any work product to the Project Officer or to his or her designee. At the County's request, the Contractor will destroy or in the alternative deliver all work product, including hard copies of electronic files, to the Project Officer and will destroy all electronic files.

The Contractor must include the provisions of this section as part of any contract or agreement related solely to this Contract into which it enters with subcontractors or other third parties.

The County acknowledges that the Contractor and its licensors claim exclusive and proprietary rights in preexisting works of authorship and other intellectual property that Contractor uses in its work pursuant to this Agreement. The Berwyn Group logo, DeathCheckSM, Berwyn Death Audit SystemTM ("BDAS") AddressCheckSM, InsuranceCheckSM, RelativeCheckSM, ObitCheckSM and SSNCheckSM are registered service marks of Berwyn. The County shall not remove or obscure the copyright notice or other notices contained on materials accessed through Contractor's services.

The provisions of this section will survive any termination or cancellation of this Contract.

20. CONFIDENTIAL INFORMATION

The parties and their employees, agents and subcontractors will hold as confidential all Confidential information obtained under this Contract. Confidential information includes, but is not limited to, nonpublic personal information; personal health information (PHI); social security numbers; addresses; dates of birth; other contact information or medical information about a person; and information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans and expertise. The Contractor must take reasonable measures to ensure that all of its employees, agents and subcontractors are informed of and abide by this requirement. The parties must take reasonable measures to ensure that all of their employees, agents and subcontractors are informed of and abide by this requirement.

- A. If either party receives a subpoena or other validly issued administrative or judicial order demanding the other party's Confidential Information, or the County receives a request under the Virginia Freedom of Information Act ("VFOIA"), Virginia Code § 2.2-3700 et seq., the parties agree to promptly notify the other party of such receipt. After providing such notification, the receiving party shall be entitled to disclose the Confidential Information to the extent required by law.

The parties agree to take reasonable security precautions to protect against the unauthorized use, publication or disclosure of Confidential Information, including but not limited to, the use of security control technologies (such as encryption, firewalls, passwords, authentication, data access and transmission controls and control procedures, virus protection, etc.), and physical security measures such as limited access to buildings. The parties will maintain a security plan, procedures, policies and guidelines to protect Confidential Information. The County will (a) ensure that none of its employees shall (i) obtain and/or use any information from the Contractor for personal reasons, or (ii) transfer any information received through the Contractor to any party except as permitted hereunder; (b) keep all user identification names, numbers, and related passwords, or other security measures (collectively, "User IDs") confidential and prohibit the sharing of User IDs; (c) immediately deactivate, or if applicable, request Contractor deactivate the User ID of any employee who no longer has a need to know, or for terminated employees on or prior to the date of termination; (d) take all commercially reasonable

measures to prevent unauthorized access to, or use of, Contractor's services or data, whether in electronic form or hard copy, by any person or entity; (e) maintain and enforce data destruction procedures to protect the security and confidentiality of all information obtained through the Contractor's services as it is being disposed; (f) take all steps to protect its networks and computer environments, or those used to access Contractor's services, from compromise. On at least a quarterly basis, the County will review searches performed by its User IDs to ensure that such searches were performed for a legitimate business purpose and in compliance with all terms and conditions herein.

Following termination of this Contract, or at the request of either party if prior to termination, each party shall promptly return or alternatively purge, delete or otherwise securely destroy all documents and other media containing Confidential Information that was received from the other party and remains in the receiving party's possession or control. The parties will use appropriate security when destroying or returning Confidential Information. Upon request of a party, the other party will provide certification of the purging, deletion or destruction.

21. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

22. COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

23. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

24. AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

25. RELATION TO COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment

taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

26. ANTITRUST

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

27. REPORT STANDARDS

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer.

28. PERMISSIBLE PURPOSE AND USE

- a. The Contractor hereby grants to the County a restricted license to the Contractor's services, both currently existing and as may become available in the future, solely for the County's own internal business purpose subject to the restrictions and limitations set forth herein:

- i. The County represents and warrants that the County's use of the Contractor's services shall be for legitimate business purposes. The County acknowledges and agrees that it may be required to certify its permissible use of NPPI data when services begin and agrees it will recertify, in writing, its permissible uses upon request. If the Contractor discovers that the County is not using the Contractor's services for a legitimate business purpose, the Contractor may take immediate action, including immediately terminating the delivery of, and/or the license to use the Contractor's services.

- ii. The County shall not use the Contractor's services for marketing purposes. The County shall not use the Contractor's services to resell or broker the Contractor's services to any third party without the Contractor's expressed written consent. The County agrees that if the Contractor determines or reasonably suspects that the County is engaging in marketing activities, or unauthorized reselling or brokering of the Contractor's services, information, programs, computer applications, or data, or is otherwise violating any provision of this Agreement, or any of the laws, regulations or rules described herein, the Contractor may take immediate action, including immediately terminating the delivery of, and/or the license to use the Contractor's services. The County shall not access the Contractor's services from Internet Protocol addresses located outside of the United States and its territories without the Contractor's prior written approval. The County may not use data to create a competing product.

- iii. The County and the Contractor agree that they will not (i) use any NPPI received from the other party, regardless of the source of the data, for any purpose other than communication with its clients, insurers and insureds, pensioners, vested participants; beneficiaries, and for recordkeeping and record maintenance, and fraud prevention; (ii) sell, sublicense, or otherwise distribute in any manner NPPI received from the other party to any third

party; (iii) use any NPPI received from the other party for any unlawful purpose, (iv) use any NPPI received from the other party to identify and/or solicit potential counties or its products, or (v) use any NPPI received from the other party for any purpose that would violate the privacy obligation policy and any other terms and provisions under law.

- b. **GLBA, DPPI and Applicable Privacy Laws:** The County recognizes that any NPPI may be governed by use, non-disclosure and privacy obligations of the GLBA, DPPA, HIPAA/HITECH, or other applicable state or federal laws, regulations or rules. The County acknowledges that it may have its own obligation for use, non-disclosure and privacy under these acts. The County shall not obtain and/or use NPPI data through the Contractor services in any manner that would violate any of these acts or applicable state or local laws, regulations and rules. The County certifies with respect to NPPI data received through the Contractor's services that it complies with the Interagency Standards for Safeguarding County Information issued pursuant to the GLBA.
- c. **Social Security and Driver's License Numbers.** If the County obtains SSNs or Driver's License Numbers through the Contractor's services, the County certifies that it is a legally authorized recipient with a permitted use and will not use the SSNs for any purpose other than as permitted under this Agreement. Upon request, The County agrees it will recertify, in writing, to the Contractor that it is an appropriate user and that it has one or more authorized uses. In the event the County is not a legally authorized recipient and/or does not have a permitted use at any time during the term of this Agreement, the Contractor may immediately preclude the County from receiving SSNs. In addition to the restrictions on distribution set forth in Section 5.1.a of this Agreement, the County agrees that it will not permit SSNs obtained through the Contractor's services to be used by an employee or contractor that is not an appropriate user with an appropriate use. The County may not, to the extent permitted by the terms of this Agreement, transfer SSNs or other NPPI via email or clear-text File Transfer Protocol ("FTP") without the Contractor's prior written consent.
- d. HIPAA: The County represents and warrants that the County will not provide the Contractor with any Protected Health Information (as that term is defined in 45 C.F.R. Sec. 160.103) or with Electronic Health Records or Patient Health Records (as those terms are defined in 42 U.S.C. Sec. 17921(5), and 42 U.S.C. Sec. 17921(11), respectively) or with information from such records without the execution of a separate agreement between the parties.
- e. The Contractor's services are not provided by "consumer reporting agencies," as that term is defined in the Federal Fair Credit Reporting Act, (15 U. S.C. 1681, et seq.), (the "FCRA"), and do not constitute Consumer Reports. Accordingly, the Contractor's services may not be used in whole or in part as a factor in determining eligibility for credit, insurance, employment or another purpose in connection with which a consumer report may be used under the FCRA. The County certifies that it will not use any of the information it receives through the Contractor's services to determine, in whole or in part an individual's eligibility for any of the following products, services or transactions: (1) credit or insurance to be used primarily for personal, family, or household purposes; (2) employment purposes; (3) a license granted by a government agency; or (4) any other product, service or transaction in connection with which

a consumer report may be used under the FCRA or any similar state statute, including without limitation apartment rental, check-cashing, or the opening of a deposit or transaction account. By way of clarification, without limiting the foregoing, the County may use, except as otherwise prohibited or limited by this Agreement, information received through the Contractor Group Services for the following purposes: (1) to verify or authenticate an individual's identity; (2) to prevent or detect fraud or other unlawful activity; and, (3) to locate an individual.

- f. **DMF Data:** The Contractor is certified as a licensee of the Social Security Administration Limited Access Death Master File ("DMF"). It is understood and agreed that the Contractor uses information obtained from the Social Security Administration ("SSA"), and DMF data. As a condition to receiving information obtained by the Contractor from the DMF (as defined in 15 CFR § 1110.2), the County certifies that it meets the applicable requirements to receive such information as required by Section 203 of the Bipartisan Budget Act of 2013. The County further certifies that it will not subsequently disclose the information obtained by the Contractor from the DMF to any person who does not meet the requirements set forth in Section 203. By using the Contractor's services, the County represents, warrants, and covenants:
- i. That the County will use such DMF data solely for a legitimate business or fraud prevention purpose, as those terms are defined in 15 CFR 1110;
 - ii. That the County will disclose such DMF data only to such third parties as have a legitimate business or fraud prevention purpose, as those terms are defined in 15 CFR 1110, are on a need-to-know basis, and who agree in writing to the same terms contained herein and in 15 CFR 1110; and,
 - iii. That the County has systems, procedures, and facilities in place sufficient to prevent unauthorized disclosure of such data;
 - iv. That the County may be subject to penalties for unauthorized disclosures or use of the DMF. **Certification:** The County certifies that (a) it is not operating out of a residence; (b) it is not (i) a motor vehicle dealer, (ii) a motor vehicle manufacturer and/or (iii) a motor vehicle warranty and/or recall company; (c) neither the County nor any individual affiliated with the County, including, without limitation, its employees and independent contractors, have ever been charged or alleged to have committed or been involved with credit fraud or other unethical business practices, engaged in fraudulent or illegal activities, such as identity theft, harassment or stalking; (d) it is not listed as a Specially Designated National on the Office of Foreign Asset Control (OFAC) website at: <http://www.treas.gov/offices/enforcement/ofac/index.shtml>; and (e) County is properly licensed to engage in its business, is in compliance with federal, state and local law requirements for its business and has been conducting its business for a period of more than one (1) year.

29. **AUDIT**

The Contractor must provide to the County the complete findings and all components of an independent certified public accountant's audit of its finances and program operation within two months after the close of Contractor's fiscal year. If a management letter was not prepared with the audit, the Contractor must so certify in writing as part of the audit report to the County. The Contractor must allow the County to review its records as the County deems necessary for audit purposes within 15 calendar days of the County's receipt of the findings. All accounts of

the Contractor are subject to audit.

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

This section does not require the Contractor to retain the County's Data (as defined in Exhibit A) which will be destroyed within a reasonable time upon the return of Customer's Results.

30. ASSIGNMENT

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County.

31. AMENDMENTS

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

32. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

33. DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

34. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

35. ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

36. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

37. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

38. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

39. SURVIVAL OF TERMS

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: ; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP OF WORK PRODUCT; AUDIT; COPYRIGHT; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION AND CONFIDENTIAL INFORMATION or DATA SECURITY AND PROTECTION.

40. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

41. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

42. NOTICES

Unless otherwise provided in writing, all legal notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

TO THE CONTRACTOR:

Scott Niese, President
The Berwyn Group, Inc.
2 Summit Park Drive, Suite 6100
Independence, OH 44131
Phone: (216) 765-8818
Email: sniese@berwyngroup.com

TO THE COUNTY:

Amy Rozier, Project Officer
Arlington County Government, Suite 511
Arlington, Virginia 22201
Phone: (703) 228-3489
Email: arozier@arlingtonva.us

AND

Sharon Lewis, Purchasing Agent
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 500
Arlington, Virginia 22201
Phone: (703) 228-3294
Email: slewis1@arlingtonva.us

TO COUNTY MANAGER'S OFFICE (FOR PROJECT CLAIMS):

Mark Schwartz, County Manager
Arlington County, Virginia
2100 Clarendon Boulevard, Suite 318
Arlington, Virginia 22201

43. DEATH RECORDS DISCLAIMER

The County acknowledges that not all states and municipalities provide death records to the Contractor and therefore, the Contractor does not guarantee access to, or availability of any death record database. The County acknowledges that access to state and municipality records may change over time. The County acknowledges that as part of certain services, the Contractor may provide results based upon published obituaries from various sources. The County is aware and understands that it is impossible for the Contractor to obtain every obituary from every available source.

The County is aware and understands that not all deaths are reported; not all deaths are published in obituaries; not all deaths are released by each state, SSA or other governmental agencies; and, that all death record and obituary databases contain errors, omissions and records with incomplete information. The absence of a match on the County's Query does not guarantee that individuals are not deceased. The County is aware and understands that it is impossible for the Contractor to obtain death records from every available source and that the Contractor makes no representation or guarantee that its death record or obituary database is complete or accurate to any certain degree. The Contractor cannot and does not guarantee all deaths will be identified. The Contractor makes no representation or warranty as to the completeness or accuracy of its Results, or the content of any database it uses.

The County is solely responsible for the selection of the Contractor's products, services and licenses. All products and services are provided to County "AS IS", and the Contractor makes no representation or warranty of any kind, express or implied, as to fitness for a particular purpose, merchantability, or any other matter with respect to the database, its services, or the accuracy of the information contained therein. The Contractor disclaims any liability thereto.

The County acknowledges that it has its own duties in verifying deaths and nothing in this Agreement is intended to abrogate those duties. The County is strongly advised not to take any action based on Results without first independently verifying the death of the individual(s) or other such information.

44. ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060.

45. NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

46. LIMITED ENGLISH PROFICIENCY

The Contractor must comply with Executive Order 13166, Title VI of the Civil Rights Act of 1964 and make reasonable efforts to ensure that as part of the services that it provides, adequate communication services, including interpretation and translation, are available to persons who have limited English proficiency. If such services are not included in the Contract's scope of services and pricing, the Contractor will use a County-contracted service provider, and the County will pay the fees.

47. ACCESSIBILITY OF WEB SITE

If any work performed under this Contract results in the design, development or maintenance of or responsibility for the content or format of any County web sites or for the County's presence on third-party web sites, the Contractor must perform such work in compliance with ADA.

48. INSURANCE REQUIREMENTS

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Ohio statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be typed on the certificate.
- c. Miscellaneous Error and Omissions/Professional Liability - \$1,000,000 per occurrence/claim
- d. Cyber Insurance - \$1,000,000 per occurrence/aggregate
- e. The Contractor shall require all subcontractors to maintain during the term of this Contract the same insurance requirements in the same form and manner as specified for the Contractor or in the alternative Contractor will cover subcontractors through Contractor's insurance or add the subcontractor as additional "named insured" under their policies, as applicable. The Contractor shall maintain subcontractor's certificates of Insurance and provide them to the County immediately upon request.

No acceptance or approval of any insurance by the County shall be construed as relieving or excusing the Contractor from any Liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

- f. Additional Insured – The County and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.
- g. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- h. Claims-Made Coverage - Any "claims made" policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.

- i. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County's approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The Contractor shall require all subcontractors to maintain during the term of this contract, Commercial General Liability insurance, Business Automobile Liability Insurance, and Workers Compensation insurance in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractor's certificates of insurance to the County immediately upon request by the County. The County's acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for of all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Contract or in connection in any way whatsoever with the Work. The Contractor's insurance shall be the primary non-contributory insurance for any work performed under this Contract.


The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

49. COUNTERPARTS

This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

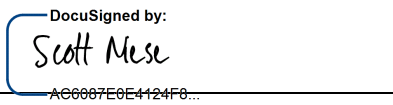
AUTHORIZED SIGNATURE: A19432A29B7746C...

NAME: ARLENE PALMER

TITLE: BUYER

DATE 12/30/2020

THE BERWYN GROUP, INC.

AUTHORIZED SIGNATURE: AC6667E6E4124F6...

NAME: Scott Niese

TITLE: President

DATE: 12/16/2020

Statement of Work # 1

DeathCheckSM Services



This Statement of Work ("SOW") is dated _____ (the "SOW Effective Date") and is entered into between Arlington County Government, having its principal place of business at 2100 Clarendon Blvd. Suite 511, Arlington, VA 22201 ("Customer") and **The Berwyn Group, Inc.**, located at 2 Summit Park Drive, Suite 610, Independence, Ohio 44131 ("Berwyn Group"), pursuant to the Master Services Agreement dated _____ (the "Agreement"). Capitalized terms used in this Statement of Work but not defined herein shall have the respective meanings set forth in the Agreement, including any Exhibit thereto.

SCOPE OF SERVICES

The Berwyn Group, Inc. ("Berwyn Group") agrees to verify the mortality of the database of individuals (herein called "Data") provided to us by the Customer. The Berwyn Group will provide a Report of Findings to the Customer within 15 days of the receipt of the data.

For the purposes of mortality verification, Berwyn Group will compare and match the Data supplied from the Customer with Berwyn Group's own National Master Death File that has been compiled from numerous publicly available sources.

FEE SCHEDULE

File-Based Audits

Service Fees: \$995 per file of 5,000-9,999 records
First job of each year at full price, subsequent jobs will receive 50% discount

Files under 500 records \$ 1.00 per record with \$ 250.00 minimum fee

CONTACT INFORMATION

Customer Primary Point of Contact: Name: _____
 Phone: _____
 Email: _____

Berwyn Account Manager: Name: Karen Mason
 Phone: 216-765-8818
 Email: K.Mason@berwyngroup.com

Statement of Work # 1

DeathCheckSM Services



By the signatures of their duly authorized representatives below, Berwyn Group and Customer, intending to be legally bound, agree to all of the provisions of this SOW as of the Effective Date set forth above.

AGREED TO AND ACKNOWLEDGED BY:

CUSTOMER:

THE BERWYN GROUP, INC.

By: _____
(Signature)

Name: _____

Title: _____

Date: _____

By: _____
(Signature)

Name: _____

Title: _____

Date: _____