

# Attachment A



## **PROFESSIONAL SERVICE AGREEMENT (PSA) FOR ?????**

Between

**THE COUNTY OF SANTA CLARA**

And

**?????, Consultant**

**EFFECTIVE DATE: ??/??/20??**



# Attachment A

## County of Santa Clara

### CONSULTANT AGREEMENT

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# Attachment A

## PROFESSIONAL SERVICE AGREEMENT ENVIRONMENTAL CONSULTANT SERVICES

This is an agreement between THE COUNTY OF SANTA CLARA, a political subdivision of the State of California (hereinafter "Owner" or "County"), and ????? doing business at ?????????????????? (hereinafter "Consultant").

### PART 1 - RECITALS

**1.01 WHEREAS**, County desires to hire Consultant under Professional Services Agreement for Environmental Compliance Consultant Services ("PSA") for various Planning Related Services (hereinafter "Services") on an as needed basis; and

**1.02 WHEREAS**, County selected Consultant by means of the County's consultant selection process based on Consultant's representation that Consultant is a professional having the requisite qualifications and expertise to perform the Services for various projects; and

**1.03 WHEREAS**, considering Consultant's prior experience and qualifications in this area, County desires to have Consultant provide such professional services and Consultant agrees to perform the Services;

**NOW, THEREFORE, Owner and Consultant agree as follows:**

### PART 2 - TERM AND MAXIMUM COMPENSATION

#### 2.01 Professional Agreement for Services and Project Agreements for Specific Services

This Agreement for Comprehensive Environmental Compliance Consultant Services (hereinafter "PSA") is a master agreement that sets forth the terms and conditions pursuant to which Consultant, as a professional, will provide services to the County. County will authorize Consultant to perform specific services per the Project Agreement (PA). Each Project Agreement will set forth: (a) Project description; (b) Scope of services and deliverables consistent with the Consultant's general activities described in section 5.02.D; (c) Schedule for performance; (d) Maximum compensation or fixed fee and method of payment and invoicing; (e) Authorized sub-consultants and key employees, if any; and (f) County's representative Project Manager, who will provide coordination between Consultant and County and communicate relevant approvals and decisions. This is not an exclusive relationship as the County may hire other consultants to do similar or the same work that is covered under this PSA.

#### 2.02 Maximum Compensation Limit (MCL)

The sum of this PSA shall not exceed **?? Million Dollars (\$???,000,000)** "Maximum Compensation Limit". If Consultant performs services or incurs expenses beyond this Maximum Compensation Limit, Consultant does so at Consultant's sole liability, cost, risk and expense. The MCL includes payment for all authorized Services, and any approved reimbursable expenses. Total payment by County will not exceed the MCL specified in this Agreement and Consultant is fully responsible for providing all Services and Deliverables required under a PA within the specified MCL.

#### 2.03 Term

This PSA is effective on ??/2015, and shall remain in effect until ??/2020 ("Term"), unless earlier terminated under Section 12 of this PSA. All services performed under the applicable Project Agreement must be completed within the term this PSA.

### PART 3 - OWNER'S RESPONSIBILITIES

#### 3.01 Owner Provided Information

- A. If required for a Project and specified in the applicable the Project Agreement (PA), Owner may provide specialized studies or information needed for the Consultant's Performance of Services.



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- B. Consultant must make a written recommendation to the Owner regarding the completeness or sufficiency of any such specialized study or information provided to Consultant, or the need for any information that the Consultant believes is required for the Project that is not included within Consultant's Services.
- C. If Owner provides GIS based data, Consultant agrees to execute the Nondisclosure Agreement, Exhibit G, relative to the handling, storage and disposition of such data.

## **PART 4 - PROJECT AGREEMENT (PA)**

### Preparation and Approval

- A. Owner will prepare each Project Agreement for each project undertaken by the Consultant under the terms of this PSA, generally in accordance with the sample which is attached hereto as Exhibit C, "Sample Project Agreement" and containing at a minimum (a) Project description; (b) Scope of services and deliverables consistent with the Consultant's general activities described in section 5.02.D; (c) Schedule for performance; (d) Maximum compensation or fixed fee and method of payment and invoicing; (e) Authorized sub-consultants and key employees, if any; and (f) County's representative Project Manager, who will provide coordination between Consultant and County and communicate relevant approvals and decisions.
- B. Each Project Agreement will be executed by the Owner's Authorized Representative ("OAR"), and incorporate the terms of this PSA. The OAR is the Director of the Parks and Recreation Department.
- C. Owner hereby approves all Project Agreements executed by OAR within the limits of this PSA. OAR does not have the authority to negotiate or authorize payments or scope beyond the Maximum Compensation Limit (MCL) in this PSA.
- D. Commencement of each Project Agreement is contingent on receipt by Consultant of an Authorization to Proceed issued by Owner's Project Manager. Consultant must not commence work until Consultant receives the written Authorization to Proceed from the Owner's Project Manager.
- E. Any act or event affecting any particular Project Agreement, such as its completion, termination, acceptance, non-acceptance, continuation or modification, will not affect any other Project Agreement or this PSA unless specifically provided herein or agreed in writing by the parties.

## **PART 5 - CONSULTANT'S RESPONSIBILITIES, SERVICES, AND DELIVERABLES**

### **5.01 Consultant as Independent Contractor**

Consultant is performing all Services as an independent contractor and not an agent or employee of the County. The expertise and experience of Consultant are material considerations for County's execution of this PSA. Nothing set forth in this PSA shall be deemed or construed to render the parties as joint ventures, partners, agents, a joint enterprise, employer-employee, or lender-borrower. Consultant shall have no authority to employ any person as employee or agent on behalf of County for any purpose. Neither Consultant nor any of Consultant's agents, employees, officers, directors, sub-consultants, contractors or subcontractors, shall be, or hold themselves out to be, an employee or agent of County.

### **5.02 Consultant's General Responsibilities**

- A. Standard of Care  
The following Standard of Care applies to all Services under this PSA:
  - 1. Consultant must perform Services in accordance with those standards of care that are generally recognized as being used by competent persons in Consultant's area of specialty in the State of California.
  - 2. Consultant must perform Services in compliance with all applicable federal, state and local codes, statutes, and regulations including environmental, energy conservation, and disabled access requirements.
- B. Equal Opportunity/Nondiscrimination  
Consultant shall comply with all applicable federal, state, and local laws and regulations including Santa Clara County's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504);



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California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Consultant shall not discriminate against any sub-consultant, subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status including but not limited to in recruitment, selection for training, apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Consultant shall not discriminate in provision of services provided under this PSA because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

C. Consultant's Use of Sub-Consultants

Notwithstanding the foregoing, Consultant may use the sub-consultants listed in Exhibit B in performing the Services under this Agreement, when authorized in a Project Agreement (PA). Consultant shall be responsible for directing the work of authorized sub-consultants, and for any compensation due to sub-consultants. County assumes no responsibility whatsoever concerning such compensation. Consultant may change or add sub consultants only with the prior written approval of the County's Project Manager in a Project Agreement (PA).

D. Services – General Scope of Work

Consultant will provide Environmental Compliance Consultant services. Such services may include various products and services that will allow the County to complete environmental compliance in order to pursue development of park improvements. These include, but are not limited to:

- ????
- ???

## PART 6 - CONSULTANT'S SCHEDULE

- A. Consultant will perform all Services and provide all Deliverables within the time and project schedule stated in the each Project Agreement (PA), including milestones, if any.
- B. Consultant must provide and maintain Project staffing levels as necessary to perform the Services within the time provided in the project schedule.

## PART 7 - RESERVED

## PART 8 - INDEMNIFICATION & INSURANCE

Indemnification and Insurance requirements are set forth in Exhibit E.

## PART 9 - REPRESENTATION BY COUNSEL

Both parties to this PSA have the right to be represented by counsel in the negotiation and execution of this Agreement.

## PART 10 - RESERVED

## PART 11 - COMPENSATION & PAYMENT

### 11.01 Consultant's Hourly Rate Schedule

Consultant's Hourly Rate Schedule is set forth in Exhibit A, "Consultant's Hourly Rates." During the Term of this PSA, and not more often than once a year, the County may authorize modifications to Consultant's Hourly Rate Schedule if Consultant provides information as to a benchmark for the prevailing increase for similar Consulting Services in the Bay Area. Authorized increases will be documented as an amendment to this PSA.

### 11.02 Reimbursable Expenses

- A. When authorized in the PA, Owner will reimburse Consultant, at direct cost only and upon submittal of itemized receipts, certain expenses incurred in the performances of the Services identified in the



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PA. All authorized expenses to be reimbursed are calculated within the Total Compensation Limit of any PA. Only the following expenses may be considered as reimbursable: overnight mail delivery service, messenger service, special printing of oversized or color graphics for public presentation purposes, printing of bound documents or compact discs (CDs). No markup is allowed on any reimbursable expense.

- B. When authorized in the PA, Owner will reimburse Consultant for car mileage incurred in the performances of the Services identified in the PA for travel to locations other than the Consultant's usual place of business. Reimbursement is calculated with the County's established mileage rate, When travel out of the San Francisco Bay Area is authorized as a reimbursable expense in the PA, Consultant agrees to comply with the Santa Clara County travel policies and guidelines, for all travel, lodging and meal reimbursements arising from the performance services identified in the PA. A copy of the County's travel policies will be provided to Consultant upon request. Only **pre-authorized reimbursable and travel related** expenses may be reimbursed.

## 11.03 Payment

### A. Payment Requests

County will endeavor to make payments within thirty (30) days after the County's approval of the Consultant's correct Payment Request. No mark-ups are allowed for any reimbursable expenses.

### B. Invoices

Consultant will submit payment requests on the forms shown in Exhibit D, "Sample Invoice," to the Project Manager. Consultant must provide detailed back up information to support each payment request, including, when applicable, receipts for reimbursable expenses; in the case of time and materials payment, the personnel/hours worked and description of tasks performed or services provided; or, in the case of fixed fee, a description of percentage of work complete and submittals provided, if any. The type of payment shall be determined by the County. County may reasonably request additional information supporting a pending payment request prior to the County's approval of same.

### C. Progress Payments

County may, at its discretion, adjust any progress payment so that it corresponds with the percentage of completion as reasonably determined by County.

## 11.04 Timely Billings

Consultant agrees to bill County on a timely basis and not later than ninety (90) Days after Services are performed or approved Reimbursable Expenses are incurred. County has no liability for payment of, and has sole discretion to pay or decline payment of, any billings submitted after the expiration of this ninety (90) day period. Additional payment and billing terms are provided in the attached Exhibits.

## 11.05 Consultant's Accounting Records

### A. Accounting System & Records Retention

Consultant must maintain an accounting system in accordance with current standards of accounting and financial reporting for the purpose of supporting payments for Services authorized under this PSA. Consultant must retain such records for three (3) years from expiration or termination of this PSA, or until all claims, if any, have been disposed of, whichever period is longer.

### B. County's Auditing Rights

During the Term and for three years after expiration or termination of the PSA, upon service of a written Notice to Consultant, County and persons authorized by County, have the right at any reasonable time and place to examine, audit, and make copies of books, records, documents, financial records, financial audits, accounting procedures and practices affecting the performance or administration of this PSA, or affecting any changes or modifications to this PSA, including but not limited to reasonable access to facility, financial and employee records that are related to the purpose of the PSA except where prohibited by federal or state laws, regulations or rules.

### C. Applicability to Subcontracts



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Consultant must incorporate the above-stated accounting and audit requirements into all subcontracts exceeding Ten Thousand Dollars (\$10,000) in value pursuant to this PSA or any modification thereof.

## **PART 12 - TERMINATION**

### **12.01 Budget Contingency Language**

This PSA is contingent upon the appropriation of sufficient funding by the County for the services covered by this PSA. If funding is reduced or deleted by the County for the services covered by this Agreement, the County has the option to either terminate this PSA or to offer an amendment to this PSA indicating the reduced amount of Compensation.

### **12.02 County's Rights**

#### **A. Termination for Convenience**

County's Authorized Representative may, by written notice to Consultant, terminate all or part of this PSA at any time for County's convenience without incurring any liability, penalty or costs. Upon the County providing such notice, Consultant must immediately cease all work as specified in the notice. In the event of termination for convenience, Consultant shall deliver to County all documents, records, materials, and Deliverables prepared pursuant to the PSA and all PAs, whether complete or incomplete. Upon receipt of the documents, Consultant shall be compensated based on the completion of services provided, as solely and reasonably determined by County.

#### **B. Termination for Breach**

1. If County reasonably believes that Consultant has violated or is violating any of the terms, conditions, covenants or agreements of this PSA, or if Consultant fails to fulfill in a timely and proper manner its obligations pursuant to this PSA, and does not cure such failure or violation within ten (10) days, or such other period as the County may determine is necessary and appropriate, after receipt of written notice from County's Authorized Representative specifying such failure or violation, County may terminate this PSA and any or all PAs at no obligation, cost, liability, fee or expense to County. County will provide Consultant with written notice as to the effective date of termination.
2. If, after notice of termination for breach of this PSA or any PA, County determines that Consultant did not breach this PSA or the PA, the termination will be deemed to have been made for County's convenience the County at its sole option may elect to withdraw the termination notice without liability, penalty or costs.

### **12.03 Consultant's Compensation Upon Termination**

#### **A. In the event of County's termination of this PSA, Consultant will receive compensation as follows:**

1. For fully performed and approved accepted items of Service, and authorized Reimbursable Expenses, compensation will be in the amount specified in the PA for that item of Service or expense.
2. For approved accepted items of Service which have not been fully completed or accepted, Consultant will be compensated for its Services accepted by County in an amount which bears the same ratio to the total fee otherwise payable for the performance of that Service as the Services performed bear to the total Services necessary for the full performance of that Service.

#### **B. In no event will the total compensation paid for any item of Service exceed the value specified in the PA for that item of Service or the MCL described above (in Section 2.02).**

### **12.04 Delivery of Documents**

Upon any termination of this PSA, Consultant must furnish County all documents and Instruments of Service prepared pursuant to this PSA, whether complete or incomplete.



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## **PART 13 - MISCELLANEOUS PROVISIONS**

### **13.01 Force Majeure**

Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, natural disasters, extreme weather conditions, and similar events beyond the reasonable control of the other or the other's employees, agents, or representatives.

### **13.02 Waiver**

No delay or failure to require performance of any provision of this PSA shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing and shall apply to the specific instance expressly stated.

### **13.03 Ownership & Use of Instruments of Service**

All Deliverables prepared by Consultant pursuant to this PSA are the property of County. Consultant must provide County with such Deliverables upon request by the County, and on termination or suspension of this PSA or any SOW. Consultant may retain a copy for its records. Consultant conveys, assigns and transfers the intellectual property rights it has to such materials to County.

### **13.04 Assignment of Clayton Act, Cartwright Act Claims**

Consultant assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Section 16700 of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Consultant for sale to the County pursuant to this PSA.

### **13.05 County No-Smoking Policy**

Consultant and its employees, agents, contractors, sub-consultants and subcontractors, shall comply with the County's No-Smoking Policy and Ordinances at all times.

### **13.06 Contracting Principles**

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, must be fiscally responsible entities and must treat their employees fairly. To ensure compliance with these contracting principles, Consultant warrants and represents that it and its employees, agents, contractors, subcontractors and sub-consultants shall: (1) comply with all applicable federal, state and local rules, regulations and laws, including but not limited to all County policies and procedures regarding park access and use; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County's request, provide the County reasonable access, through representatives of the Consultant, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

### **13.07 California Public Records Act**

All documents, information and records provided to or made available to County in response to this RFP become the sole and exclusive property of the County. The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If trade secret or proprietary information is contained in documents or other information submitted by Consultant to County, and Consultant expressly claims that such information falls within one or more CPRA exemptions, Consultant must clearly mark such information "CONFIDENTIAL AND PROPRIETARY" and identify the specific lines containing the confidential information on each document. In the event of a request for such information, the County will make reasonable efforts to provide notice to Consultant prior to such disclosure. If Consultant contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required at its own cost, liability and expense to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County at least two (2) days before the County deadline to respond to the CPRA request. If Consultant fails to obtain such a remedy before the County responds to the CPRA request, County will disclose the requested information and shall not be liable or responsible for such disclosure. Consultant agrees that it shall defend, indemnify and hold County harmless for, from and against any and all Claims that may or do





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result from denial by County of a CPRA request for any information arising from any representation, or any action (or inaction), by Consultant or Consultant's contractors, consultants, employees, agents or representatives.

## 13.08 Third Party Beneficiaries

This Agreement does not, and is not intended to confer any rights or remedies upon any person or entity other than the parties.

## 13.09 Services

On County's reasonable request, prior to making any changes to the services or deliverables, Consultant will provide to County for written approval prior to such change any and all documents, information, representations, depictions or clarifications as to the scope of the changes.

## 13.10 Sub-consultants

If any obligation is performed for Consultant through a Consultant or sub-consultant, Consultant will remain fully responsible for the performance of all obligations under this PSA and Consultant will be solely responsible for all payments due to its sub-consultants and Consultants. No contract, subcontract or other agreement entered into by Consultant with any third party in connection with the services contemplated herein will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, County with respect to such arrangement. No Consultant Affiliate will be deemed an employee or agent of County or a third party beneficiary for any purposes under this PSA.

## 13.11 Counterparts

This PSA may be executed in any number of counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original. Facsimile or electronic or scanned signatures shall have the same legal effect as original or manual signatures if followed by mailing of a fully executed original to both parties.

## 13.12 Obey All Laws

Consultant and Consultant Representatives will comply strictly with all federal, state, local and County laws, rules and regulations, including County policies.

## 13.13 Conflict of Interest

- A Consultant represents and warrants that (1) no official or employee of County has been employed or paid to aid in the procuring of this PSA; and, (2) no official or employee of County will be employed, paid or otherwise personally benefit from this PSA.
- B Consultant shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this PSA and is grounds for immediate termination of this PSA by the County.
- C In accepting this PSA, Consultant covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this PSA. Consultant further covenants that, in the performance of this PSA, it will not employ any contractor or person having such an interest. Consultant, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this PSA, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.
- D If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this PSA, Consultant shall, upon execution of this PSA, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Consultant's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in



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making governmental decisions or performing duties that would be performed by an individual in a designated position,” (2 CCR 18701(a)(2)), as part of Consultant’s service to the County under this PSA. Consultant shall immediately notify the County of the names and email addresses of any additional individuals later assigned to provide such service to the County under this PSA in such a capacity. Consultant shall immediately notify the County of the names of individuals working in such a capacity who, during the course of the PSA, end their service to the County.

- E If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this PSA, Consultant shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this PSA, annually by April 1, and within 30 days of their termination of service pursuant to this PSA.

## 13.14 Bribery Clause

Consultant certifies, represents and warrants that Consultant and the Consultant Representatives described in Attachment A have not been convicted of bribery or attempting to bribe an officer or employee of the County or any other municipality or state entity nor has Consultant or any of the Consultant Representatives made an admission of guilt of such conduct which is a matter of record.

## 13.15 Entire Agreement: Governing Language

This PSA constitutes the entire agreement by and between the parties with respect to the subject matters hereof, and supersedes all prior understandings and agreements relating thereto. This PSA comprises the complete and final expression of the rights, obligations, duties, and undertakings of the parties and sets forth all consideration, covenants, understandings and inducements pertaining thereto. Any translation of this PSA is done for local requirements and in the event of a dispute between the English and any non-English version, the English version of this PSA shall govern. No alteration, amendment, waiver, cancellation or other change in any term or condition of this PSA shall be valid or binding on either party unless the same has been agreed to in writing and signed by both parties.

Each party represents and warrants that it has executed this PSA freely, fully intending to be bound by the terms and provisions contained in this PSA.

## 13.16 Changes or Amendments to PSA

This PSA sets forth all agreements by and between the parties as to the subject matter herein. No modification or amendment shall be valid unless set forth in writing and signed by County and Consultant.

## 13.17 Paragraph Headings

The headings and captions of the various paragraphs and subparagraphs hereof are for convenience only, and they shall not limit, expand or otherwise affect the construction or interpretation of this PSA.

## 13.18 Cumulative Remedies

The rights and remedies of the parties to this PSA, whether pursuant to this PSA or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.

## 13.19 Construction

This PSA shall not be construed more strongly against either party regardless of who is more responsible for its preparation.

## 13.20 Governing Law, Exclusive Jurisdiction

This PSA, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this PSA or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of laws provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this PSA, including arbitration proceedings, shall be brought only in Santa Clara County, California. Each of the parties consent to the exclusive personal jurisdiction and venue of the courts, state and federal, located in Santa Clara County, California.



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## 13.21 Survival

Those sections and provisions of this PSA that by their nature should survive termination, cancellation or expiration of this PSA, shall so survive, including but not limited to Parts 1, 5, 8, 9, 11.02, 11.04, 11.05, 12, 13, 14, and 15 inclusive.

## 13.22 Use of County's Name for Commercial Purposes

Consultant shall not use the name or logo of the County or reference any endorsement from the County in any fashion for any purpose, without the prior express written consent of the County.

## 13.23 Disentanglement

Consultant shall cooperate with County to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Consultant shall cooperate with County's efforts to ensure that there is no interruption of work required under the Agreement and no adverse impact on the provision of services or County's activities. Consultant also agrees to work with other County Consultants in the provision of services that are similar or the same as covered under this PSA.

## 13.24 Wage Theft Prevention

It is the policy of the County that all parties contracting with the County must comply with all applicable federal, state, and local wage and hour laws, including, but not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any Minimum Wage Ordinance enacted by the County or any city within the County of Santa Clara. A potential contractor that has submitted a formal or informal bid to provide goods and/or services to the County may be disqualified if the potential contractor has been found, by a court or by final administrative action of an investigatory government agency, to have violated applicable wage and hour laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five years prior to or during the term of the contract with the County, may be in material breach of its contract with the County if the violation is not fully disclosed and/or satisfied per County guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.

## 13.25 Living Wage

Unless otherwise exempted or prohibited by law or County policy, where applicable, Contractors that contract with the County to provide Direct Services developed pursuant to a formal Request for Proposals process, as defined in County of Santa Clara Ordinance Code Division B36 ("Division B36") and Board Policy section 5.5.5.5 ("Living Wage Policy"), and their subcontractors, where the contract value is \$100,000 or more ("Direct Services Contract"), must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair workweek, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If Contractor and/or a subcontractor violates this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

- a) Suspend, modify, or terminate the Direct Services Contract.
- b) Require the Contractor and/or Subcontractor to comply with an appropriate remediation plan developed by the County.
- c) Waive all or part of Division B36 or the Living Wage Policy.

This provision shall not be construed to limit an employee's rights to bring any legal action for violation of the employee's rights under Division B36 or any other applicable law. Further, this provision does not confer any rights upon any person or entity other than the Board of Supervisors or its designee to bring any action seeking the cancellation or suspension of a County contract. By entering into this contract, Contractor certifies that it is currently complying with Division B36 and the Living Wage Policy with respect to applicable contracts, and warrants that it will continue to comply with Division B36 and the Living Wage Policy with respect to applicable contracts.

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## 13.26 Beverage Nutritional Criteria

It is the policy of the Board that County funds that are being used to purchase food and beverages on behalf of the County must not be used to purchase beverages that do not meet the County's nutritional beverage criteria. These criteria may be waived in the event of an emergency or in light of medical necessity. The criteria for waiver are set forth in the Administrative Guidelines for this section.

## PART 14 - NOTICES

All notices will be deemed to have been given when made in writing and delivered or mailed to the representatives of Owner and Consultant at their respective addresses as shown in Exhibit F, "Notices."



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## PART 15 - EXHIBITS

The following listed Exhibits referred to herein are incorporated in this PSA as though set forth in full:

- Exhibit A, "Consultant's Hourly Rates"
- Exhibit B, "Approved Sub-consultants"
- Exhibit C, "Sample Project Agreement"
- Exhibit D, "Sample Invoice Format"
- Exhibit E, "Indemnification & Insurance Requirements"
- Exhibit F, "Notices"
- Exhibit G, "Sample Nondisclosure Agreement"

**IN WITNESS WHEREOF**, the parties hereto have entered into this Professional Services Agreement effective as of the last date signed by all the Parties, as follows:

**CONSULTANT: ????**

\_\_\_\_\_  
Consultant

**COUNTY OF SANTA CLARA:**

\_\_\_\_\_  
**Dave Cortese, President  
Board of Supervisors**

**ATTEST:**

\_\_\_\_\_  
**Megan Doyle,  
Clerk Board of Supervisors,**

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
**Shirley R. Edwards                      Date  
Deputy County Counsel**



# EXHIBITS

# Attachment A

## EXHIBIT A

### CONSULTANT'S HOURLY RATES

Consultant will be paid a fee for each project per the terms and conditions of the applicable executed Project Agreement to which this exhibit is attached, at the hourly rate shown in this Exhibit A.

The following rates include all overhead, administrative costs, and profit, and will be used in arriving at fees for hourly-rate Services. Modifications to Consultant's Hourly Rate Schedule may only be made as described in Section 11.01 of this Agreement.

**CONSULTANT FIRM NAME: ???**

| <b>Consultants Staff (sample)</b>                                 | <b>Billable Hourly Rate</b> |
|---|-----------------------------|
| Principal   |                             |
| Sr. Project Manager / Sr. Planner / Sr. Scientist / Sr. Biologist |                             |
| Project Manager / Project Planner / Sr. Scientist / Sr. Biologist |                             |

\* The Services of the Principal or Principal-in-charge will only be used when there is a specific written request from the Owner for the Services of the Principal or Principal-in-charge for a specifically defined task.

**Travel:** County will pay only pre-approved travel expenses at costs. No mark-ups are allowed. Consultant is to comply with County Travel policy.

**Reimbursable:** County will pay only pre-approved reimbursable expenses at costs. No mark-ups are allowed.

**END EXHIBIT A**





# Attachment A

## EXHIBIT B

### SUB-CONSULTANTS with hourly rates

Consultant may employ sub-consultants that Consultant deems appropriate to the complexity and nature of the Project. Such sub-consultants must be licensed or certified, as appropriate, in the State of California for their particular area of expertise. Consultant is solely responsible for managing and coordinating the work of sub-consultants, and for compensating the sub-consultant for Services provided.

**No mark-ups are allowed:** County will not pay any mark-ups for managing and coordinating sub-consultants.

**Travel:** County will pay only pre-approved travel expenses at costs as per County Travel Policy. No mark ups are allowed.

**Reimbursable:** County will pay only pre-approved reimbursable expenses at costs. No mark-ups are allowed.

| List of Sub-consultants Contacts | Services | Consultant's Team Contacts (Principal's name) |
|----------------------------------|----------|---|
|                                  |          |   |
|                                  |          |   |
|                                  |          |   |

Consultant may not replace a sub-consultant without County's prior written approval. If Consultant's designated Project Manager, or any designated key staff person or sub-consultant, fails to perform to the satisfaction of Owner, Consultant will have fifteen (15) days from County's written notice to remove and replace that person with a replacement acceptable to Owner.

| 1 Sub-Consultant: ??? | Billable Hourly Rate |
|-----------------------|----------------------|
| Principal             |                      |
| Sr. Associate         |                      |
| Associate             |                      |

| 2 Sub-Consultant: ????    | Billable Hourly Rate |
|---------------------------|----------------------|
| Project / Program Manager |                      |
| Principal Investigator    |                      |
| Architectural historian   |                      |

**END EXHIBIT B**



# Attachment A

## EXHIBIT C

### SAMPLE PROJECT AGREEMENT

|  |
|--|
| <b>PROJECT AGREEMENT NO. _____</b><br><b>TO PSA BETWEEN THE COUNTY OF SANTA CLARA AND</b><br>_____<br><b>FOR _____ PROFESSIONAL SERVICES</b> |
| <b>PROJECT TITLE:</b>  |

| Account Assignment | G/L Account | Cost Center | WBS | Amount | Fund |
|--------------------|-------------|-------------|-----|--------|------|
| I                  | ???         | ???         | ??? | ???    | ???  |
|                    |             |             |     |        |      |

**WHEREAS**, on \_\_\_\_\_, the County of Santa Clara, a political subdivision of the state of California, issued a Request for Proposals No. \_\_\_\_\_ (the "RFP"), to which \_\_\_\_\_ corporation ("Consultant") responded in writing. Consultant's written response to the RFP was accepted by County as the most responsive bid and based on that response the County entered into a Professional Services Agreement ("PSA") with Consultant for the provision of \_\_\_\_\_ PROFESSIONAL SERVICES (the "Services"). The PSA expires on \_\_\_\_\_. Consultant's PSA is hereby incorporated herein by this reference into this PA.

**WHEREAS**, the PSA requires that Consultant's Services will be provided pursuant to individual Project Agreements to be executed by the parties and that no commencement of work under this PA shall begin until Consultant has received an Authorization to Proceed from Owner's Project Manager.

**NOW, THEREFORE**, the parties agree to the foregoing and as follows:

**1. PURPOSE:**

- 1.1 This is Project Agreement No. \_\_\_\_ pursuant to the PSA.
- 1.2 Consultant will perform the services described in Attachment 1, Consultant's Services and Deliverables (the "Services").
- 1.3 All the definitions, terms and conditions of the PSA are incorporated into this Project Agreement unless specifically modified herein.

**2. OWNER'S PROJECT MANAGER:** The Owner's Project Manager is Reem Assaf. All communications concerning the Project shall be through the Project Manager.

**3. SCHEDULE AND EXPIRATION DATE:** Services and Deliverables shall be provided according to Attachment 2, Consultant's Schedule. Consultant's Schedule may only be modified with Owner's prior written approval.

**4. MAXIMUM COMPENSATION LIMIT:** The maximum compensation limit for services pursuant to this Project Agreement shall be \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_.00) as stated in Attachment 3, Consultant's Compensation, which together with all prior and current PAs to date, does not and shall not cumulatively exceed the Maximum Compensation Limit specified in the PSA. Consultant is fully responsible for not exceeding this limit and solely assumes and accepts all liability, cost, and expense for exceeding this limit.



# Attachment A

## 5. ATTACHMENTS:

The following listed Attachments referred to and check marked herein are incorporated in this Project Agreement as though set forth in full.

- Attachment 1: Consultant's Services and Deliverables
- Attachment 2: Consultant's Schedule
- Attachment 3: Consultant's Compensation
- Attachment 4: Listing of Subconsultants
- Attachment 5: Payment Request Forms
- Attachment 6: Non-disclosure Agreement

**IN WITNESS WHEREOF**, this Project Agreement is effective as of the last date executed by all the parties below ("Effective Date").

**CONSULTANT:** *Firm???*,

**By:** \_\_\_\_\_ **Date** \_\_\_\_\_  
(Type Name of Person)

**Title:** \_\_\_\_\_

## COUNTY OF SANTA CLARA:

\_\_\_\_\_  
Director **Date** \_\_\_\_\_  
**County's Authorized Representative**

\_\_\_\_\_  
Sylvia Gallegos **Date** \_\_\_\_\_  
**Deputy County Executive**

## APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
Shirley Edwards, **Date** \_\_\_\_\_  
**Deputy County Counsel**



# Attachment A

**SAMPLE ATTACHMENT 1**  
**to**  
**PROJECT AGREEMENT NO. \_\_\_\_\_**

**CONSULTANT'S SERVICES AND DELIVERABLES**

**1. Project Description:**  
("Project").

**2. Basic Services & Deliverables:**

The Consultatn will:

By way of example, and not limitation, a scope of work would identify and contain:

- a. Identify any Project-specific definitions.
- b. List Project-specific Specifications and Other Documents.
- c. Identify the Tasks and Deliverables.
- d. Identify Project Milestones and Critical Path Milestones.
- e. Required Meetings and Intervals. Include required attendees.
- f. Responsibility for note taking, meeting agenda, meeting minutes and follow up on action items.
- g. Identify the Project Schedule for completion, including schedule for meetings, tasks, deliverables, milestones and critical path milestones.
- h. Identify the individual(s) who are authorized to sign a Change Order based on the dollar value of such Change Order. Identify Project Manager and other Key Personnel.
- i. Insert or Attach the Implementation Workplan (if any) developed in accordance with the Agreement Terms.
- j. Identify approved subcontractors who will be performing any work under the Agreement.
- k. Complete pricing information including all subcontractor fees, implementation and other services fees.

**3. Supplementary Services (if applicable):**

County may authorize Consultant to perform Services supplemental to the Basic Services and Deliverables described above by prior written authorization. County's authorization will include a description of the Services to be provided, the method of compensation (fixed fee or time and materials), maximum compensation limit and schedule for performance of the Supplementary Services.

End of Attachment 1 to PA No \_\_\_\_\_



**Attachment A**  
**SAMPLE ATTACHMENT 2**  
**to**  
**PROJECT AGREEMENT NO. \_\_\_\_\_**

**CONSULTANT'S SCHEDULE**

Compensation is predicated upon Owner accepting AND Consultant completing each task and associated Deliverables within the time frame herein provided and in a form and content agreed upon by Owner.

Consultant will complete the Basic Services described in Attachment No. 1 by \_\_\_\_\_ from Delivery of Letter of Authorization to Proceed from the Owner. Consultant will complete the tasks or submit the deliverables described below within the time indicated; however, Consultant may request extension of the below completion dates from County's Project Manager in the event Consultant encounters delays not within Consultant's control. Such extensions may not allow for completion of all Services beyond the \_\_\_\_\_ week date provided above. For the purposes of this section, Consultant is considered to control the timely performance of its sub-consultants.

| Basic Services and Deliverable Products | Completion Date from Authorization to Proceed |
|---|---|
| ???                                     | ??  |
| ???                                     |   |

End of Attachment 2 to PA No \_\_\_\_\_



# Attachment A

**SAMPLE ATTACHMENT 3**  
to  
**PROJECT AGREEMENT No. \_\_\_\_\_**  
**CONSULTANT'S COMPENSATION**

**1. Compensation Summary**

Consultant will be paid [fixed fee or not to exceed on a time and materials basis] for the Basic Services required under Attachment 1,???? ????? DOLLARS. Consultant will be responsible for monitoring this compensation limit and advising the County's Project Manager if additional funds are required to complete the Services *prior* to performing such Services. If Consultant exceeds this compensation limit without the County's prior written agreement, Consultant performs such Services at Consultant's own risk.

**2. Progress Payments:**

- a. All payments to this Project Agreement on a time and materials basis will be paid using the hourly rates and reimbursable expense provisions of the PSA. Payments based on fixed fee will be paid according to the percentage of work complete upon County's acceptance of work and approval of the invoice.
- b. Consultant must prepare and submit appropriate documentation and information to support each invoice an invoice detailing Services performed, completed milestones or deliverables, percentage of work complete, and hours worked and applicable rates when appropriate, and receipts for authorized reimbursable costs incurred, if any.
- c. Only invoices identifying personnel listed in Exhibit A to the PSA will be accepted by County for payment.
- d. Consultant must submit appropriate documentation and information to support each invoice, including a description of Services performed during the period, completed milestones or deliverables, which may be reviewed by County to determine whether Services have been performed and payment should be made.
- e. Consultant invoices will be paid by County only after County has determined that all applicable deliverables, milestones and documentation have been provided justifying payment subject to the satisfaction of County, in its sole discretion.

| SUMMARY OF CONSULTANT'S COMPENSATION |   |  |  |
|--------------------------------------|---|--|--|
|                                      |   |  |  |
| a.                                   | Basic Services and Deliverables   |  |  |
|                                      | [INSERT SCHEDULE OF VALUES FOR FIXED FEE OR NTE AMOUNTS FOR EACH PHASE OF WORK] |  |  |
|                                      | <b>SUBTOTAL: Fixed Fee [or NTE on time &amp; materials] for Basic Services</b>  |  |  |
| b.                                   | Supplemental Services Allowance   |  |  |
| c.                                   | Allowance for Reimbursable Expenses   |  |  |
|                                      | <b>TOTAL (Maximum Compensation Limit)</b>                                       |  |  |

End of Attachment 3 to PA No \_\_\_\_



# Attachment A

## SAMPLE ATTACHMENT 4 to PROJECT AGREEMENT No. \_\_\_\_\_

### CONSULTANT'S STAFF AND LISTING OF APPROVED SUBCONSULTANT

A. Refer to Exhibit A of the PSA for approved Subconsultants, which includes:

| Sub-consultants |
|-----------------|
|                 |
|                 |

B. Consultant declares that the Principal-in-Charge will be \_\_\_\_\_, and Consultant's Project Manager Will be \_\_\_\_\_.

C. Consultant represents and warrants that the above-named Subconsultant(s) and Staff (1) are appropriate to the complexity and nature of the required Services, (2) are, if their specialty is licensable, licensed by the State of California to perform their specific Services, and (3) have demonstrated competence and meets the professional qualifications necessary for the satisfactory performance of the services required. Consultant further warrants and represents that the Subconsultant's and staff contract agreement(s) are and shall be consistent with and otherwise comply with applicable terms and conditions of the PSA and this PA, including but not limited to provisions of standard of care, compliance with laws, insurance, confidentiality, indemnity, and jurisdiction. Upon Owner's request Consultant will provide copies of all Subconsultant and Staff contract agreements to the Owner.

D. None of the above named Staff or Subconsultants shall be replaced without Owner's approval pursuant to this Project Agreement and PSA terms. Consultant must provide the names of all key staff and lead personnel of Subconsultants associated with each Project in the applicable Project Agreement prior to the work. If Consultant's Project Manager or any other designated key staff person or Subconsultant fails to perform to the satisfaction of the Owner, on written notice from the Owner's Project Manager, Consultant will have fifteen (15) calendar days to remove that person from the Project and provide a replacement acceptable to the Owner. In that event Consultant must submit the name of a qualified replacement for Owner's approval.

E. Consultant represents, warrants and agrees that (1) Consultant is solely responsible and liable for all work and services performed by Subconsultants and Staff, (2) Consultant is at all times solely liable and responsible for payment of all Subconsultants and Staff, (3) Owner is not responsible or liable for payment or other obligations to Consultant's Subconsultants and Staff, (4) Owner is not, nor shall Owner be considered or alleged to be, an employer of Consultant's Subconsultants or Staff or the employees or agents of Subconsultants or Staff.

End of Attachment 4 to PA No \_\_\_\_

**END OF EXHIBIT C**





# Attachment A

## EXHIBIT D

### SAMPLE INVOICE FORMAT

#### Contractor's Payment Request Summary Sheet

|                  |             |
|------------------|-------------|
| Contractor:      | Date:       |
| Address:         | Invoice #:  |
| Project:         | Contract #: |
| For period from: |             |

|  |  |
|--|--|
| 1. Original Contract Amount              |  |
| 2. Total of Change Orders                |  |
| 3. Current Contract Amount (1+2)         |  |
| 4. Total Work Completed Previous Periods |  |
| 5. Work Completed This Period            |  |
| 6. Total Work Completed to Date          |  |
| 7. Total Previous Payments               |  |
| 8. Net Due This Payment (6 minus 7)      |  |
| 9. Balance Available (3 minus 6)         |  |

|                 |     |     |      |      |
|-----------------|-----|-----|------|------|
| Accounting Data |     |     |      |      |
| Dept.:          | AA: | CC: | G/L: | WBS: |

APPROVALS:

---

Signature of Project Managers
Date

---

Signature of County representative or Designee
Date



# Attachment A

## Contractor's Payment Request Breakdown Sheet

|              |                |
|--------------|----------------|
| Project:     | Contract #:    |
| Period from: | To: Payment #: |

| Item # | Description of work | Item value | Completed this period |    | Total completed to date |    |
|--------|---------------------|------------|-----------------------|----|-------------------------|----|
|        |                     |            | %                     | \$ | %                       | \$ |
|        |                     |            |                       |    |                         |    |
| TOTAL  |                     |            |                       |    |                         |    |

I hereby certify that all items, units, quantities, and prices of work shown on this Payment Request are correct; that all work has been performed, and materials supplied in full accordance with the terms and conditions of the construction contract on this project.

\_\_\_\_\_  
(Name) Contractor's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Project Manager

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of County representative or Designee

\_\_\_\_\_  
Date

**END EXHIBIT D**



# Attachment A

## EXHIBIT E

### B3-A INSURANCE REQUIREMENTS FOR ARCHITECTS, LANDSCAPE ARCHITECTS, ENGINEERS & SURVEY SERVICES CONTRACTS

#### Indemnity

To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), Consultant shall indemnify, defend and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees, from any claim, liability, loss, injury or damage (collectively, "Litigation") arising out of, or in connection with, performance of this Agreement due to the negligence, recklessness, or willful misconduct of Consultant and/or its agents, employees or sub-consultants, excepting only to the extent such loss, injury or damage is caused by the negligence, recklessness or willful misconduct of personnel employed by the County. The Consultant shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any Litigation in which the Consultant is obligated to indemnify, defend and hold harmless the County under this Agreement.

#### Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

#### A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

#### B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

#### C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.



# Attachment A

## D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
  - a. Each occurrence - \$1,000,000
  - b. General aggregate - \$2,000,000
  - c. Personal Injury - \$1,000,000
2. General liability coverage shall include:
  - a. Premises and operations
  - b. Personal Injury liability
  - c. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

**Additional Insured Endorsement**, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.
- 4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.
5. Workers' Compensation and Employer's Liability Insurance
  - a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
  - b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.
6. Professional Errors and Omissions Liability Insurance
  - a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.



# Attachment A

- b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.
- c. Coverage shall include contractual liability coverage.
- d. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

## 7. Claims Made Coverage

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

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

## E. Special Provisions

The following provisions shall apply to this Agreement:

- 1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
- 2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
- 3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
- 4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

## F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

**END EXHIBIT E**



# Attachment A

## EXHIBIT F

### NOTICES

All notices are deemed to have been given when made in writing and delivered or mailed to the representatives of Owner and Consultant at their respective addresses as follows:

A. **Owner:**

**County of Santa Clara: Parks & Recreation Department**

298 Garden Hill Drive, Los Gatos, CA 95032

Attention: Project Manager – ???

Phone: 408-???; Fax 408-355-2290; email: ????@prk.sccgov.org

B. **Consultant:**

????? Inc.

Address:

Attention: Principal – ????

Phone: 91???

email: ?????.com

Attention: Project Manager –

Phone: 91???

email: ?????.com

**END EXHIBIT F**



# Attachment A

## EXHIBIT G

### SAMPLE - NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“NDA”) by and between \_\_\_\_\_ (“Receiving Party”) and the County of Santa Clara (referred to interchangeably as “County” or “Owner”) relates to the disclosure of certain confidential information. This NDA is incorporated into and made a part of the Service Agreement entered into the Parties, to which it is attached.

In consideration of the mutual covenants and agreements hereinafter set forth, the adequacy of which are acknowledged, the parties agree as follows:

1. This NDA will commence following full execution by both parties and will continue in full force and effect until the conclusion of the business relationship between the County and the Receiving Party, or for a period of one year following execution of this NDA, whichever is longer. The obligations with respect to the treatment of all Confidential Information that is received under this NDA will survive termination or expiration of this NDA.
2. The Receiving Party will return all Confidential Information received from the County upon termination or conclusion of this NDA. The Confidential Information will remain the exclusive property of the County, and no copies will be made or retained without the written consent of the County.
3. “Confidential Information” will mean any and all tangible and intangible information, whether written, oral or in any other medium, originated by or uniquely within the knowledge of the County and not generally available to third parties. Confidential Information includes, without limitation, any and all network diagrams, network schematics, network and system documentation, network address information, system and device configurations, trade secrets, data captured from a County network or information system, financial information, know-how, designs, methodologies, processes, manuals, marketing information, price lists, customer lists, supplier lists, employee information, facility infrastructure, computer programs, and systems designs. County’s Confidential Information also includes all County Property as defined below.

#### **3.1 DATA OWNERSHIP**

3.1.1 All “County Property” is Confidential Information, and as used in this NDA and the Agreement, means, collectively and singularly, all of the following County property: information, data or materials provided to Consultant by County or on behalf of County; Customer Data and PII (as defined below); the deliverables (excluding any deliverables otherwise excluded from County ownership as stated elsewhere in this Agreement); County documents, materials, specifications, lists, maps, outlines, emails, electronic communications; County information collected or relating to each and every participant in any game or contest developed for or by County or for County use; County programming, object code, website, publication, source code, technology, metadata, data, device, or other asset of any kind; County copyrights, trade names, trade dress, domain names, patents, trade secrets, moral rights, termination rights, ownership rights, authorship and other proprietary rights of County including, without limitation, all goodwill, all information and materials provided by or on behalf of County and all derivative work thereto; and, all County rights necessary for any and all local, national, or worldwide development, manufacture, modification, enhancement, sale, licensing, use, reproduction, publication or display.

3.1.2 Personally Identifiable Information and Customer Data (collectively the “Customer Data and PII”) includes but is not limited to any and all information pertaining to or about persons and/or entities receiving County services, accessing County links or websites, or participating in any County held or sponsored activities, regardless of whether County provided these links, websites, services, contests or games directly. Customer Data and PII also includes but is not limited to any and all names, addresses, emails, phone numbers, social security numbers, bank account or credit card information, driver license





# Attachment A

numbers, age, sex, religion, physical descriptions and website or internet use data or metadata. All Customer Data and PII is exclusively and solely County Property. All Customer Data and PII is always County Confidential Information, except as otherwise determined solely by the County in writing.

3.1.3 Should County Confidential Information be divulged to unauthorized third parties, Consultant shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code Sections 1798.29 and 1798.82 at Consultant's sole expense (if applicable). Consultant shall not charge the County for any expenses associated with Consultant's compliance with the obligations set forth in this section.

4. Receiving Party shall review and maintain the Confidential Information in accordance with the following terms and conditions:

(a) Receiving Party agrees to treat all Confidential Information (as defined above) as confidential and not to disclose the same to any third party. The Receiving Party shall keep the Confidential Information in strict confidence, using the same standard of care as it does with respect to its own Confidential Information, but in no event less than a reasonable degree of care.

(b) No copies of the Confidential Information shall be made, unless agreed to in writing by the County.

(c) All of the Confidential Information shall be kept and maintained in a safe and secure place with adequate safeguards to insure that unauthorized persons do not have access to the Confidential Information. Receiving Party shall, at all times, keep the County informed in writing of the location of the Confidential Information.

(d) The Receiving Party will permit access to Confidential Information only to individuals authorized in writing by the County and who have a bona fide need to know, provided that all such persons must be required to comply with the terms of this NDA with respect to such Confidential Information.

(e) The Confidential Information shall be used solely by Receiving Party for the limited purpose stated in this NDA.

(f) Any oral discussions between the County and Receiving Party that relate to the Confidential Information shall be kept secret and confidential and are deemed to be Confidential Information.

(g) Upon the request of the County or after the termination of this NDA, Receiving Party shall promptly return all of the Confidential Information including all work products of Receiving Party containing Confidential Information to the County. Receiving Party shall certify that all Confidential Information and copies or extracts thereof have been returned or destroyed.

(h) Receiving Party shall immediately notify the County in writing of any misuse or misappropriation of the Confidential Information or violation of this NDA that may come to its attention.

(i) Receiving Party, its agents, employees, representatives, subsidiaries, affiliated, or parent companies shall not, for themselves or for the benefit of any person or entity, other than the County, use, or disclose the Confidential Information whether written or oral, software technology, or otherwise or any portion thereof, for any purpose, at any time or in any place, without the express prior written approval of the County.

5. Confidential Information will not include any information that the Receiving Party can demonstrate that, absent breach of this NDA, was/is:

(a) Publicly known at the time of disclosure by the Disclosing Party, or becomes publicly known through no fault of the Receiving Party;



# Attachment A

- (b) Rightfully received from a third party without a duty of confidentiality;
- (c) Already known to the Receiving Party at the time of receiving such Confidential Information or is independently developed by the Receiving Party without reference to the Confidential Information;
- (d) Permitted to be disclosed by written consent of the Disclosing Party; or;
- (e) Required to be disclosed by law or by an order of a governmental agency, legislative body or court of competent jurisdiction; provided that the Receiving Party provides the Disclosing Party with prompt notice of such requirement, so that the Disclosing Party may seek an appropriate protective order and/or waive compliance with this NDA.

6. Disclosure by the County of Confidential Information does not constitute a warranty that the Confidential Information is accurate, complete, or adequate for the purposes contemplated by the Receiving Party. Confidential Information is provided "AS IS". COUNTY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, AND ANY EXPRESS WARRANTY WITH RESPECT TO ANY OF THE CONFIDENTIAL INFORMATION AND DOCUMENTATION DISCLOSED HEREUNDER. County accepts no responsibility as a result of any expenses, losses, damages, or actions incurred or undertaken by the Receiving Party as a result of the Receiving Party's receipt or use of any Confidential Information or documentation.

7. County may in its sole discretion terminate this NDA in whole or in part by providing three (3) calendar days written notice to Receiving Party. Termination under this provision shall not relieve Receiving Party of any obligation occurring prior to termination, such as confidentiality, payments, and other provisions which by their nature would survive termination.

8. Upon the end of term of this NDA, or its termination, or at any time upon written demand by the County, all Confidential Information, together with any copies, memoranda, working papers, notes and photographs thereof, will, at the County's option, be returned or destroyed by the Receiving Party. The return of any Confidential Information will not relieve the Receiving Party of its obligation to maintain the confidentiality of the Confidential Information for the full period contemplated by this NDA; said confidentiality obligation shall survive termination of this NDA.

9. Neither party has any obligation to enter into any further agreement with the other except as such party in its sole judgment may deem advisable.

10. This NDA contains the entire understanding and agreement of the parties with respect to the disclosure of the Confidential Information, and supersedes all prior agreements and discussions concerning the subject matter hereof, whether oral or written.

11. The parties agree that a breach of this NDA is likely to cause irreparable harm to the County for which money damages alone would be an inadequate remedy. Accordingly, the County will be entitled to seek specific performance and injunctive or other equitable relief as a remedy for breaches of this NDA.

12. If any provision of this NDA is held illegal, invalid, or unenforceable by any court of competent jurisdiction, such provision will be deemed separable from the remaining provisions hereof and the remaining portions shall remain in full force and effect.

13. All sections of this NDA shall survive termination, cancellation and expiration of this NDA regardless of the reason for termination, cancellation or expiration.

14. Receiving Party shall indemnify, defend, and hold harmless the County, its officers, agents and employees from any claim, liability, loss, injury or damage (collectively, "Litigation") arising out of, or in connection with, performance of this NDA due to the negligence, recklessness, or willful misconduct of



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Consultant and/or its agents, employees or sub-contractors, excepting only to the extent such loss, injury or damage is caused by the negligence, recklessness or willful misconduct of personnel employed by the County. It is the intent of the parties to this NDA to provide the broadest possible coverage for the County.

15. Unless where preempted by Federal laws such as in Copyright Laws, this NDA shall be enforced and interpreted under the laws of the State of California and the County of Santa Clara, without any regards to the conflict of law principles.

16. The parties to this NDA hereby agree to submit to the exclusive jurisdiction of and venue in the courts of competent jurisdiction, federal or state, in the County of Santa Clara in any disputes related to or arising out of this NDA.

17. No delay or failure to require performance of any provision of the NDA shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing and shall apply to the specific instance expressly stated.

18. Receiving Party shall not assign or transfer this NDA, or all or any part of its rights hereunder, by operation of law or otherwise, without the prior written consent of County. Any unauthorized assignment or transfer shall be null and void and shall constitute grounds for immediate termination of this NDA by County. This NDA shall inure to the benefit of and be binding upon any permitted successor or assign.

19. Each party acknowledges that it has read and understands this NDA and agrees to be bound by its terms.

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

**County of Santa Clara:**

**Consultant**

**Signature:**

**Signature:**

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:**

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**END EXHIBIT G**

