

sample



PROFESSIONAL SERVICES AGREEMENT (PSA) for

**Real Estate Appraisals and Commercial Economic Analysis
Professional Services**

Between

THE COUNTY OF SANTA CLARA

And

?? (*dba, ??), Consultant

EFFECTIVE DATE: ??/??/2019

*dba = doing business as

County of Santa Clara

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PROFESSIONAL SERVICES AGREEMENT FOR
REAL ESTATE APPRAISALS AND COMMERCIAL ECONOMIC DEVELOPMENT ANALYSIS
PROFESSIONAL SERVICES

PART 1 - RECITALS

This is an agreement between **THE COUNTY OF SANTA CLARA**, a political subdivision of the State of California (hereinafter "County"), and **????, (doing business as "????")**, a **type of business entity**, with its principal place of business located at [**address ???**] (hereinafter "Consultant"). Consultant and County are each a "Party" and collectively the "Parties" to this Agreement.

- 1.01** This Professional Services Agreement (hereinafter referred to, interchangeably, as "PSA" or "Agreement") sets forth the terms and conditions pursuant to which Consultant will provide Real Estate Appraisal and Commercial Economic Analysis Services and Deliverables (hereinafter referred to, interchangeably, as "Services" or "Services and Deliverables" or "SOW" or "Scope of Work" or "Statement of Work") for the County. The Services and Deliverables described within this PSA reflect a menu of Services and Deliverables that may be ordered through individual Project Agreements (hereinafter referred to, interchangeably, as "PA" or "Project Agreement"), and are part of the scope of this PSA. The Consultant is not authorized to perform Services described within this PSA unless and until a Project Agreement is executed by County for the scope of such Services. The decision to authorize any Services in a Project Agreement is at the sole discretion of County.
- 1.02** Consultant acknowledges, agrees and understands that Consultant's written response to the County's competitive selection process is the basis upon which Consultant was selected, such responses are incorporated herein by this reference, and County materially relies upon such responses as a basis for entering into this PSA.
- 1.03** Consultant was selected by means of County's consultant selection process, represents itself as an expert professional having the requisite qualifications, skills, knowledge, and expertise to deliver and complete all Services, and agrees to perform such Services in accordance with all terms and conditions of this PSA.
- 1.04** Consultant will perform such Services pursuant to separately issued Project Agreements issued by County pursuant to this PSA. The **County's Authorized Representative** ("CAR"), will designate a Project Manager for each PA issued under this PSA. Each Project Manager for the County will be identified in the PA.

NOW, THEREFORE, County and Consultant agree to the foregoing and as follows:

PART 2 - PROJECT AUTHORIZATION, DEFINITIONS, TERM AND MAXIMUM COMPENSATION

2.01 Professional Services Agreement and Project Agreement for Services

This PSA is a master agreement that sets forth the terms and conditions pursuant to which Consultant will perform and complete all Services for County's sole benefit. County will authorize Consultant to perform specific services by separate Project Agreements. Each Project Agreement will set forth: (1) a project description; (2) Services and Deliverables; (3) schedule for performance ("Schedule"); (4) maximum compensation; (5) method of payment and invoicing; (6) authorized subconsultants and employees, if any; and (vii) process for coordination between Consultant and County and communicate relevant approvals and decisions.

Definitions: Capitalized terms found in this PSA are defined within this PSA.

Services and Deliverables ("Services"): The statement of work, scope of work, instruments of service, documents, deliverables, information, data, other services, submittals and other products or things of Consultant to be delivered to County pursuant to this PSA or a specific PA.



Milestones: An action or event specific points along a project timeline. These points may signal anchors such as a project start and end date, a need for external review, or input and budget checks. Milestones focus on major progress points that must be reached to achieve success or to advance to the next stage of the project.

2.02 Maximum Compensation Limit (MCL)

The maximum sum of compensation for all Project Agreements issued pursuant to this PSA shall not exceed One Million Dollars (\$1,000,000) (“Maximum Compensation Limit” or “MCL”). If Consultant performs Services or incurs expenses beyond the amount authorized in an County-issued PA or in an amount which exceeds the Maximum Compensation Limit in this PSA, Consultant does so at Consultant’s sole risk and expense, and is solely responsible and liable for any such expenses incurred and amounts owed or expended.

2.03 Term

This Agreement is effective upon the date of full execution by both Parties and shall remain in effect for a period of 60 months (“Term”), unless earlier terminated pursuant to any terms of this Agreement. Expiration date of this PSA is ??/1/2024. Each PA will set out its own expiration date and in no instance shall the expiration date of any PA exceed the Term of this PSA.

2.04 Scope

- A. The Services and Deliverables identified in Part 5, “Consultant’s Responsibilities, Services, and Deliverables”, of this PSA, establish the full range of Services and Deliverables the County may authorize for PA projects within the scope of this PSA and any PA.
- B. Any act or event affecting any particular PA, such as its completion, termination, acceptance, non-acceptance, continuation or modification, shall not affect any other PA or this PSA except as mutually agreed in writing by both Parties or as otherwise provided for in this PSA.

PART 3 - PROVISION OF INFORMATION AND PAYMENT OF FEES

3.01 Project Information

- A. If necessary for the completion of a project specified in a PA (“PA Project”), the County may provide the following documents for Consultant’s use in connection with the Services and Deliverables, to the extent such documents are in the County’s possession: Specialized studies of existing site conditions, including but not limited to studies regarding the presence of hazardous materials, integrity and functionality of structural, HVAC, and electrical systems, soil, air, water, pollution, traffic, noise, archaeology, and environmental impacts.
- B. In accordance with best industry practices, Consultant must make a written recommendation to the County regarding the completeness or sufficiency of any survey or specialized study provided by or to Consultant or make a written recommendation regarding the need for any study or survey that the Consultant believes is required to complete the PA Project that is not included within the PA’s Services or Deliverables.

3.02 Approval and Permit Fees

County will pay all fees required by any jurisdiction having authority over a PA Project for filing and checking of any item of Service prepared by Consultant, and such fees necessary to secure approvals and permits for the PA Project from any state, local or federal department, agency, municipality, county, special district, executive office or public utility (collectively and each “Government Agency”).



PART 4 - PROJECT AGREEMENT (PA)

4.01 Preparation and Approval

- A. County will prepare each PA, generally in accordance with the sample which is attached hereto as Exhibit C, "Sample Project Agreement (PA)," and its attachments.
- B. Each PA will be executed by the County's Authorized Representative ("CAR"), and incorporates all the terms and conditions of this PSA. The County may designate a separate Project Manger for each PA.
- C. CAR does not have the authority to negotiate or authorize payments or scope of work beyond the Maximum Compensation Limit or Services identified in this PSA.
- D. Commencement under any County-issued PA is contingent on receipt by Consultant of an Authorization to Proceed issued by the CAR or designee. Consultant must not commence work until Consultant receives the written Authorization to Proceed from the CAR or designee.

4.02 Changes in Scope

- A. If County requests a change in the requirements of a PA, or circumstances not in the control of Consultant cause a material change in the duration or scope of Services that Consultant contends is material and justifies an increase in compensation, Consultant must obtain written consent from County before proceeding with such change. If Consultant fails to provide prior written notice to County prior to commencing any such change in Services, such change will be deemed not material and Consultant will not be entitled to additional compensation for the Services rendered in support of such change.
- B. If the change results in a material decrease in the scope of Services required to perform a PA, Consultant will immediately notify County and Consultant's compensation will be subject to a commensurate reduction in compensation.
- C. If, during the term of a Project Agreement, circumstances constituting a material change in the necessary work to complete a PA Project arise, as described in the "Changes in Scope" section of Attachment 1 to a PA (Exhibit C), and the County provides prior written approval of a change in the scope of work in the PA, Consultant will be entitled to compensation for the changed scope of work within the PA MCL for that Project Agreement.

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

5.01 Consultant as Independent Contractor

Consultant is performing and providing all Services as an independent contractor and not an agent or employee of County. The expertise and experience of Consultant are material considerations for County's execution of this Agreement. Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant's obligations hereunder, without the prior written consent of County, and any attempt to so assign this Agreement, or any rights, duties or obligations arising hereunder, shall be void and of no effect.

5.02 Consultant's Use of Sub-Consultants

Consultant may use subconsultants in performing the Services under this PSA, when expressly authorized in a PA or elsewhere in this PSA. Consultant shall be responsible for directing the work of authorized subconsultants, and for any compensation due to subconsultants. County assumes no responsibility whatsoever concerning such compensation. Consultant may add subconsultants to Exhibit B of this PSA only with the prior written consent of the CAR which shall be in the form of an amendment to the PSA or, alternatively, additional subconsultants may be added to a PA upon approval and execution of the PA by the CAR.

5.03 Consultant's General Responsibilities

- A. The specific Services Consultant shall provide for each PA project, and Consultant's Schedule for providing those Services, shall be set forth in the applicable PA. Consultant's responsibilities when providing such Services shall be specified in the PA and shall be in full compliance with all terms and conditions of this PSA.
- B. Consultant shall provide Services in accordance with the standard of care generally recognized in the following disciplines: Real Estate Appraisal and Commercial Analysis Consulting Services.
- C. Standard of Care
 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, laws, regulations and ordinances, including, but not limited to, environmental, energy conservation, and accessibility standards and requirements.
 3. Consultant must use best efforts to verify interpretations of applicable law, codes, regulations, and ordinances, from the appropriate Government Agency(s) and authorities having jurisdiction over the PA Project. Such efforts will be undertaken in accordance with the acceptable standard of care for this type of PA Project in the industry within Santa Clara County.
 4. If County desires to obtain funding from federal, state, or other outside funding sources, Consultant must prepare and furnish information required by such federal, state, or outside funding sources.
 5. When a PA Project is to be completed in whole or in part with funds from federal, state, or other outside funding sources, then the requirements of said federal, state, and outside funding sources are incorporated herein and made a part of this PSA and any PA Project by this reference and Consultant shall fully comply with all such requirements in carrying out and completing the PA Project.
 6. Notwithstanding the source of funding, this PSA is between the County and Consultant and unless specified herein, all direction, instructions and decisions related to the Services provided by Consultant under this PSA shall come from the County.
- D. Sequence of Consultant's Services
 1. In general, Consultant's Services will proceed sequentially as described in Part 5.04, "Basic Services & Deliverables" and in the applicable PA.
 2. Each PA will establish the Consultant's Milestone Schedule for completion of the Consultant's Services applicable to that PA.
- E. Quality Control & Coordination Checks
 1. Consultant is responsible for the quality control, oversight and coordination of all Services and Deliverables prepared by Consultant and the Consultant's subconsultants in accordance with the requirements set out in this PSA and the applicable PA.
 2. Before submitting required completed documentation under the PA to County, Consultant must check and verify all documentation for accuracy, comprehensiveness, completion & adequacy.
 3. Quality control, accuracy and coordination checks must be performed in accordance with procedures and methods acceptable to the County.
 4. Consultant must not incorporate review comments generated by the County's organization into subsequent draft reports until the comments are first reviewed and accepted by the County or designee.
- F. Submittal of Deliverables
 1. Each submittal must include a declaration statement, signed by a principal of Consultant's firm, that the work of Consultant and its subconsultants was coordinated, the submittal is complete, and that all prior County review comments and changes have been addressed with the County or incorporated into the documents.

2. Consultant must furnish to County, suitable for reproduction, original reproducible deliverables in hard copy and electronic format.
- G. Printing & Reproduction
Consultant must pay for all printing and reproduction costs incurred in the performance of its Services.
- H. Meetings
1. In addition to meetings specifically identified in the “Services and Deliverables” section of each PA, Consultant must attend meetings as needed or required with:
 - a) County’s officials, staff, commissions and user groups as required for the performance of Consultant’s Services pursuant to this PSA and any PAs. This requirement includes meetings with County and third parties to develop, explain and refine the deliverables and for Consultant to present solutions for County review, consideration and acceptance.
 - b) County-sponsored advisory groups and local officials to present the PA Project to the public or others.
 - c) Government agencies having jurisdiction related to the PA Project or any part of the PA Project. The Consultant must schedule and participate in preliminary meetings with all government agencies with permitting authority for the PA Project (where required by County).
 2. If requested by the County, Consultant must prepare agendas for and take minutes of all meetings conducted/attended by Consultant. This includes meetings that are chaired by the CAR or designee. In meetings involving discussion of scope, or project costs, Consultant shall take meeting minutes and provide a copy of these meeting minutes to the CAR or designee.
 3. The Consultant’s fee for attendance at and preparation of minutes for all meetings specifically identified in Part 5.04, “Basic Services & Deliverables,” will be considered included in the overall fee identified in each Project Agreement.
 4. CAR will coordinate all meetings between Consultant, County’s user groups, and the public or may require Consultant to undertake such coordination efforts.
- I. Consultant’s Staff and Subconsultants
1. Consultant’s staff and subconsultants are identified in Exhibit B of this PSA, “Consultant’s Staff and Subconsultants,” or will be otherwise identified in attachments to the applicable PA subject to the requirements set forth therein.
 2. Adequate and Competent Labor Force. At all times during the performance of the Service, Consultant shall keep, and cause to be kept, a sufficient number of skilled and experienced personnel necessary to perform and complete each part and all portions of the Services and Deliverables. County shall have the right to direct Consultant to remove any individual whether an employee of Consultant or of a subconsultant performing the Services or Deliverables. Consultant shall take reasonable precautions in the selection of its personnel and subconsultants and in the performance of the Services to safeguard, if applicable, equipment, materials, supplies, plans and specifications and all aspects of the Services and Deliverables from theft or unauthorized use or disclosure thereof or damage thereto.
 3. Wages and Benefits. Consultant shall be responsible for payment of all wages, fringe benefits, pension or retirement obligations, housing obligations, social security, unemployment, workers compensation and all other social taxes or charges for its employees and those of its subconsultants and ensure that its subconsultants are so responsible for their employees.
 4. Key Personnel. Consultant shall identify in writing the name and contact information for the Consultant’s Project Manager, and all key personnel and key subconsultant personnel responsible for completing any part of the Services. Consultant shall include a reasonably detailed job description and explanation of related past experience for each individual identified. The Consultant’s PA Project Manager shall have full responsibility for the Services and Deliverables and shall act as the primary point of contact on behalf of Consultant with respect to performance of the Services and Deliverables. Consultant shall not change the PA Project

Manager, or the key personnel or key subconsultant personnel without the prior written consent of County, which will not be unreasonably withheld.

5.04 Basic Services & Deliverables

- A. Consultant will provide one or more of the following professional real estate appraisal services:
- *Service Area 1: Appraisal of varied interests in real properties*, including but not limited to special use properties, such as fee title, easements, partial interests, conservation easements, and leasehold interests. Appraisal reports must meet all requirements in the Uniform Relocation Assistance and Real Property Acquisition Act and the State of California Department of Transportation (“Caltrans”) Right of Way Manual. Proposers should be able to take multiple appraisal approaches, including sales comparison, cost, income, and any combination thereof. Types of appraisal reports may include, but are not limited to:
 - New appraisal reports;
 - Multiple new appraisal reports for properties in the same vicinity being appraised concurrently, thereby affording the Department certain economies of scale;
 - Update of previous appraisal reports to reflect current market conditions;
 - Update of previous appraisal reports to reflect different scope or restrictions;
 - Other types of appraisal reports as specifically requested
 - *Service Area 2: Preparation of Commercial Economic Analysis (CEAs)*, as necessary, setting forth a written report on the performance of existing or potential commercial activities on Department-owned real estate or potential acquisition land. CEAs may include analysis of the performance of leasehold activities such as: golf courses, cattle grazing, cell towers, zip-line courses, outdoor adventure facilities, vendor services and other commercial operations resulting in shared receipt of revenue and provision of services on public parkland. It may also include analysis of alternative revenue-generating opportunities including public-private partnerships and joint use facilities. Consultant will be expected to draft, present, and submit reports on CEAs.
 - *Service Area 3: Review and provision of advice* to the Department regarding appraisal reports, and CEAs, including those prepared by other entities.
- B. Provide and distribute on a timely basis all progress reports as directed by the County’s Project Manager.
- C. The Consultant will be responsible for completing the tasks and milestones according to a negotiated time line with the County’s Project Manager(s). At the completion of the project, the Consultant is expected to provide sufficient information upon which the County may rely on about the value of the properties appraised or other value determinations made.
- D. Provide a final signed report to the County’s PA Project Manager, where required by the County or as otherwise stated in the PA.
- E. Consultant shall promptly bring non-conforming work to the attention of the County’s Project Manager and note all such items in Consultant’s emails or other correspondence to County’s Project Manager. If any item of non-conforming work is not resolved in a timely manner or is about to be incorporated in the work, the Consultant shall immediately remedy the issue to the satisfaction of the CAR or designee.
- F. Consultant shall retain all pertinent records relating to the Services performed for a period of three (3) years following PA Project completion during which period the records will be made available to the CAR at all reasonable times.
- G. When a particular phase of Services is authorized in an individual Project Agreement, Consultant must provide the Services and Deliverables for that phase as required herein, except where the requirements for the Services and Deliverables described herein are specifically modified in a particular PA fully executed by the County and Consultant, and such modifications fall within the scope of Services authorized in this PSA.

PART 6 - CONSULTANT'S SCHEDULE

6.01 Each Project Agreement must contain a Consultant's Schedule

- A. Consultant will perform all Services and Deliverables, and meet any Milestones, in accordance with the Schedule stated in the Project Agreement.
- B. Consultant must provide and maintain PA Project staffing levels as necessary or required by CAR to perform the Services within the time provided in the project schedule.

6.02 Time is of the Essence

Consultant shall perform all services expeditiously. Time is of the essence in this PSA, and all Project Agreements executed in accordance with this Agreement. Failure to meet any time-related requirement in this PSA, or in any Project Agreement, shall constitute a material breach of the PSA or Project Agreement.

PART 7 - INDEMNIFICATION & INSURANCE

7.01 Consultant will comply with all insurance and indemnification requirements contained within this PSA, all PAs and Exhibit E to this Agreement.

PART 8 - REPRESENTATION BY COUNSEL

8.01 Both Parties to this PSA were represented by counsel in the negotiation and execution of this Agreement.

8.02 The parties to this PSA were represented by their respective counsel in the negotiation and execution of this PSA. The parties are aware of the provisions set forth in California Civil Code §1717 and intend this paragraph of the PSA to meet said statutory requirements so that the reference to attorneys' fees in the Insurance provisions and exhibits of this PSA, applies only in the indemnification context in such provisions and exhibits.

PART 9 - HAZARDOUS MATERIALS

9.01 County acknowledges that Consultant has no special knowledge or expertise regarding asbestos or other hazardous materials.

9.02 Unless otherwise provided in this PSA or a PA, or unless County has provided documented information to Consultant regarding the presence or potential presence of such hazardous materials Consultant and its subconsultants have no responsibility for the discovery, presence handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the PA Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or any other toxic substance, except to the extent Consultant or any of its employees, agents, officers, directors, representatives, affiliates, contractors, subconsultants or their/its respective employees, agents or representatives (collectively and each the "Consultant Representatives"), disturb, transport, generate, handle, remove, dispose of or bring to the PA Project site or to any County facilities or property any form of Hazardous Materials as defined herein below.

- A. Definition of Hazardous Materials. "Hazardous Materials" means, but is not limited to, (1) any hazardous, toxic or regulated wastes, materials or substances, and other pollutants or contaminants, which are or become regulated by any Environmental Laws, including but not limited to regulations pertaining to storage, labeling, handling, recordkeeping, reporting, transportation, use, disposal or shipment; (2) petroleum, petroleum by-products, gasoline, diesel fuel, crude oil or any fraction thereof; (3) asbestos and asbestos containing material, in any form, whether friable or nonfriable; (4) polychlorinated biphenyls; (5) radioactive materials; (6) lead,



lead-containing materials or suspected lead-containing materials; (7) any other material, waste or substance displaying or reasonably believed or suspected to have toxic, reactive, ignitable or corrosive characteristics, as all such terms are used in their broadest sense, and are defined or become defined by any Environmental Law (defined below); (8) any materials which cause or threaten to cause a nuisance upon or waste to any portion of the Premises or any surrounding property; (9) any materials which pose or threaten to pose a hazard to the health or safety of persons on the Premises or any surrounding property; or, (10) any substances, ingredients, materials or products containing blood borne pathogens, human remains or by-product, bio-waste or medical waste. "Environmental Laws" or "Environmental Law" means, for purposes of this Agreement, any and all local, state and federal environmental, health and safety-related laws, statutes, orders, standards, court or judicial or administrative decisions, ordinances, rules, regulations, decrees, directives, guidelines, permits, and permit conditions, currently existing and as amended, enacted, issued or adopted in the future.

- B. Prohibition; Environmental Laws. For quantities and uses that are more than what are regulated as household hazardous waste or materials, Consultant and the Consultant Representatives shall not be entitled to generate, manufacture, store, handle, transport to or from, use, dispose of, or ship to or from, any Hazardous Materials on, in, under or about any portion of County property or facilities ("Use") without, in each instance, first disclosing such Hazardous Materials to County, obtaining County's prior written consent thereto and complying with all Environmental Laws, including County's IPM Ordinance. If County, in its sole discretion, consents to any Use then Consultant shall be permitted to engage in such Use only for those Hazardous Materials and in such quantities (1) that are necessary and unavoidable for the intended PA project; (2) to the extent disclosed pursuant to disclosure requirements and guidelines under Environmental Laws; (3) expressly approved by County in writing; and (4) only to the extent that such Use fully and completely complies with all applicable Environmental Laws. County shall have the right at all times during the Term to (i) inspect the PA Project site, (ii) conduct tests and investigations to determine whether Consultant or others are in compliance with this Agreement, the applicable PA and Environmental Laws, and (iii) request lists of all Hazardous Materials in Use on, under or about any portion of the PA Project site or any County property.

The aforementioned rights granted herein to County and its representatives shall not create a duty on County's part to perform inspections, monitor or otherwise observe the PA Project, the PA Project site, other County property or observe or prevent or deter Consultant or others from such Use or liability on the part of County and its representatives for any Use or any Release (as defined below), it being understood that Consultant and the Consultant Representatives shall be solely responsible for all liability in connection with or relating to such Use. Consultant warrants, represents and agrees that all Consultant Representatives shall be required by written executed agreement between Consultant and such party to comply with all the provisions of this Part 10.

- C. Releases. Consultant shall give to County immediate verbal and follow up written notice of any contamination, exposure, deaths, injuries, illnesses, spills, releases, discharges, disposals, emissions, migrations, removals, shipments or transportation of, from or relating to Hazardous Materials on, under or about any portion of the PA project site or on County property (collectively, a "Release"), provided that Consultant knows or reasonably should know of such Release, regardless of cause. Consultant, at its sole cost and expense, covenants, warrants and represents to promptly investigate, remedy, clean up, remove, decontaminate, restore, respond to, otherwise fully remediate, and resolve any and all claims relating to (including, without limitation, preparation of any feasibility studies or reports and the performance of any and all closures) any Release of Hazardous Materials arising from or related to the acts or omissions of Consultant or any of the Consultant Representatives such that the affected portions of the County property and any adjacent property are returned to the condition existing prior to the Release of such Hazardous Materials (the "Remediation"). Any such Remediation shall only be performed after Consultant has obtained County's prior written consent, which consent shall not be unreasonably withheld so long as such actions would not potentially have a material adverse

long-term or short-term effect on any portion of the County property or the liability of the County. Notwithstanding the foregoing, Consultant shall be entitled to respond immediately to an emergency without first obtaining County's prior written consent so long as such response complies fully with all applicable laws. Consultant, at its sole cost and expense, shall conduct and perform, or cause to be conducted and performed, all Remediation as required by any Environmental Laws or any agencies or other governmental authorities having jurisdiction thereof. If Consultant fails to so promptly complete the Remediation, County may, but without obligation to do so, take any and all steps necessary to rectify the same and Consultant shall promptly reimburse County, upon written demand, for all costs and expenses to County for performing the Remediation. All such Remediation, as required herein, shall be performed in such a manner so as to enable County to make full use of the Premises and the other portions of the Premises after the satisfactory completion of such Remediation. County acknowledges that Consultant shall have no obligation or liability with respect to Hazardous Materials existing on County property prior to the date the property was used by Consultant as intended by this Agreement, but only so long as Consultant and the Consultant Representatives have not, by action or inaction, disturbed or caused the disturbance or Release of said existing Hazardous Materials.

- D. Consultant shall immediately deliver to County documents, notices, demands and information, in the possession or control of Consultant or the Consultant Representatives, from any governmental or quasi-governmental, or any insurance company or board of fire underwriters or like or similar entities, regarding any Hazardous Material, Release or Remediation upon, under, at, in, around or from the PA project site or any other County property. Consultant shall immediately inform County in writing (and orally in the event of a Release or other emergency) of (1) any and all enforcement or Remediation, or other governmental, regulatory, or judicial acts or orders instituted, or threatened pursuant to any Environmental Law; and/or (2) all claims made by any third party in writing against County property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any actual or threatened use or presence of Hazardous Material, Remediation or Release on, under, from, to, or about the PA Project site or any other County property.

PART 10 - COMPENSATION & PAYMENT

Payments will be made as set forth herein and as authorized in each Project Agreement.

10.01 Project Agreement Maximum Compensation Limit (PA MCL)

Each Project Agreement will specify PA Project Maximum Compensation Limit (PA MCL) by County to Consultant for that Project Agreement. The PA MCL includes all authorized Services and authorized reimbursable expenses. Total payment by County pursuant to any Project Agreement will not exceed the PA MCL specified in the Project Agreement and Consultant is fully responsible for provision of all Services and Deliverables to fully perform a PA. The total maximum compensation limits of all Project Agreements under this PSA cannot exceed the PSA Maximum Compensation Limit ("MCL"). Consultant shall be solely responsible and liable for any Services provided in excess of the MCL, and County shall have no obligation to compensate or reimburse Consultant for such Services.

10.02 Consultant's Hourly Rate

- A. Consultant's Hourly Rate is set forth in Exhibit A, "Consultant's and Sub-consultants' Hourly Rates."
- B. During the Term of this PSA, and not more often than once in a calendar year, the CAR may authorize modifications to Consultant's and Sub-consultants' Hourly Rate following Consultant's demonstration that it is consistent with the cost of similar services in the San Francisco Bay Area. If the modification of the rate schedule does not increase the PSA MCL approved herein by the Board of Supervisors, the CAR shall under the Board's delegated authority document the modifications in a revised Exhibit "A". The revised Exhibit A shall explain the reason and justification for the modification and identify whether the modification is an increase in the rate(s).



- C. Subconsultant's hourly rates are subject to approval by the CAR and documented in Project Agreements. Consultant may not add any administrative mark-up on subconsultant invoices, without the prior written authorization of the CAR as specified in a PA.
- D. Where the class of persons authorized to provide specific Services is not designated in a Project Agreement, Services must be provided by a qualified person who is in a class that has the lowest rate of payment among those classes that contain persons who are qualified to provide the Services.

10.03 Prevailing Wages

Consultant acknowledges that work performed to support the Services under this PSA may be considered a public work within the meaning of California Labor Code Section 1720, as amended, and that the requirements of Section 1771, as amended, et. seq. apply to such public work. Consultant has included (and will include) consideration for this obligation in calculating compensation under this PSA. Where applicable, Consultant shall comply at all times with California prevailing wage laws, including registration, notice and recordkeeping responsibilities. It is solely Consultant's obligation to comply with prevailing wage laws, where they are applicable.

10.04 Reimbursable Expenses

- A. When travel may be authorized as a reimbursable expense in a Project Agreement, Consultant agrees to comply with the County travel policy for all travel, lodging, and meal reimbursements arising from the performance of Services. Travel policy requirements are available upon request. Only pre-approved (in writing and signed by County) reimbursable expenses and travel-related expenses may be reimbursed at cost after Consultant has provided all supporting itemized receipts and documents. **No mark-ups are allowed** on any payment, fee or reimbursable expense.
- B. When authorized in the Project Agreement, County may reimburse Consultant, **at cost (no mark-ups allowed)**, for reasonable extraordinary expenses incurred in the performance of the Services. Consultant must provide itemized receipts for all pre-approved reimbursable expenses. Only the following expenditures, made by Consultant with County's **advance written approval**, are payable as reimbursable expenses within the PA MCL (if authorized in the PA):
 1. Extraordinary "office" expenditures specifically related to executing the scope of work in Project Agreements, including overnight mailing such as Federal Express, and additional copies of Deliverable Documents, over and above those required by the terms of the Project Agreement; and mileage reimbursement to attend meetings beyond those specified in the scope of Project Agreements.
 2. Other reimbursable expenses specifically identified in a Project Agreement.
- C. Reimbursable expenses are subject to the PA MCL identified in the PA and not an amount that is in addition to such PA MCL amount.

10.05 Payment

- A. Payment Term
The payment Term is **Net 45** (payment(s) will be made 45-days after the County's approval of the Consultant's correct invoice).
- B. Invoices
Consultant will submit a hard copy of each invoice on the forms shown in **Exhibit D**, "Sample Invoice Format", or on other forms approved by County, not more than once each month.
- 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.

10.06 Release of All Claims

Prior to final payment under any Project Agreement, Consultant must execute and deliver, and have all subconsultants execute and deliver, to County a release of all claims for payments

arising under the Project Agreement, other than such claims, if any, as may be specifically excepted from the release for the reasons and in the amounts stated in the release. Otherwise, Consultant's acceptance of final payment shall constitute a release of all claims arising under the Project Agreement.

10.07 Timely Billings

- A. Consultant agrees to bill County on a timely basis and not later than ninety (90) Calendar Days after the earliest of the following:
 - 1. Services are accepted by County;
 - 2. Authorized Reimbursable Expenses are incurred; or
 - 3. Billings are otherwise due pursuant to the terms of the Project Agreement.
- B. 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.
- C. Applicability to Subcontracts
Consultant must incorporate the accounting and audit requirements in this Agreement into all subcontracts exceeding Five Thousand Dollars (\$5,000) in value.

10.08 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
County retains all auditing rights as it may solely determine to be reasonable and appropriate under the circumstances. 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, accounting procedures and practices affecting the performance or administration of this PSA or any PA executed in accordance with this PSA, or affecting any changes or modifications to this PSA or any PA.

10.09 Errors and Omissions

Consultant must correct errors and omissions resulting from a failure to comply with any of the provisions of this PSA or the applicable PA, without cost to County. County may pursue all available legal remedies for Consultant's errors and omissions.

PART 11 - TERMINATION AND DEFAULT

11.01 Termination

- A. Termination for Convenience
 - 1. County's Authorized Representative may, by written notice to Consultant, terminate all or part of this PSA or any Project Agreement at any time for County's convenience. Upon receipt of such notice, Consultant must immediately cease all work on the date and in the manner specified in the notice.
 - 2. If this PSA or any Project Agreement is so terminated, Consultant will be compensated as set forth in Part 10.
- B. Termination for Breach
 - 1. If Consultant violates any of the terms, conditions, requirements, covenants or agreements of this PSA or any Project Agreement, or if Consultant fails to fulfill in a timely and proper manner its obligations pursuant to this PSA or any Project Agreement, County may terminate this PSA and any or all Project Agreements. The termination shall take place upon provision

- of written notice from County's Authorized Representative to Consultant, or, if classified as an Event of Default under Section 11.02 of this PSA, after the cure periods specified in that section have expired and the injured Party has provided the notice required under this PSA.
2. County will provide Consultant with written notice as to the effective date of termination, and Consultant is not entitled to compensation for (a) Services or expenses beyond the specified termination date; (b) for incomplete work; (c) for work not approved or accepted by County.
 3. If, after notice of termination for breach of this PSA or any Project Agreement, it is determined that Consultant did not breach this PSA or the Project Agreement, the termination will be deemed to have been made for County's convenience, and Consultant will receive payment, as allowed by this PSA for a termination for convenience.

11.02 Events of Default

- A. **Default.** Consultant and County acknowledge and agree that any of the following shall constitute specific "Events of Default" and that the occurrence of one (1) or more of such Events of Default shall constitute a material breach of this Agreement:
1. Consultant's failure to achieve a Milestone or deliver or provide any of the key Services and Deliverables to County within the time frame specified in the applicable PA, and such failure shall be subject to a cure period of ten (10) calendar days.
 2. Consultant's failure to maintain insurance coverage at any time during the Term as specified in this PSA, and such failure shall have a cure period of five (5) calendar days.
 3. County's failure to timely pay any undisputed amount owed to Consultant, provided that such failure is not cured forty-five (45) calendar days following receipt of written notice from Consultant of such failure.
 4. The institution of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against Consultant under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of the United States or any state thereof, if such proceedings have not been dismissed or discharged within thirty (30) calendar days after they are instituted; the insolvency or making of an assignment for the benefit of creditors or the admittance by Consultant of any involuntary debts as they mature; the institution of any reorganization arrangement or other readjustment of debt plan of Consultant not involving the United States Bankruptcy Code; appointment of a receiver for all or substantially all of Consultant's assets; or any corporate action taken by the Board of Directors of Consultant in furtherance of any of the above actions. In addition, in the event Consultant voluntarily or involuntarily becomes subject to the protection of the Bankruptcy Code and Consultant or the trustee in bankruptcy rejects this Agreement under Section 365 of the Bankruptcy Code, County shall have the right (at County's sole election) to: (a) treat this Agreement as immediately terminated without any cure period; or (b) retain County's rights under this Agreement, specifically including, without limitation, the right to exercise its rights granted herein to the Deliverables (and to all work-in-progress relating thereto). Failure by County to assert its right to retain its benefits to the intellectual property embodied in the Deliverables pursuant to Section 365(n)(1)(B) of the Bankruptcy Code with respect to an executory contract rejected by Consultant or the trustee in bankruptcy shall not be construed by the courts as a termination of such contract by County under Section 365(n)(1)(A) of the Bankruptcy Code.
- B. **Rights and Remedies of Consultant Upon an Event of Default by County.** Upon the occurrence of an Event of Default by County, subject to County's right to cure, Consultant may elect to do any of the following:
1. After the expiration of the cure period, temporarily discontinue performance of its obligations under the affected PA until the default is cured; or
 2. Terminate the affected PA and discontinue services.
- C. **Rights and Remedies of County Upon an Event of Default by Consultant.** Upon the occurrence of an Event of Default which is not corrected during the cure period, by or with

respect to Consultant, County shall be entitled to any of the following remedies:

1. Terminate, in whole or in part, any affected PA or this Agreement; or
 2. Seek to recover damages from Consultant; or
 3. Discontinue the Services and Deliverables under the affected PA and receive a refund of any pre-paid but unearned Services and Deliverables fees and charges, which refund shall be paid by Consultant to County within thirty (30) calendar days following County's issuance of a notice of such discontinuation; or
 4. If applicable, obtain the additional remedies described elsewhere in this Agreement.
- D. **Right to Set Off.** County shall have the right to set off any undisputed amounts owed to Consultant against any reasonable damages or charges assessed by County against Consultant as a result of an Event of Default by Consultant.
- E. **Consultant's Obligations upon Notice of Termination.** Upon receipt of a notice of termination from County, Consultant shall commence and perform, with diligence, all actions required by County to affect the termination of this Agreement on the date specified by the County and to minimize the liability of Consultant and County to third parties as a result of termination. All such actions shall be subject to the prior written approval of the County. Such actions shall include, without limitation, at Consultant's cost:
1. Unless directed otherwise, halting the performance of all Services and Deliverables, activities and other work under this Agreement by the date(s) and in the manner specified by County, except where otherwise required or excluded by County.
 2. Not placing any further orders or subcontracts for Services and Deliverables or other items.
 3. Unless directed otherwise, terminating, if possible, all existing orders and subcontracts.
 4. At the County's direction, assigning to the County any or all of Consultant's right, title, and interest under the purchase orders, Services and Deliverables and subcontracts to be terminated. Upon such assignment, County shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such Services and Deliverables, purchase orders or subcontracts.
 5. Subject to County's approval, settling all outstanding liabilities and all claims arising out of the termination of purchase orders and subcontracts, unless County elects to accept assignment pursuant to the provisions set out herein above.
 6. Completing performance of any or all Services and Deliverables, and purchase orders or other work that County designates to be completed prior to the date of termination specified by the County.
 7. Taking such action as may be necessary, or as the County may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Consultant and in which County has or acquires an interest pursuant to the terms of this Agreement or otherwise.
- F. The rights and remedies provided herein to County are in addition to any other rights and remedies provided by law, this PSA, or a Project Agreement.

11.03 Consultant's Compensation Upon Termination

- A. In the event of County's termination of this PSA or any Project Agreement, Consultant will receive compensation as follows:
1. For fully performed and accepted items of County-approved Service, and authorized reimbursable expenses pursuant to any Project Agreement, compensation will be in the amount specified in the Project Agreement for that item of Service or expense.
 2. For items of Service on which County has issued an Authorization to Proceed but which have not been fully completed and 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 applicable Project Agreement for that item of Service.

11.04 Delivery of Documents

Upon any termination of this PSA or any PA, Consultant must furnish County all documents and instruments of Service prepared pursuant to this PSA or such Project Agreement(s), whether complete or incomplete. Consultant may retain a copy for its records, if authorized by County.

PART 12 - DISPUTE RESOLUTION

12.01 The parties will attempt to resolve any disputes related to this Agreement informally, to the extent possible, and will act in good faith to attempt to resolve such disputes in a mutually satisfactory manner.

A. Alternate Dispute Resolution (ADR)

1. County intends to use ADR techniques including partnering and mediation during the Term of this Agreement, excluding arbitration.
2. Consultant and its subconsultants are expected to participate in all ADR efforts.

B. ADR - Voluntary Mediation

1. In the event a dispute or issue is not resolved by negotiation, County and Consultant agree to attempt to resolve the matter by mediation.
2. Said mediation is voluntary, non-binding, and intended to provide an opportunity for the parties to evaluate each other's cases and arrive at a mutually agreeable solution.
3. These provisions relating to voluntary mediation shall not be construed or interpreted as mandatory arbitration.
4. Negotiations to resolve disputes before and during mediation are initiated for settlement purposes only and are not binding unless otherwise mutually agreed by County and Consultant.

PART 13 - MISCELLANEOUS PROVISIONS

13.01 Capitalization and Formatting

- A. Terms capitalized in this PSA and subsequent Project Agreement may include those that are:
 1. Specifically defined; or
 2. Titles of Parts or paragraphs; or
 3. Titles of reports
 4. Titles of other documents.
- B. Unless otherwise indicated, **highlighted**, **emboldened**, *italicized*, underlined, or indented text does not imply special significance but serves merely as an aid to the reader to distinguish or quickly reference selected text.
- C. The captions of the Parts and paragraphs are for convenience only and will not be deemed relevant in resolving any question of interpretation or construction of any such Part or paragraph.

13.02 Force Majeure

Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, severe weather, hurricanes, earthquakes, natural disasters, fire or other similar causes beyond the reasonable control of the other or the other's employees, agents, or representatives.

13.03 Waiver

One or more waivers by either Party of any provision, term, condition or covenant will not be construed by the other party as a waiver of a subsequent breach. If either party should waive any breach of any provision of this Agreement, it/he shall not thereby be deemed to have waived any



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

13.04 Timely Approvals

Whenever the approval of Consultant is required pursuant to this PSA or any Project Agreement, such approval must not be unreasonably withheld or delayed.

13.05 Ownership & Use of Instruments of Service

County shall own all right, title, and interest in and to the Deliverables specified in this PSA or in any PA. Contractor hereby assigns to the County all rights, title, and interest in and to any and all intellectual property whether or not patentable or registrable under patent, copyright, trademark or similar statutes, made or conceived or reduced to practice or learned by Contractor, either alone or jointly with others, during the period of Contractor's agreement with the County or as a result of the use of premises leased, owned, or contracted for by the County. Contractor acknowledges that all original works or authorship which are made by Contractor (either solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C. § 101), and shall belong solely to County. Contractor agrees that the county will be the copyright owner in all copyrightable works of every kind and description created or delivered by Contractor, either solely or jointly with others, in connection with any agreement with the County. All instruments of Service and other materials prepared by Consultant in association with this PSA or any PA, including appraisal reports, manuals and other documents, in whatever media, are the sole and exclusive property of County. Consultant must provide County with such materials at appropriate times during the PA Project as specified in the PA, upon request by the County, or on termination or suspension of this PSA or any PA. Consultant may retain a copy for its records, if authorized by County.

13.06 Reliance

- A. County may rely on the accuracy and technical quality of documents provided by Consultant or by or through Consultant or its subconsultants.
- B. County's review of Consultant's Services and Deliverables is not conducted for the purpose of determining the accuracy and completeness of the details in such materials. However, County reserves the right, but not the obligation, to verify the accuracy and completeness of such materials. Consultant shall provide County with accurate, timely and complete Services and Deliverables.

13.07 Smoking Prohibited

Smoking is prohibited on County property and within 30 feet of County property at all times and Consultant and all Consultant Representatives shall comply with this requirement.

13.08 Compliance with All Laws, Including Nondiscrimination, Equal Opportunity, and Wage Theft Prevention

- A. Compliance with All Laws. Consultant shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below:
 - 1. Compliance with Non-Discrimination and Equal Opportunity Laws: Consultant shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information



Nondiscrimination Act of 2008. In addition to the foregoing, Consultant shall not discriminate against any subconsultant, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall Consultant discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

2. Compliance with Wage and Hour Laws: Consultant shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.
3. Definitions: For purposes of this Section 44, the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual’s sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose’s Office of Equality Assurance.
4. Prior Judgments, Decisions or Orders against Consultant: By signing this Agreement, Consultant affirms that he has disclosed any final judgments that (a) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (b) found that Consultant violated an applicable wage and hour law or pay equity law. Consultant further affirms that he has satisfied and complied with – or has reached Agreement with the County regarding the manner in which he will satisfy – any such final judgments.
5. Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, Consultant receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then Consultant shall promptly satisfy and comply with any such Final Judgment. Consultant shall inform the Office of the County Executive, Office of Countywide Contracting Management (“OCCM”) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. Consultant shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive, OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.
6. Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to Consultant’s records, Consultant shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County’s



request, Consultant shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Section 44, except where prohibited by federal or state laws, regulations or rules. County's access to such records and facilities shall be permitted at any time during Consultant's normal business hours upon no less than 10 business days' advance notice.

7. **Pay Equity Notification:** Consultant shall (a) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to Consultant for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (b) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of Consultant's Employees and Job Applicants.
 8. **Material Breach:** Failure to comply with any part of this Section 44 shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions: (a) Suspend or terminate any or all parts of this Agreement; (b) Withhold payment to Consultant until full satisfaction of a Final Judgment concerning violation of an applicable wage and hour Law or pay equity Law; (c) Offer Consultant an opportunity to cure the breach.
 9. **Subconsultants:** Consultant shall impose all of the requirements set forth in this Section 13.08 on any and all subconsultants permitted to perform work under this Agreement. This includes ensuring that any subconsultant receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.
- B. **Unfair or Deceptive Advertising or Trade Practices.** Consultant warrants, represents and agrees that he shall comply at all times with all laws and regulations relating or pertaining to unfair, deceptive or misleading business practices, unfair trade practices, and requirements relating to disclosures, misleading advertising, weights and measures, health, safety, environment, serial and identification numbers, labeling, toxic substances, and/or the requirements of California Proposition 65.

13.09 Contracting Principles.

Consultant agrees to comply with the County's Contracting Principles set forth in the Santa Clara County Board of Supervisors Policy Manual. The Contracting Principles require, that Consultant be a fiscally responsible entity and treat its employees fairly. Consultant is also required to: (a) Comply with all applicable federal, state and local rules, regulations and laws; (b) Maintain financial records, and make those records available upon request; (c) Provide to the County copies of any financial audits that have been completed during the term of the contract; and (d) 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.

13.10 Budget Contingency

This Agreement is contingent upon the appropriation of sufficient funding by the County for the services covered by this Agreement. Notwithstanding the termination provisions above, if funding is reduced, depleted or deleted by the County for services covered by this Agreement, the County has the option to either terminate this Agreement without notice (except that necessary to transition any projects in the discretion of the County) and with no liability occurring to the County, or to offer an amendment to this Agreement indicating the reduced amount.

13.11 Assignment of Clayton Act, Cartwright Act Claims

Consultant hereby assigns to the County all rights, title, and interest in and to all causes of action he 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 Agreement.

13.12 Authority

Each party executing the Agreement on behalf of such entity represents that he or she is duly authorized to execute and deliver this Agreement on the entity's behalf.

13.13 Notice and Cooperation in Legal Proceedings.

Consultant shall give prompt notice, in writing, to the County of the commencement of any action, lawsuit or other legal proceeding against County or against Consultant with respect to any aspect or part of the Services or this PSA. Consultant shall fully cooperate with County, and shall cause all Consultant's representatives to fully cooperate, in connection with the prosecution or defense of any such legal proceedings.

13.14 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 proprietary information is contained in documents 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. 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, he 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 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 may disclose the requested information and shall not be liable or responsible for such disclosure. Consultant agrees that he shall defend, indemnify and hold County harmless against each and every loss, damage (whether general, punitive or otherwise), liability, action, administrative proceedings, claim, demand, lawsuit, cause of action, judgment, settlement amount, mediation cost, attorneys' fees, court cost, litigation, injury, allegation and penalties (the "CPRA Claims") that may or do result from denial by County of a CPRA request for any information arising from any representation, or any action (or inaction), by Consultant or any of the Consultant Representatives.

13.15 Third Party Beneficiaries

Neither this PSA nor any of the PAs confer any rights or remedies upon any person or entity other than the parties. There are no third-party beneficiaries to this PSA or any of the PAs.

13.16 Changes to Scope of Services

On County's reasonable request and prior to making any changes to the Services and Deliverables in this PSA, 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. No changes or modifications will be made to the Services unless first approved in writing by County.

13.17 Subconsultants

If any obligation is performed for Consultant through any Consultant Representative, Consultant will remain fully responsible and liable for the performance of all obligations under this PSA and PAs and Consultant will be solely responsible for all payments due to its Consultant Representatives. No contract, subcontract or other agreement entered into by Consultant with any third party in connection with the Services or Deliverables contemplated herein will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, County with respect to such arrangement. None of the Consultant Representatives will be deemed an employee or agent of County or a third-party beneficiary for any purposes under this PSA or any of the PAs.

13.18 Counterparts; Electronic/Digital Signatures

- A. This PSA, any of the PAs, and any amendments thereto, may each 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 provided all of the Parties have fully executed the applicable PSA, PA, or amendment. Unless otherwise prohibited by law or County policy, and provided all Parties have first executed the applicable PSA, PA, or amendment, the Parties agree and intend that an electronic copy of a signed PSA, PA, or amendment, or an electronically signed PSA, PA, or amendment, has the same force and legal effect as if the PSA, PA, or amendment had been executed with an original ink signature. The term “electronic copy of a signed PSA, PA, or amendment” refers to a transmission of a copy of an original ink-signed PSA, PA, or amendment by facsimile, electronic mail (email), or other electronic or digital means in a portable document format. The term “electronically signed PSA, PA, or amendment” means a PSA, PA, or amendment that is fully executed by all Parties each applying an electronic signature. An “electronic signature” means an electronic or digital sound, symbol, or process attached to or logically associated with an electronic or digital record (e.g. DocuSign®) and executed or adopted by a person with the intent to sign the electronic record. The Parties each represent, warrant, and agree that the signatures, whether an ink-signed original or electronically signed PSA, PA, or amendment, by their respective signatories are intended to authenticate such signatures and to give rise to a valid, enforceable, and fully effective agreement when so executed by all the Parties.
- B. Each of the Parties agree, accept and understand that a submission of this PSA or any PA, or any amendment thereto, for examination, review, editing, or signature by either Party, in any form or by electronic or digital means, by email, facsimile or DocuSign®, by verbal confirmation or discussion or by any other means of delivery, does not constitute a binding agreement or contract, nor does it constitute a meeting of the minds or a commitment to execute the PSA, or any PA, or any amendment thereto, and this PSA or any such PA, or any amendment thereto, shall only be legally binding and enforceable upon full execution by all Parties. The Parties acknowledge and agree that this PSA, any PAs, and any amendments thereto, are nonbinding on either Party and neither Party may claim any legal rights against the other by reason of the existence of this PSA, any PA, or any amendments thereto, or by reason of actions taken in reliance upon this PSA, any PA, or any amendments thereto (including, but not limited to, any obligation to continue negotiations) unless and until this PSA, the subject PA(s), and any applicable amendments thereto, are fully executed by all of the Parties.

13.19 Conflict of Interest

- A. Consultant represents and warrants that (1) no official or employee of County has been employed or paid by it or any of the Consultant Representatives to aid in the procuring of this PSA; and, (2) no official or employee of County will be employed or paid by Consultant or any of the Consultant Representatives or otherwise personally benefit from this PSA.
- B. Consultant shall comply, and requires its subconsultants to comply, with all applicable: (1) requirements governing avoidance of impermissible client conflicts; and (2) 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 and its subconsultants presently has/have 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 or any of the PAs. Consultant, on its own behalf and on behalf of its subconsultants, further covenants that, in the performance of this PSA, it and its subconsultants will not employ any contractor or person having such an

interest. Consultant, including but not limited to the Consultant Representatives, 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 subconsultants, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in 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 Services 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 Services 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 Services to the County.
- E. If the disclosure provisions of the Political Reform Act are applicable to any individual providing Services 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.

13.20 Bribery Clause

Consultant certifies, represents and warrants that Consultant and the Consultant Representatives have not been convicted of bribery or attempting to bribe an officer or employee of the County or any federal, state, local or municipal entity, agency, department or public corporation, nor has Consultant or any of the Consultant Representatives made an admission of guilt of such conduct which is a matter of record.

13.21 Entire PSA – Governing Language

This PSA and its Appendices, Exhibits, and Attachments (if any) constitutes final, complete, and exclusive statement of the terms of this Agreement between the Parties. It incorporates and supersedes all the agreements, covenants, and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants, and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

13.22 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.

13.23 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.

13.24 Governing Law, Exclusive Jurisdiction

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.



13.25 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 written consent of the County.

13.26 Disentanglement

Consultant shall cooperate with County to ensure a smooth transition at the time of termination of this PSA, 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 PSA 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.

13.27 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 subconsultants, 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 work week, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If Consultant and/or a subconsultant 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 Consultant and/or Subconsultant 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, Consultant certifies that he is currently complying with Division B36 and the Living Wage Policy with respect to applicable contracts, and warrants that he will continue to comply with Division B36 and the Living Wage Policy with respect to applicable contracts.

13.28 Food and Beverage Standards

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Contractor with County funds for County-sponsored meetings or events. If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low-calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, Contractor shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the Contractor should consider providing a vegan option. If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans-fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving. If beverages are to be provided, beverages that meet the County's nutritional criteria are

(1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

13.29 Bailee Disclaimer

The parties understand and agree that the County does not purport to be Consultant's bailee and is therefore not responsible in any way for any of the Consultant Representatives.

13.30 Responsibility for County Property

Except as otherwise provided in this PSA, Consultant assumes the risk of and shall be responsible for any loss or damage to any materials, documents or other property delivered by the County, and for the security and condition of any and all property both personal or otherwise used or operated by Consultant or any of the Consultant Representatives regardless of location. Consultant shall return County property to the County in the condition in which it was received, except for reasonable wear and tear, upon the expiration or earlier termination of this PSA.

13.31 Liens, Claims, Encumbrances and Title

Consultant represents and warrants that, to the extent payments have been received from the County per the terms of this Agreement, all the Services shall remain and are free and clear of all liens, claims or encumbrances of any kind. If, because of any act or omission, of Consultant or any of the Consultant Representatives, any mechanic's lien or other lien, charge or order for the payment of money are filed against any portion of County real or personal property, Consultant shall at its own expense, cause the same to be discharged of record within thirty (30) days after written notice from County; and Consultant shall indemnify, defend and save harmless County from, for and against all resulting costs, liabilities, suits, claims and demands, including legal fees and court costs, resulting.

13.32 Intellectual Property Indemnity

- A. Intellectual Property. Consultant represents, warrants and agrees for the benefit of County that: (1) any Services performed or Information provided by Consultant, or through or on behalf of Consultant (including the Intellectual Property rights used in, as a part of, with, or in relation thereto) do not and will not violate, misappropriate, or infringe any third party Intellectual Property rights, or privacy, publicity, legal or other rights; and (2) there are no existing or threatened claims or proceedings by any person or entity against Consultant or any of the Consultant Representatives that would impair or prevent Consultant's ability to fully perform under this PSA, fully provide any of the Services or Information or would create liability for the County or County Representatives. Consultant shall defend, indemnify and hold the County and the County Representatives harmless for, from and against each and every claim, allegation, charge, action, lawsuit and litigation (including but not limited to all judgments, costs, fees, and reasonable attorneys' fees) by each and every third party alleging that any or all of the Services and Information, in whole or in part, collectively or individually, infringe upon or violate any Intellectual Property rights of any third party or third parties (the "Infringement Claims"). Intellectual Property, as used herein means trademarks, patents, proprietary rights, copyrights and other intellectual property, including international or worldwide rights.
- B. Indemnification Procedures. In connection with any of the Infringement Claims for which County seeks indemnification or defense in accordance with this PSA, County: (1) will give Consultant written notice of any such Infringement Claims within County's knowledge or reasonable belief as soon as possible; provided, however, that failure to provide such notice shall not relieve Consultant from its liability or obligation hereunder, except to the extent of any actual material prejudice as a direct result of such failure to notify; and (2) will reasonably cooperate with Consultant, at Consultant's expense, in connection with the defense and settlement of the



Infringement Claims. Consultant shall not settle any of the Infringement Claims without the prior written consent of the County Board of Supervisors or their designee, which shall not be unreasonably withheld or delayed. Delay is unreasonable only if such delay precludes a timely settlement of Infringement Claims and results in material adverse impacts to Consultant's rights or obligations relating to the Infringement Claims. Nothing contained herein shall require County to agree to a settlement that results in an admission of liability or responsibility of or by County and such denial of or delay in settlement shall be deemed reasonable. County, at its cost, may participate in the defense of any Infringement Claims through counsel of its own choosing.

13.33 Debarment

Consultant represents and warrants on behalf of itself and its Representatives (referenced collectively in this Section 33 as the "Consultant") has not and have not been suspended, debarred, excluded, or ineligible for participation in any federal, state or local program, or from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration (collectively and each referred to herein as "Debarment"), from the System for Award Management (SAM), or from any Medicare, Medi-Cal or any other federal or state funded health care program. Consultant must within thirty (30) calendar days advise the County if, during the Term of this Agreement, Consultant becomes or may become suspended, debarred, excluded or ineligible for participation in any such programs, or from receiving federal, state or local funds. Consultant shall defend, indemnify, and hold the County harmless for and from any and all loss, liability or damage resulting from the conviction, Debarment, exclusion or ineligibility of Consultant. Without cost, penalty or obligation of County, County may at its sole discretion terminate this Agreement immediately upon becoming aware of any such Debarment. County shall not be liable or responsible to Consultant or any third parties if County exercises its right to terminate this Agreement as provided for herein. Any breach of any part of this Section shall be deemed a material breach (i.e. Consultant default) of this Agreement and cause for immediate termination without County cost, liability or obligation. Reference: System for Award Management (SAM) at <https://www.sam.gov> for Central Consultant Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<http://www.epis.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17). The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

13.34 Severability

Should any part of the PSA between County and the Consultant be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of the PSA which shall continue in full force and effect, provided that such remainder can, absent the excised portion, be reasonably interpreted to give the effect to the intentions of the parties.

13.35 Ambiguities

Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this PSA. Should any ambiguities or conflicts between contract terms and conditions contained in this PSA and its exhibits exist, the terms and conditions in this PSA shall control over its exhibits.

13.36 Joint and Several

If Consultant consists of more than one person or entity, the obligations of all such persons or entities shall be joint and several. Each provision to be performed by Consultant hereunder shall be deemed to be both a covenant and a condition.

13.37 Other Representations and Warranties

Consultant represents, warrants and covenants that the following is true and correct and shall be



true and correct at all times during the Term:

- A. Consultant is in good standing under the laws of the State of California and is authorized to carry on and do business in the State of California as such business is now conducted and to perform its obligations under this PSA.
- B. Consultant has the full right, power and lawful authority to enter into this PSA and its execution and delivery of this PSA by it or on its behalf has been fully authorized by all requisite actions.
- C. Consultant has provided County with true and correct copies of documentation requested by County designating the parties authorized to execute this PSA on its behalf.
- D. Consultant's execution, delivery and performance of the obligations under this PSA will not violate any applicable laws, regulations, or rules nor to its knowledge after due inquiry, constitute a breach or default under any contract, agreement, or instrument to which Consultant is a party, or any judicial or regulatory decree or order to which he is a party or by which he is bound.
- E. Consultant has not made an assignment for the benefit of creditors, filed a petition in bankruptcy, been adjudicated insolvent or bankrupt, petitioned a court for the appointment of any receiver or trustee for it or any substantial part of its property, or commenced any proceeding relating it under any reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or later in effect. There has not been commenced nor is there pending against it any proceeding of the nature described in the first sentence of this subsection. No order for relief has been entered with respect to it under the Federal Bankruptcy Code.
- F. All documents, instruments, and other information delivered by Consultant to the County per this PSA are true, accurate, correct and complete to the best of Consultant's knowledge unless otherwise indicated in writing delivered concurrently with such delivery. County shall be entitled to rely upon the accuracy and completeness of the information, surveys, and reports provided by Consultant or any of Consultant's employees, agents, subconsultants or consultants.
- G. This PSA, when executed by Consultant and delivered, shall constitute its legal, valid and binding obligation. No consent, approval, or authorization of any third person to its execution, delivery, and performance of this PSA is required, other than consents, approvals, and authorizations which have already been unconditionally given.
- H. Upon Consultant's receipt of knowledge that any fact or condition which would cause any warranty or representation made by it pursuant to this Section is not true, promptly give written notice of such fact or conditions to the County. Each of the foregoing items (a) to (h), inclusive shall be deemed to be ongoing representations, warranties and covenants and shall survive termination, expiration or cancellation of this PSA.

13.38 County Reliance and Consequential Damages

Acceptance by County of the Services (in whole or in part) performed under this PSA or any PA does not operate as a release of the Consultant from such professional responsibility for the Services performed or provided. It is further understood and agreed that Consultant is apprised of the scope(s) of the work to be performed under this PSA and Consultant agrees that the work can and shall be performed in a fully competent manner. Consultant recognizes that the timely and competent completion of the Services is an important inducement to enter into this PSA, and that the failure of Consultant to timely and competently perform may result in foreseeable and known substantial negative financial consequences to the County.

13.39 Further Assurances

Consultant covenants and agrees that it will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out this PSA.

13.40 Office of Foreign Assets Control (OFAC)

Consultant represents and warrants to County that: (1) Consultant and the Consultant Representatives are not acting, and shall not act, directly or indirectly, for or on behalf of any



person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule or regulation enforced or administered by the federal Office of Foreign Assets Control; and (2) Consultant and the Consultant Representatives are not engaged in the PA Project or entering into this PSA, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

13.41 References to Consultant

As used in this Agreement, any reference to "Consultant" also shall apply to Consultant Representatives in accordance with the following: (1) any reference to Consultant shall mean at all times that Consultant is responsible for ensuring and causing the compliance of each of the Consultant Representatives with the terms and conditions of this Agreement; and, (2) with regard to Consultant compliance with the terms and conditions of this Agreement, any reference to Consultant includes Consultant Representatives to the extent that such Consultant Representatives are providing or performing any of the Services and Deliverables as permitted by this Agreement. Notwithstanding the foregoing, under no circumstances shall Consultant Representatives be eligible for or exercise, use or enjoy any rights or benefits of Consultant under the terms and conditions of this Agreement unless explicitly stated otherwise in the applicable term or condition. Consultant Representatives are not third-party beneficiaries to this Agreement.

13.42 Non-Exclusive Agreement

This Agreement does not establish an exclusive contract between the County and the Consultant. The County expressly reserves rights to, without limitation, the following: the right to utilize others to provide products, deliverables, software, support and services; the right to request proposals from others with or without requesting proposals from the Consultant; and the unrestricted right to bid any such product, software, deliverables, support or service.

13.43 Non-Revocable Costs

Unless explicitly provided for in this Agreement, County shall not be liable or responsible under this Agreement for costs or expenses not already expressly included in the applicable Project Agreement regardless of whether or not incurred by Consultant or any of the Consultant Representatives. Such non-recoverable costs and expenses include but are not limited to: anticipated profits on this Agreement, consequential damages, lost profits, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable.

13.44 Transitions Rights

Upon a complete or partial termination of this PSA or any Project Agreement for any reason, all County software and telecommunication systems (excluding the Licensed Software), customer data, website design and content, reports, analyses, business rules, data configurations, and customer care activities shall remain the sole property of the County. In the event this PSA is completely or partially terminated by County for convenience or terminated by Consultant due to the occurrence of a County Event of Default, the Services and Deliverables provided by Consultant during the Transition Period shall be provided at the then applicable rates and fees set out in this PSA or the applicable Project Agreement. In all other cases, Consultant agrees to provide reasonable assistance with the County's transition to a different provider or platform, at such rates as are reasonably agreed between the Parties.

- A. Consultant grants to the County an unlimited user, multi-site, non-transferrable, non-exclusive, limited, world-wide license to use Consultant's software, web portals and related technology solely in accordance with the terms of this Agreement during the Term.
- B. Consultant shall cooperate with County and County's other contractors 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 supply of Services and Deliverables or the County's activities as is reasonably possible.

- C. Consultant shall deliver to County or its designee, at County's request, all Documentation and data related to County, including, but not limited to, the County Data and analytics, held by Consultant, and after return of same, Consultant shall destroy all copies thereof not turned over to County, all at no charge to County.

13.56 County Limitation of Liability

Limitation Upon Types of Recoverable Damages. COUNTY SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER THE CLAIM GIVING RISE TO SUCH DAMAGES IS BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT OR NEGLIGENCE, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. THIS PROVISION SHALL NOT APPLY TO DAMAGES INCURRED BY CONSULTANT THAT ARE SOLELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF COUNTY OR ITS EMPLOYEES. COUNTY'S TOTAL LIABILITY TO CONSULTANT FOR ANY CAUSE OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY PART THEREOF SHALL NOT EXCEED THE MCL AMOUNT OR ONE HUNDRED AND FIFTY PERCENT (150%) OF THE FEES ALREADY PAID BY COUNTY UNDER THIS AGREEMENT, WHICHEVER IS LESS.

13.57 Other Warranties

In addition to, and not as a substitute for, any other warranty, representation or responsibility of Consultant, Consultant also represents and warrants to County that:

- A. **Functionality and Performance Warranty.** The Services and Deliverables shall perform in accordance with, and shall contain the functionality specified in or required under, this PSA or the applicable PA.
- B. **Pending Litigation Warranty.** Consultant represents and warrants that there is no action, suit, claim, investigation or proceeding pending, or to the best of Consultant's knowledge, threatened against, by or affecting Consultant or any of the Services and Deliverables which, if adversely decided, might adversely affect: (1) Consultant's ability to enter into this Agreement; (2) Consultant's performance of its obligations; or (3) County's use of the Services and Deliverables. Consultant further represents and warrants that he does not know of any basis for any such action. At all times during the Term, Consultant shall notify County, within fifteen (15) days of any such action, suit, claim, investigation or proceeding initiated by or against Consultant or third parties that may adversely affect Consultant's ability to perform under this Agreement or impact any of County's rights or ability to use any of the Services and Deliverables, including but not limited to where amounts in dispute may result in a material adverse change in the financial status of Consultant.
- C. **Documentation Warranty.** Consultant represents and warrants that it has provided to County all Documentation for the Services and Deliverables and that such Documentation is detailed and complete and accurately describes the functional and operational characteristics of the Services and Deliverables. Consultant further represents and warrants that it will provide to County updated versions of all such Documentation as they become available.
- D. **Transfer of Warranty and Other Rights to County**
 - 1. Services and Deliverables furnished under this Agreement shall be covered by the most favorable commercial warranties that Consultant gives to any of its customers for the same or substantially similar Services and Deliverables, but for a period of no less than one year. Any warranties so provided shall supplement, and shall not limit or reduce, any rights afforded to County by any provision in this Agreement, any applicable Uniform Commercial Code warranties, including, without limitation, Implied Warranty of Merchantability and Implied

- Warranty of Fitness for a Particular Purpose as well as any other express warranty.
2. During the provision of Services and Deliverables, Consultant may not disclaim any warranty, express or implied, and any such disclaimer shall be void. Additionally, the warranties above shall not be deemed to exclude Consultant's standard warranties or other rights and warranties that the County may have or obtain.
 3. All Services and Deliverables supplied shall be new, suitable for the use intended, of the grade and quality specified, free from all defects in design, material and workmanship, in conformance with all samples, drawings, descriptions and specifications furnished by the County, in compliance with all applicable federal, state and local laws and regulations and free of liens, claims and encumbrances.
 4. Security features shall be embedded, enabled and active upon delivery to County, including baseline security configurations for all Services and Deliverables and a defined process to discover and report to County areas within the Services and Deliverables that are vulnerable to security breaches.
 5. Consultant shall repair and/or replace any Services and Deliverable not conforming to any warranty or provide services to conform to County's requirements. If after notice, Consultant fails to repair or replace Services and Deliverables, or to provide services to conform to County's requirements, Consultant shall promptly refund to County the full purchase price paid by the County and the County's Cost to Cover as defined herein. This remedy is non-exclusive of other remedies and rights that may be exercised by the County. Claims for damages may include direct damages, such as cost to repair, as well as incidental and consequential damages. "Cost to Cover" means the cost, properly mitigated, of procuring Services and Deliverables of equivalent capability, function, and performance. Consultant shall also extend the warranty period for the equivalent period of time that the Deliverables are not in conformance with the County's requirements.
 6. All warranties, specified elsewhere herein, shall inure to the County, its successors, assigns, customer agencies, and governmental users of the Services Deliverables.

13.58 Taxes

Responsibility for Taxes. Each Party will be responsible for any taxes on property it owns or leases, for any franchise or privilege tax on its business, and for any tax based on its gross or net income or gross receipts. Consultant will be responsible for all sales, service, value-added, lease, use, personal property, excise, consumption and other taxes and duties, including VAT, payable by Consultant on any goods or services used or consumed by Consultant in providing the Software, Deliverables and/or Services (including services obtained from any of the Consultant Representatives). Consultant will be responsible for all Service Taxes. If required under applicable law, Consultant will invoice County for the full amount of such Service Taxes, as separately stated items, and then credit or reimburse County for that portion of such Service Taxes for which Consultant is financially responsible under this Agreement.

13.59 Late Payment Charges or Fees

Consultant acknowledges and agrees that the County will not pay late payment charges or fees.

13.60 Shipping and Risk of Loss

Services and Deliverables shall be packaged, marked and otherwise prepared by Consultant in suitable containers in accordance with sound commercial practices. Consultant shall include an itemized packing list with each shipment and with each individual box or package shipped to the County.

13.61 Disallowance

In the event the Consultant receives payment for any Services and Deliverables, which payment is later disallowed by the County or state or federal law or regulation, the Consultant shall promptly refund the disallowed amount to the County upon notification. At County's option, the County may offset the amount disallowed from any payment due to the Consultant under any contract with the County.



13.62 Merger and Acquisition

Neither Party may assign this Agreement or transfer any rights to a third party without the prior written consent of the other Party, and any such attempt shall be void. This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. The terms of this Agreement will survive an acquisition, merger, divestiture or other County-approved transfer of rights or County-approved assignment involving Consultant. In the event of a County approved acquisition, merger, divestiture or other transfer of rights, Consultant shall ensure that the acquiring entity or the new entity agrees to be bound by the terms of this Agreement and act in the place of Consultant with respect to all of its obligations as set forth herein. The acquiring entity shall honor all the terms and conditions in this Agreement and (if applicable) provide the functionality of the Services and Deliverables in a future, separate or renamed product, if the acquiring entity or the new entity reduces or replaces the functionality, or otherwise provide a substantially similar functionality of the Services and Deliverables at the same pricing levels. No additional license or maintenance fee will apply. Consultant shall provide thirty (30) calendar days written notice to the County following the closing of a County-approved acquisition, merger, divestiture or other transfer of right(s) involving Consultant. Consultant shall provide reasonable assistance to County during the transition period.

13.63 Liens, Claims, Encumbrances on Title

The Consultant represents and warrants that all the Services and Deliverables are and shall be free and clear of all liens, claims or encumbrances of any kind and at Project Acceptance during the Term. Consultant represents and warrants that he has free and clear title (including any and all intellectual property rights) to the Services and Deliverables purchased by County under this Agreement. If, because of any act or omission of Consultant or any of the Consultant Representatives, any mechanic's lien or other lien, charge or order for the payment of money are filed against any portion of County real property, personal property or any of the Services and Deliverables, Consultant shall at its own expense, cause the same to be discharged of record within thirty (30) days of discovery or written notice from County; and, Consultant shall indemnify, defend and save harmless County against all resulting costs, liabilities, suits, claims and demands, including legal fees and court costs relating to any such liens, claims and encumbrances.

13.64 Indemnity

In addition to any other indemnity provision found elsewhere in this Agreement including in any exhibits, Consultant shall also defend, indemnify, and hold harmless the County, its officers, agents and employees from any and all claims, liability, losses, injuries and damages arising out of, or in connection with, the provision of the Services and Deliverables, performance by Consultant, performance by any of the Consultant Representatives, excepting only loss, injury or damage caused by the sole gross negligence or willful misconduct of personnel employed by the County. It is the intent of the Parties to this Agreement to provide the broadest possible coverage for 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 defend, indemnify, and hold harmless the County under this Agreement.

13.65 Cooperation with Review

Consultant shall cooperate with County's periodic review of Consultant's performance. Consultant shall make itself available onsite to review the progress of Services and Deliverables, as requested by the County, upon reasonable advanced notice. Consultant agrees to extend to the County or his/her designees and/or designated auditor of the County, the right to monitor or otherwise evaluate all work performed and all records, including service records and procedures to assure that the project is achieving its purpose, that all applicable federal, state, and local laws and regulations are met, and that adequate internal fiscal controls are maintained.

13.66 Protection of Proprietary Software and Other Proprietary Data

The County agrees that all material appropriately marked or identified in writing as proprietary,

and furnished hereunder are provided for County's exclusive use for the purposes of this Agreement only. All such proprietary data shall remain the property of the Consultant, except that Consultant shall not mark or claim as proprietary any County Property, County Intellectual Property or County Confidential Information. County agrees to take reasonable steps to insure, that Consultant proprietary data is not disclosed to others, subject to compliance with the California Public Records Act ("CPRA") and Section 37 of this Agreement. The County will make reasonable efforts to ensure, prior to disposing of any media, that any Consultant confidential materials contained thereon have been erased or otherwise destroyed to the extent possible. The County agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Agreement with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

13.67 County Data

- A. **County Intellectual Property.** "County Intellectual Property" means, for purposes of this Agreement, all County confidential, trade secret or proprietary information, all County customer information, all County licensing rights; County trade names, trade dress, patents, patents pending, copyrights, copyrighted materials and goodwill; and, all County-generated information, County data, customer information, invention, software, metadata, system, hardware, design, device, material or program. County will identify to Consultant all such County Intellectual Property. Consultant warrants, represents, and agrees that it has not and that it will not grant or give permission or license to use County Intellectual Property, nor allow others to do so, for advertising or for any purpose without County's prior written consent. Consultant acknowledges and agrees that: (1) County is and shall remain the sole and exclusive owner of all right, title and interest in and to County Intellectual Property, including the right to grant permission to use the County Intellectual Property; (2) Consultant's use of the County Intellectual Property, and all goodwill associated with the County Intellectual Property shall inure to the sole and exclusive benefit of County; and, (3) nothing in this Agreement or any related agreement, instrument or document shall be construed to give Consultant or any of the Consultant Representatives any legal or beneficial ownership interest in or title to the County Intellectual Property. Notwithstanding the foregoing, in the event that Consultant is deemed to own any rights in the County Intellectual Property, Consultant hereby permanently and unconditionally assigns all such rights to County. Consultant represents, warrants and agrees for itself and for each of the Consultant Representatives that it has not and that it shall not change or modify the County Intellectual Property other than in connection with the performance of its obligations under this Agreement, or create any design variation of the County Intellectual Property, without the prior written consent of County; Consultant SHALL NOT join any name, mark or logo with any of the County Intellectual Property so as to form a composite trade name or mark, without obtaining the prior written consent of County; Consultant shall refrain from using any other name or mark that is confusingly similar to the County Intellectual Property; and Consultant will not directly or indirectly do anything to compromise County's Intellectual Property. Consultant agrees to notify County promptly if it becomes aware of any actual, suspected or threatened infringement, misuse, imitation, dilution, misappropriation or other unauthorized use, access or conduct in derogation of the County Intellectual Property. County shall have the sole right to bring any action to remedy the foregoing, and Consultant and Consultant Representatives shall cooperate with County in exercising such right. Any and all recoveries resulting from such actions initiated by County shall be retained by County. EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, COUNTY DISCLAIMS ALL WARRANTIES REGARDING THE COUNTY INTELLECTUAL PROPERTY AND ANY OTHER INFORMATION OR ASSISTANCE PROVIDED INCLUDING WARRANTIES OF NON-INFRINGEMENT. IN NO EVENT SHALL COUNTY BE LIABLE TO CONSULTANT OR OTHERS FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, COLLATERAL OR PUNITIVE DAMAGES OR LOST PROFITS OR FAILURE TO REALIZE EXPECTED SAVINGS OR OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND, ARISING FROM, OUT OF

OR RELATED TO THIS AGREEMENT, CONSULTANT'S USE OF OR RELIANCE ON THE COUNTY INTELLECTUAL PROPERTY OR ANY INFORMATION OR ASSISTANCE PROVIDED TO CONSULTANT BY OR ON BEHALF OF COUNTY.

B. **County Confidential Information.** Consultant represents, warrants, and agrees to comply with the provisions of the attached Nondisclosure Agreement (Exhibit G).

13.68 Use of County's Name for Commercial, Marketing or Advertising Purposes

Consultant and the Consultant Representatives shall not use or reference the name of the County, its logos or affiliations or reference any endorsement from the County in any fashion for any purpose, without the prior express written consent of the Santa Clara County Board of Supervisors.

13.69 Good Faith and Fair Dealing

The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement: (1) wherever the Agreement requires the consent, approval or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed; and (2) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

13.70 Security CISO Compliance

Consultant shall follow the security standards, recommendations, conditions, and restrictions as provided by the County Information Security Office (CISO) for the entire term of the Agreement, and subject to the County's annual assessment and/or Independent penetration testing.

13.71 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, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 inclusive, and each Subpart and Subsection contained therein.

PART 14 - NOTICES

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

PART 15 - LIMITS OF AGREEMENT

- A. This PSA and all fully executed Project Agreements constitute the entire and integrated agreement between County and Consultant and supersede all prior negotiations, representations, or agreements, either written or oral, preceding this PSA or any Project Agreement.
- B. This PSA including Project Agreements may be amended only by written agreement signed by County and Consultant or as otherwise authorized herein.

PART 16 - EXHIBITS

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

1. Exhibit A, "Consultant's and Sub-consultants' Hourly Rates"
2. Exhibit B, "Consultant's Staff & Subconsultants"
3. Exhibit C, "Sample Project Agreement (PA)"
4. Exhibit D, "Sample Invoice Format"



- 5. Exhibit E, "Insurance Requirements"
- 6. Exhibit F, "Notices"
- 7. Exhibit G, "Nondisclosure Agreement" (to be signed at same time PSA is signed).

PART 17 - SIGNATURES

By signing below, each signatory for a Party warrants and represents that he/she executed this PSA, in his/her authorized capacity, that he/she has the authority to bind the entity or person for whom he/she signs to contractual obligations and that, by his/her signature, the entity or person on behalf of which he/she acted executed this PSA.

IN WITNESS WHEREOF, the parties hereto have entered into this Professional Services Agreement effective as of the last date signed below by all Parties ("Effective Date").

CONSULTANT / FIRM NAME: [???? ?].

_____	_____
Signature of Authorized Representative	Business License Number
_____	_____
Name & Title	Date

COUNTY OF SANTA CLARA:

 ???, President
 Board of Supervisors

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.
 Attest:

_____	_____
Megan Doyle Clerk of the Board of Supervisors	Date

APPROVED AS TO FORM AND LEGALITY:

 Tony LoPresti
 Deputy County Counsel

End of PSA (Before Exhibits)



EXHIBIT A

CONSULTANT'S AND SUBCONSULTANTS' HOURLY RATES

The following rates, which include all overhead, administrative costs, and profit, will be used in arriving at fees for hourly-rate Services. Any rate increases approved by **the County's Authorized Representative** ("CAR") shall take effect on the yearly anniversary of the final execution of the PSA.

Modifications to Consultant's and Subconsultants' Hourly Rate to include out-years beyond the rates identified in Exhibit A, and the addition of personnel not identified in Exhibit A, will be negotiated by the parties using as a benchmark the prevailing rates/increase for similar Consulting Services in the San Francisco Bay Area, and are subject to approval as an amendment to the PSA by the Board of Supervisors.

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

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

RATE SCHEDULE:

CONSULTANT / FIRM NAME: ???	Billable Hourly Rate* (\$) Year 1	Billable Hourly Rate* (\$) Year 2	Billable Hourly Rate* (\$) Year 3	Billable Hourly Rate* (\$) Year 4	Billable Hourly Rate* (\$) Year 5
???, Project Principal	\$	\$	\$	\$	\$
????					

NAME OF SUBCONSULTANT (1): ???	Billable Hourly Rate* (\$) Year 1	Billable Hourly Rate* (\$) Year 2	Billable Hourly Rate* (\$) Year 3	Billable Hourly Rate* (\$) Year 4	Billable Hourly Rate* (\$) Year 5
???, Project Manger	\$	\$	\$	\$	\$
???					

NAME OF SUBCONSULTANT (2): ???	Billable Hourly Rate* (\$) Year 1	Billable Hourly Rate* (\$) Year 2	Billable Hourly Rate* (\$) Year 3	Billable Hourly Rate* (\$) Year 4	Billable Hourly Rate* (\$) Year 5
???, Project Manager	\$	\$	\$	\$	\$
???					



CONSULTANT'S AND SUBCONSULTANTS' HOURLY RATES (continues)

NAME OF SUBCONSULTANT (3): ???	Billable Hourly Rate* (\$) Year 1	Billable Hourly Rate* (\$) Year 2	Billable Hourly Rate* (\$) Year 3	Billable Hourly Rate* (\$) Year 4	Billable Hourly Rate* (\$) Year 5
???, Project Manger	\$	\$	\$	\$	\$
???					

NAME OF SUBCONSULTANT (4): ???	Billable Hourly Rate* (\$) Year 1	Billable Hourly Rate* (\$) Year 2	Billable Hourly Rate* (\$) Year 3	Billable Hourly Rate* (\$) Year 4	Billable Hourly Rate* (\$) Year 5
???, Project Manager	\$	\$	\$	\$	\$
???					

*Billable hourly rate indicated in the table above are a Not to Exceed Rate. The County reserves the right to negotiate such rate on a project by project basis and to adjust such rates as appropriate, as solely determined by CAR.

END EXHIBIT A



EXHIBIT B

CONSULTANT'S STAFF & SUBCONSULTANTS

[County Authorized Representative ("CAR") as used below].

- A. Consultant declares that the following key personnel will work with the County:
- B. Consultant will employ subconsultants he deems appropriate to the complexity and nature of the required Services and said subconsultants must, if their specialty is licensable, be licensed by the State of California to perform their specific Services. Consultant must obtain County's approval of all subconsultants pursuant to the terms of the PSA. Upon County's request Consultant must provide copies of all subconsultant contract agreements to County.
- C. **No mark-ups are allowed:** County will not pay any mark-ups for managing and coordinating subconsultants.
- D. **Travel:** County may pay only pre-approved travel expenses at costs as per County Travel Policy. No mark ups are allowed.
- E. **Reimbursable:** County may pay only pre-approved reimbursable expenses at costs. No mark-ups are allowed.
- F. The County/Consultant may add a sub-consultant(s) pursuant to Section 5.02 of this PSA.
- G. Subconsultants (Name, phone, email, address, and key personnel):
- H. 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 this PSA and any applicable PA, including but not limited to provisions of standard of care, compliance with laws, insurance, confidentiality, indemnity, and jurisdiction. Upon County's request Consultant will provide copies of all subconsultant and Staff contract agreements to the County.
- I. None of the above-named staff or subconsultants shall be replaced without CAR's approval pursuant to an amendment to this PSA or any applicable PA. Consultant must provide the names of all key staff and lead personnel of subconsultants associated with each PA Project in the applicable Project Agreement prior to the work. If Consultant's Project Manager for any PA Project or any other designated key staff person or Sub-consultant fails to perform to the satisfaction of County, on written notice from County's PA Project Manager, Consultant will have fifteen (15) calendar Days to remove that person from the PA Project and provide a replacement acceptable to CAR. Consultant must submit the name of a qualified replacement for CAR's approval.

END EXHIBIT B



EXHIBIT C

“SAMPLE” PROJECT AGREEMENT (PA)

(Subject to County's Changes. This format will be used for all PAs authorized pursuant to this PSA. County shall prepare all Project Agreements and Consultant shall provide information and data requested by Owner sufficient to draft the PA.)

PROJECT AGREEMENT NO. ___ TO PSA BETWEEN THE COUNTY OF SANTA CLARA AND ??????????????? FOR ?? ?? ?? PROFESSIONAL SERVICES					
PROJECT TITLE: [Insert ___]					
Account Assignment	G/L Account	Cost Center	WBS	Amount	Fund
I				\$	
H					

WHEREAS, on _____ the County of Santa Clara, a political subdivision of the state of California ("County") issued a Request for Proposal ("RFP") for various projects for parks department to which ?? ?? ?? ("Consultant") responded and was selected by County based on that RFP response. Thereafter, on _____, County and Consultant entered into a Professional Services Agreement ("PSA") for Consultant to provide the _____ Services for Various Projects, which expires on _____. Consultant and County are each a "Party" and collectively the "Parties" to this Project Agreement No. ___, as referenced herein; and

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 any project agreement shall begin until Consultant has received an Authorization to Proceed from County's PA Project Manager.

NOW, THEREFORE, the Parties agree to the foregoing and as follows:

1. PURPOSE.

- 1.1** This is Project Agreement No. ___ ("PA") pursuant to the PSA.
- 1.2** Consultant will perform the services described and set forth in Attachment 1, Consultant's Services and Deliverables (the "Services", "Scope of Work" or "SOW"). The Services may only be modified with County's prior written approval in advance of any additional or modified work being performed.
- 1.3** All capitalized terms used in this PA shall have the same meaning as those used in the PSA, unless expressly defined in this PA. All terms, conditions and provisions of the PSA are incorporated into this Project Agreement No. ___ and shall remain in full force without change.

2. COUNTY'S PROJECT MANAGER. The County's PA Project Manager is _____. All communications concerning the PA Project shall be through the PA Project Manager.

3. CONSULTANT'S PROJECT MANAGER. Consultant's PA Project Manager is _____. All communication and submittal of future invoices shall be through the consultant's Project Manager.



4. **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 County's prior written approval. The Parties mutually agree that the expiration date of this PA shall be _____.

5. **MAXIMUM COMPENSATION LIMIT.** The maximum compensation limit for Services pursuant to this PA shall be as stated in Attachment 3, Consultant's Compensation, which shall not be exceeded by the Consultant. Consultant's Compensation, as stated in Attachment 3, together with all prior and current project agreements to date, shall not cumulatively exceed the Maximum Compensation Limit ("MCL") specified in the PSA. Nothing stated herein authorizes or approves an increase in the PSA MCL or in the compensation limit specified in Attachment 3. Consultant is fully responsible for not exceeding these limits and solely assumes and accepts all liability, cost and expense for exceeding these limits.

6. **ATTACHMENTS.** The following listed Attachments are incorporated into this PA as though set forth in full herein.

- Attachment 1: Consultant's Services and Deliverables (Scope of Work)
- Attachment 2: Consultant's Schedule
- Attachment 3: Consultant's Compensation
- Attachment 4: Payment Request Form -> (use Exhibit D form from PSA)
- Attachment 5: Listing of Sub-consultants

7. **COUNTERPARTS; ELECTRONIC/DIGITAL SIGNATURES.** This PA 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 provided all of the Parties have fully executed the PA. Unless otherwise prohibited by law or County policy, and provided all Parties have first executed the applicable PA, the Parties agree and intend that an electronic copy of a PA or an electronically signed PA, has the same force and legal effect as if the PA had been executed with an original ink signature. The term "electronic copy of a signed PA " refers to a transmission of a copy of an original ink-signed PA by facsimile, electronic mail (email), or other electronic or digital means in a portable document format. The term "electronically signed PA" means a PA that is fully executed by all Parties each applying an electronic signature. An "electronic signature" means an electronic or digital sound, symbol, or process attached to or logically associated with an electronic or digital record (e.g. DocuSign®) and executed or adopted by a person with the intent to sign the electronic record. The Parties each represent, warrant and agree that the signatures, whether an ink-signed original or electronically signed PA, by their respective signatories are intended to authenticate such signatures and to give rise to a valid, enforceable, and fully effective agreement when so executed by all the Parties. The Parties further agree if a Party has evidenced its/their signature by forwarding an electronic copy of a signed PA, it/he will confirm that signature by forwarding to the other Party within ten (10) days an ink-signed original of the PA but the failure to so forward an ink-signed original will not affect in any way the validity or enforceability of the PA.

8. **SUBMISSION OF PA; NONBINDING UNTIL SIGNED.** Each of the Parties agree, accept and understand that a submission of this PA for examination, review, editing or signature by either Party, in any form or by electronic or digital means, by email, facsimile or DocuSign®, by verbal confirmation or discussion or by any other means of delivery, does not constitute a binding agreement or contract, nor does it constitute a meeting of the minds or a commitment to execute the PA and this PA shall only be legally binding and enforceable upon full execution by all Parties. The Parties acknowledge and agree that this PA is nonbinding on either Party and neither Party may claim any legal rights against the other by reason of the existence of this PA, or by reason of actions taken in reliance upon this PA (including, but not limited to, any obligation to continue negotiations) unless and until this PA is fully executed by all of the Parties.



9. CONSTRUCTION. This PA shall not be construed more strongly against either Party regardless of who is more responsible for its preparation.

10. SIGNING AUTHORITY. By signing below, each signatory for a Party warrants and represents that he/she executed this PA, in his/her authorized capacity, that he/she has the authority to bind the entity or person for whom he/she signs to contractual obligations and that, by his/her signature, the entity or person on behalf of which he/she acted executed this PA.

IN WITNESS WHEREOF, this PA is effective as of the last date signed by all of the parties herein below ("Effective Date").

CONSULTANT: _____ Date _____

By: _____
Signature Principal

COUNTY: COUNTY OF SANTA CLARA

By: _____ Date _____
Director or Designee, Department

By: _____ Date _____
Sylvia Gallegos, Deputy County Executive

APPROVED AS TO FORM AND LEGALITY:

Tony LoPresti, Deputy County Counsel



SAMPLE” ATTACHMENT 1
to
PROJECT AGREEMENT NO. _____

CONSULTANT’S SERVICES AND DELIVERABLES

I. PA Project Description

[Introduction to provide context for services and deliverables required from Consultant. Every PA will state this same description in Attachment 1 for a project specific PA.]

II. Basic Services & Deliverables for this PA

[This sub-paragraph should be divided into Services & Deliverables.]

1. Services:

2. Deliverables:

III. Compensation for Changes in Scope

The Consultant must notify the County PA Project Manager, in writing, within ten days of occurrence, of any direction by the County PA Project Manager, which will cause a change in the Consultant’s Services and Deliverables for this Project Agreement, for which the Consultant intends to seek additional compensation. The County PA Project Manager, in response, may revise or rescind any such direction, or both parties will negotiate and implement an Additional Basic Services Order and/or a Supplemental Services Order, as appropriate. Consultant shall not be entitled to additional compensation without prior written consent from the County.

IV. Information and Documentation to support Invoice. Consultant must submit appropriate documentation to support each invoice, including: a narrative description of services performed during the period; milestones achieved; and deliverables completed. For any preapproved reimbursable expenses, Consultant must provide itemized receipts as stated in PSA Section 10.04.

End if Attachment 1 to PA No.____



(Continued)
"SAMPLE" ATTACHMENT 2
to
PROJECT AGREEMENT NO. ____

CONSULTANT'S (Milestone) SCHEDULE

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

Consultant will complete the Basic Services described in Attachment No. 1 by **??/??/???** from Delivery of Letter of Authorization to Proceed from the County. 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. For the purposes of this section, Consultant is considered to control the timely performance of his sub-consultants.

Basic Services and Deliverable Products	Completion Date from Authorization to Proceed

End Attachment 2 to PA No. ____



(Continued)
“SAMPLE” ATTACHMENT 3
to
PROJECT AGREEMENT NO. ____

CONSULTANT'S COMPENSATION

1. COMPENSATION SUMMARY

Consultant's **Fixed Fee** **Maximum Fee if done on hourly basis--PM to edit!** shall be:

SUMMARY OF CONSULTANT'S COMPENSATION		
		Amount
Task 1	Basic Services and Deliverables	\$??
Task 2	[INSERT SCHEDULE OF VALUES FOR FIXED FEE OR NTE AMOUNTS FOR EACH PHASE OF WORK]	
	SUBTOTAL: Fixed Fee [or Not to Exceed (“NTE”) on time & materials] for Basic Services	\$??
	Contingency Allowance (if allowed)	
	¹ Allowance for Reimbursable Expenses (if allowed)	
	TOTAL (Maximum Compensation Limit)	\$??

¹ Allowance for Reimbursable Expenses pursuant to PSA Part 10, Section 10.04.

2. PAYMENT TERM

The Payment Term is **Net 45**: payment will be made 45-days after County’s approval of the invoice (PSA Part 10, Section 10.05 Payment).

3. PROGRESS PAYMENTS

- a. For **FIXED FEE** portion, Progress Payments will be on the basis of one of two ways, or a combination of both: Monthly and based on the percent of work completed during the billing period. Or Upon completion of Project Agreement Milestones.
- b. For **HOURLY FEE** portion, Progress Payments will be made monthly and based on the actual hours worked during the billing period charged at the hourly rates set forth in Exhibit A or B to the PSA, or as modified in this Project Agreement. **(Consultant must include back up information for payment including a breakdown of the staff hours for particular tasks performed: task-fee breakdown)**
- c. Only invoices submitted by consultant’s Project Manager _____ will be accepted by County for payment.
- d. Consultant must submit appropriate documentation to support each invoice, including a narrative description of services performed during the period; completed milestones & deliverables; and for pre-approved reimbursable expenses, the itemized receipts.
- 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.

End Attachment 3 to PA No__



(Continued)

**“SAMPLE” ATTACHMENT 4
To
PROJECT AGREEMENT NO. ____**

LISTING OF SUBCONSULTANT'S and SUBCONSULTANT'S RATES

(Describe Subconsultants in detail)

- A.** Consultant may employ subconsultants that Consultant deems appropriate to the complexity and nature of the PA Project pursuant to the requirements of the PSA. Such subconsultants 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 subconsultants, and for compensating the subconsultant for Services and Deliverables provided.
- B. No mark-ups are allowed:** County will not pay any mark-ups for managing and coordinating the PA Project, any subconsultants or any other third parties.
- C. Travel:** County will pay only pre-approved travel expenses at costs as per County Travel Policy. No mark ups are allowed.
- D. Reimbursable:** County will pay only pre-approved reimbursable expenses at costs. No mark-ups are allowed.

List of Subconsultants Contacts	Services	Consultant's Team Contacts (Principal's Name; Phone #; Email; Address)
1. ???	???	???
2. ???	???	???
3. ???	???	???

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

Subconsultant Name	Billable Hourly Rate
Subconsultant 1: ??	\$
Subconsultant 2: ??	\$

- F.** None of the above-named Staff or subconsultants shall be replaced without CAR's approval pursuant to an administrative amendment to this PSA. If Consultant's PA Project Manager or any other designated key staff person or Sub-consultant fails to perform to the satisfaction of County, on written notice from County's PA Project Manager, Consultant will have fifteen (15) calendar Days to remove that person from the PA Project and provide a replacement acceptable to CAR. In that event Consultant must submit the name of a qualified replacement for CAR's approval.
- G.** 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 County's request Consultant will provide copies of all subconsultant and Staff contract agreements to the County.

- H. 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) County is not responsible or liable for payment or other obligations to Consultant's subconsultants and Staff, (4) County is not, nor shall County be considered or alleged to be, an employer of Consultant's subconsultants or staff or the employees or agents of subconsultants or staff.

End Attachment 4 to PA No. ____

END EXHIBIT C



EXHIBIT D

“SAMPLE” INVOICE FORMAT

**Contractor’s Payment Request:
Summary Sheet**

Contractor:		Date:		
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



**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 under penalty of perjury 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 contract on this project.

(Name) Contractor's Signature

Date

Signature of Project Manager

Date

Signature of County representative or Designee

Date

END EXHIBIT D



EXHIBIT E

Exhibit B-3 Insurance Requirements for Professional Services Contracts (e.g. Medical, Legal, Financial services, etc.)

Indemnity

The 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 arising out of, or in connection with, performance of this Agreement by Consultant and/or its agents, employees or sub-consultants, excepting only loss, injury or damage caused by the sole gross negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for 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 contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Consultant's indemnification of the County, the Consultant shall provide and maintain at its own expense, during the term of this PSA, 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 he 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.

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 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.
- 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 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 Contractor'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



EXHIBIT F

NOTICES

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

1. County:

County of Santa Clara: Parks & Recreation Department

298 Garden Hill Drive, Los Gatos, CA 95032

Attention: Project Manager – Tim Heffington

Phone: 408-355-2239; Cell: 408-355-4595; email: tim.heffington@prk.sccgov.org

2. Consultant:

????, a sole ???proprietor (dba ???)

Headquarters address: ??P?? Ave??, S????, CA 95???

Attention: Principal-in-Charge – ???

Phone: 408-???-???; email: ???@f???.com

Consultants Working Office address: [same as above or specify if different]

Project Manager working with the County: [???]

END EXHIBIT F



EXHIBIT G

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“NDA”) by and between **????, Corporation or a sole proprietor (dba, ???)** (“Consultant”) and the County of Santa Clara (referred to as “County”) relates to the disclosure of certain confidential information. This NDA is incorporated into and made a part of the PSA 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 Consultant, 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 Consultant 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” means 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 diagrams, schematics, documentation, maps, 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, means and includes, collectively and singularly, all of the following County property: information, appraisals,, data or materials provided to Consultant by County or on behalf of County; PHI, Customer Data and PII (as defined below); the Deliverables; County documents, materials, specifications, lists, maps, outlines, emails, electronic communications; 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, developed for, developed 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 (including but not limited to links and websites developed for the benefit of the County), 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 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. Consultant shall review and maintain the Confidential Information in accordance with the following terms and conditions:

- (a) Consultant agrees to treat all Confidential Information (as defined above) as confidential and not to disclose the same to any third party. The Consultant shall keep the Confidential Information in strict confidence, using the same standard of care as he 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 and shall not leave County property unless authorized in advance by County. Consultant shall, at all times, keep the County informed in writing of the location of the Confidential Information.
- (d) The Consultant 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 Consultant for the limited purpose stated in this NDA or as otherwise authorized in writing by County.
- (f) Any oral discussions between the County and Consultant 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, Consultant shall promptly return all of the Confidential Information including all work products of Consultant containing Confidential Information to the County. Consultant shall certify that all Confidential Information and copies or extracts thereof have been returned or destroyed.
- (h) Consultant 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) Consultant, 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 Consultant can demonstrate that, absent breach of this NDA, was/is:

- (a) Publicly known at the time of disclosure by the County, or becomes publicly known through no fault of the Consultant;
- (b) Rightfully received by Consultant from a third party without a duty of confidentiality;



- (c) Already known to the Consultant at the time of receiving such Confidential Information or is independently developed by the Consultant without reference to the Confidential Information;
- (d) Permitted to be disclosed by written consent of the County; 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 Consultant provides the County with prompt notice of such requirement, so that the County 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 Consultant. 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 Consultant as a result of the Consultant'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 Consultant. Termination under this provision shall not relieve Consultant 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 Consultant. The return of any Confidential Information will not relieve the Consultant 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. 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.

10. 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.

11. 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.

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

13. Consultant shall indemnify, defend and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees, from, for and against any and all claims, liabilities, losses, injuries and damages (collectively, "Litigation") arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of Consultant and/or any of its officers, directors, owners, agents, employees, contractors, subcontractors or sub-consultants, excepting only to the

extent such loss, injury or damage is caused by the gross negligence 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 PSA. The cost to defend charged to the Consultant shall not exceed the Consultant's proportionate percentage of fault.

14. 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.

15. 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.

16. 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.

17. Consultant 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.

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

19. 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 (dba, ????)

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

END EXHIBIT G

