

COUNTY OF SANTA CLARA, CALIFORNIA



REQUEST FOR PROPOSALS (RFP)

for Marketing Consulting Services for various projects for County of Santa Clara Parks and Recreation Department

RFP Number: eRFP-PRK-FY23-0503

ISSUE DATE: May 3, 2023

ELECTRONIC SUBMISSION OF PROPOSALS PROJECTED DUE DATE:

7/7/2023 3:00 PM Pacific Time

Parks and Recreation Department

298 Garden Hill Dr. Los Gatos, CA 95032

Procurement Officers: April Smith
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THIS RFP SOLICITATION REQUIRES ALL PROPOSALS TO BE SUBMITTED ELECTRONICALLY THROUGH PERISCOPE HOLDINGS. NO PAPER, EMAIL OR FAX SUBMISSIONS WILL BE ACCEPTED AND MAY BE DEEMED NONRESPONSIVE.

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APPENDICES

The following documents are to be submitted with the proposal, arranged in numerical or alphabetical order of reference label.

PROJECT SCOPE REQUIREMENTS:

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| Appendix A: | Intent to Respond |
| Appendix B: | Client References |
| Appendix C: | Proposer's Acknowledgement |
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PROPOSER'S DECLARATION:

| | |
|-------------|--|
| Appendix F: | Declaration of Local Business |
| Appendix G: | Declaration Submittal form [Non-Collusions Declaration; Declaration of Compliance with Equal Opportunity/Nondiscrimination and Wage Theft Prevention; Declaration of Intent to Comply with County Covid-19 Requirements] |

ATTACHMENTS:

| | |
|---------------|---|
| Attachment 1: | Sample Template Professional Services Agreement ("PSA") |
|---------------|---|

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I. INTRODUCTION

A. INVITATION

The County of Santa Clara ("County"), through its Parks and Recreation Department ("SCC Parks" or "Department"), is soliciting proposals from qualified firms/consultants/organizations hereafter, ("Proposer") for marketing consulting services including, public relations, media buys, creative design, and social media. Partnerships with media outlet affiliates (newspaper, radio and TV) located within the geographical boundaries of the County will be a very important factor in selecting a successful consulting firm. Proposers shall be expected to provide no less than the minimum services and deliverables identified in this RFP and the Scope of Work ("SOW") as described in Section II below.

The County's intention is to enter into a multi-fiscal year Professional Services Agreement (PSA), which will serve as a master agreement for the County to obtain professional marketing services on an as needed basis with a selected consulting firm up to a maximum compensation limit which will be determined by the County. The County invites consulting firms to submit a proposal with their qualifications for consideration. The Proposer must have significant knowledge, expertise and experience in the County of Santa Clara. The objective of this RFP is to identify consultants with the required experience, knowledge and expertise for set services. See Scope of Work (SOW) for details in Section II below.

A Proposer will be evaluated to determine they have significant knowledge, expertise and experience in Santa Clara County to fulfill the project requirements and such evaluation will be based on the submissions of the qualified Proposer (and may be based on an interview as well). The objective of this RFP is to identify and select from qualified "Proposers" with the required experience, knowledge and expertise to fulfill County needs as set out in this RFP.

It is the County's intent to hire one or two consulting firms, but the County is not required to do so. If an award is made, the resulting PSA shall be for a Term of five years or less, which Term shall solely be determined by the County. The County may, at its election, terminate the PSA sooner than the expiration of the Term of the PSA.

The PSA template is attached to this RFP as Exhibit A. Read the terms and conditions carefully. The PSA shall not be modified by the Proposer. You will be required to confirm that you can satisfy and meet all terms and conditions in the attached PSA in order to qualify to submit a proposal. Qualified Proposers must have the capability, willingness, ability and intent to carry out the terms and conditions of the PSA and the SOW for the entirety of the Term and will need to demonstrate, based on their proposal (and possibly an interview), that they have the background and experience to do so. Proposers intending to respond to this solicitation are required to fill out and submit an INTENT TO RESPOND form (Appendix A) via Periscope to the County's Procurement Lead as indicated below on or before the Due date (Schedule III).

B. BACKGROUND

1. County of Santa Clara

County of Santa Clara ("County") is located at the southern end of the San Francisco Bay, and it forms the geographic core of the economic region called Silicon Valley with a population of nearly 1.9 million. It is the fifth-largest county in the State of California and the largest of the nine Bay Area counties. The

County is comprised of 15 cities with San José being the largest, with a population of approximately one million. Nearly 92% of the population lives in cities, while unincorporated ranch and farmland covers a significant portion of the County's 1,315 square miles. County residents speak over 100 languages and dialects with over 55% of them from either Asian, Latino or Hispanic backgrounds. Additionally, demographic analysis shows that the County is highly urbanized with an ethnically diverse resident population of which over 40% are foreign-born.

The County provides services such as public safety and justice; hospital and health care; road construction and maintenance; parks and recreation; libraries; and environmental resource management. It also operates "enterprise" programs, which charge fees to users for services. Two examples are the County Health System, which includes 3 hospitals, and the County airports. The County acts as an agent of the State in administering health, social services, and criminal justice programs that are of statewide concern. The County is governed by a five-member elected Board of Supervisors ("BOS"). The County Executive administers the day-to-day operations of the County and is appointed by the BOS. For more information, please go to www.sccgov.org.

2. County of Santa Clara Parks and Recreation Department

Since the dedication of the first County park in 1956, the County's park system has grown to encompass over 52,000 acres of parkland in 28 separate regional parks. Today the County's park system offers more than 340 miles of paved and unpaved recreational trails; fishing, boating, camping, and picnicking facilities; off-leash dog areas; and an array of land and water based recreational venues. Most of the County's regional parks offer visitors and residents access to open space in a rural setting, with many containing unique cultural and historic components, while still close to the urban core of the Santa Clara Valley. More details about the Department can be found on the Department's website (www.parkhere.org).

The Department has benefitted from a stable funding source since 1972, the County Park Charter Fund, which was re-approved by the voters in 2016 for a period of 15 years. In 2018, the Board of Supervisors adopted the Department's Strategic Plan, which provides a 10-year road map of activity to meet the goals of the strategic plan and mission of the Department.

The Strategic Plan identifies the following nine goals: (1) Protect Natural Resources in the Context of the Greater Region; (2) Meet the Needs of a Diverse Customer Base; (3) Manage the Park System in a Fiscally Sustainable Manner; (4) Balance the Role of Technology; (5) Elevate the Role of Parks in Improving Human Health; (6) Provide Exceptionally Safe, Welcoming, and Well-Maintained Parks and Trails; (7) Prioritize Core Outdoor Recreational Uses; (8) Demonstrate Leadership in Regional Trail Development and the Provision of Equitable Access; and (9) Conserve, Protect and Interpret Regionally Significant Historical and Cultural Resources.

The Strategic Plan also identifies over \$155 million (in 2017 dollars) in unmet funding needs for the same period. The Department wants to ensure that public needs are consistently considered while making decisions about the use of Park Charter Funds to achieve the goals of the Strategic Plan, which can be found at: <https://parks.sccgov.org/sites/g/files/exjcpb961/files/strategic-plan-santa-clara-county-parks-19-0219.pdf>

Mission Statement: The mission of the Parks and Recreation Department is to provide, protect, and preserve regional parklands for the enjoyment, education and inspiration of this and future generations.

Vision Statement: We create and manage a sustainable, vibrant system of regional parks and trails where exceptional visitor experiences enrich the human spirit and offer all people the opportunity to connect with the County’s protected natural, cultural, historic, and scenic resources, consistent with responsible resource stewardship. The Department’s vision of the future of the regional park system is based on the following elements and core values:

- Interconnected and Inclusive
- Enriched Visitor Experience
- Resource Stewardship
- Human Health
- Operational Excellence

3. The Department’s Commitment to Diversity, Equity, and Inclusion

The Department does not discriminate in its provision of services or employment practices based on race, color, culture, ancestry, national origin, religious belief, sex, sexual orientation, gender identity, age, pregnancy, marital status, medical condition, political belief, organizational affiliation, or disability.

The Department is committed to social justice by creating equitable access to parks for all. At Parks we understand the importance of access to outdoor spaces for creating healthy, strong, and vibrant communities. Similarly, we recognize that the deeply rooted legacy of discrimination and segregation create present day conditions that impact equitable access to quality parks and distribution of resources. As a result, we are committed to acknowledging the harm caused by such discriminatory practices by normalizing conversations about inequality and developing a formal infrastructure to combat inequities.

II. PROJECT SCOPE OF WORK (SOW)

The Santa Clara County Department of Parks and Recreation (“SCC Parks” or “Department”) is seeking proposals from qualified marketing and communications professionals specializing in parks and recreation, community-based promotion, governmental relations, public information, brand management, digital strategy, content and social media marketing, and/or related specialties. The selected firm would:

- A. Assess the Department’s current approach to public relations, communication, and marketing,
- B. Recommend benchmarks and other metrics by which to measure improvement, and
- C. Develop and carry out a comprehensive strategy to improve the Department’s brand recognition and integrity, communications reach, and effectiveness in sharing information.

The objectives of this strategy are outlined below.

Objectives:

1. Increase and improve communication to all county residents including both park visitors and non-visitors.
2. Expand access to information about the park system and reduce barriers to park visitation for those that do not currently use the park system.
3. Increase communications with underserved populations throughout the county, including community-based organizations, and those with limited English language proficiency.

Community awareness of park and recreation amenities and programming is a key factor in whether a park and its facilities will be utilized. NRPA's [Awareness and the Use of Parks report](#) explores the role awareness plays in driving park and recreation usage and presents a series of steps that park and recreation leaders should consider when executing an awareness strategy. The report also studies the steps taken by two cutting- edge park and recreation agencies to promote greater awareness of their offerings.

Action:

- Engage the community in current and future park development and recreation programming efforts.
- Promote and create awareness of the parks, facilities, programs and activities throughout the SCC Parks website and social media.
- Develop a marketing plan to ensure diversity in communication methods. It should be reviewed regularly and updated as needed. The marketing strategies will be front facing to the public, i.e., web page, social media that includes but is not limited to:
 - Increased use of social media (recommend we consider a focus on socially responsible social media platforms if such exist).
 - Use and development of the Department’s website.
 - Partner opportunities to expand marketing reach across the County.

- Enhance program marketing using an equity lens with specific emphasis on program promotion in multiple languages (i.e., Spanish and Chinese) utilizing the County’s in-house translation services.
- Ensure communication channels align with goals and actions identified in the Department Strategic Plan.

DESCRIPTION OF SERVICES AND DELIVERABLES

Marketing

- Develop, produce, and evaluate a comprehensive marketing plan that includes brand identity and management to highlight SCC Parks as a desirable destination and increases public awareness of SCC Parks offerings and activities. The plan should include, but is not limited to, the following elements: email, influencer, experiential, event, content, and digital marketing with a focus on reaching diverse audiences and non-park users.
- Use research and market analysis to provide recommendations for target audiences and most effective media placement to reach identified audiences. As required, conduct new market research and analysis for future recommendations and strategy.
 - Track and analyze web and social media analytics
- Create, procure, and place various advertising across multiple platforms (i.e., print, digital, out-of-home) with rate negotiations made directly with vendors.
 - Design and provide an array of creative assets using brand consistency to be used for SCC Parks. Current creative assets may be used for future campaigns.
 - Develop, track and review metrics regularly and provide recommendations, as needed, to retarget and optimize.
- Implement and optimize a social media strategy that is consistent with the Department’s Social Media and Web Content policy and aligns with staff strategy developed in house.
- Ensure all messaging is consistent with SCC Parks brand.
- Establish and cultivate relationships with external industry-related partners on behalf of SCC Parks for potential cooperative opportunities and exposure.
- Provide graphic design services for many special projects.
- Assist in marketing the Department’s various mapping and application services including ArcGIS Online
- Shoot, edit and produce high-quality photography and videography to showcase SCC Parks amenities, services, and events.

Public Relations

- Provide public relations services to increase exposure and protect brand integrity and reputation.
- Develop an annual editorial calendar and targeted media list that aligns with SCC Parks’ business objectives (and is aligned with seasonal recreation and natural resource opportunities and events).
- Promote Department programs and events (education, countywide trails, planning, preservation/protection of resources)

- Assist in development and dispersal of informational materials related to the Department's various public input processes (primarily on planning and design projects), including reusable templates for email, presentations, websites, etc.
- Assist in the creation of unique project-specific communications as-needed
- Create media materials to appropriately pitch to approved outlets or publications.
- Cultivate and maintain relationships with media, editors, content creators, etc.
- Create monthly eblast to promote department services and programs.
- Develop biannual Play Here brochure showcasing department events and programs.

OTHER REQUIREMENTS

- Provide SCC Parks a comprehensive annual summary report including, but not limited to, services performed, creative produced, digital analytics, optimization and recommendations, budget allocations, earned media value, reach, etc.
- Develop a SCC Parks marketing-reporting dashboard for campaign efficiency.
- Facilitate the transfer of creative assets, and creative accounts, within an agreed upon timeline.
- The selected firm is expected to be available Monday-Friday during normal business hours of 8 a.m.- 5 p.m. PDT. They should also expect to support SCC Parks beyond these hours as-needed for special projects (i.e., photo shoots, event activations, digital campaigns). Methods of communication include phone, email, and text.

III. SCHEDULE AND EXPLANATION OF EVENTS

This section of the RFP contains the anticipated schedule for the procurement and describes the procurement events as well as the conditions governing the procurement.

A. SCHEDULE OF EVENTS

The County will make every effort to adhere to the following anticipated schedule:

| | EVENT | DATE |
|-----|--|---|
| 1. | Issuance of RFP | 5/3/2023 |
| 2. | Deadline to Submit Written Questions | 5/16/2023, 3:00 pm PDT |
| 3. | Response to Written Questions/RFP Addendum Posted | 5/19/2023 |
| 4. | Deadline to Submit Intent to Respond (Appendix A) | 5/30/2023, 3:00 pm PDT |
| 5. | Submission of Proposals | 6/6/2023, 3:00 pm Pacific Time |
| 6. | Proposal Evaluation | Week of 6/20/2023 |
| 7. | Selection of Short List (If Applicable) | Week of 6/20/2023 |
| 8. | Conduct Oral Presentations/ Demonstrations (If Applicable) | Week of 6/20/2023 |
| 9. | Selection of Finalist(s) | Week of 6/20/2023 |
| 10. | Negotiations | Week of 6/20/2023 |
| 11. | Issue Notice of Intent to Award | Week of 6/27/2023 |
| 12. | Contract Approval and Execution | August 2023 |
| 13. | Commencement of Contract | Upon Approval by the Board of Supervisors |

B. POINT OF CONTACT

The County has designated a Procurement Officer(s) who is responsible for the conduct of this Procurement whose name, address and telephone number are listed below:

April Smith, Sr. Management Analyst
Diane Stambaugh, Sr. Management Analyst
Santa Clara County Parks & Recreation Department
298 Garden Hill Dr., Los Gatos CA 95032
april.smith@prk.sccgov.org
diane.stambaugh@prk.sccgov.org

Any inquiries or request regarding this procurement should be submitted to the Procurement Officer in writing through <https://www.periscopeholdings.com/s2g>, the County's solicitation management system. Proposers may contact ONLY the Procurement Officer regarding this RFP.

C. EXPLANATION OF EVENTS

1. Issue of RFP

This RFP is being issued by the County Procurement Department. Copies of this RFP including supporting documents may be obtained from <https://www.periscopeholdings.com/s2g>.

2. Pre-Proposal Conference

No pre-proposal conference is scheduled for this RFP. Please submit all questions by the due date listed in Item A of Section III.

3. Deadline to Submit Written Questions

Submit all written questions through <https://www.periscopeholdings.com/s2g> by the due date listed in item A of Section III to the Procurement Officer. The County will not respond to questions submitted in any other manner or format.

4. Response to Written Questions/RFP Addendum Posted

The County will list answers to all written questions received by the deadline in Section III A (“Deadline to Submit Written Questions”) and will provide the responses via an addendum posted on <https://www.periscopeholdings.com/s2g>. The County may, but is not required to, respond to questions at other times, e.g., prior to a scheduled pre-proposal conference. The County reserves the right to post additional addenda until the RFP closing date and time, including addenda that make material changes to the RFP.

5. Deadline to Submit Required Forms: Submit Intent to Respond (Appendix A) through <https://www.periscopeholdings.com/s2g> by the date identified in item A section III Schedule of Events above.

6. County Screening to Determine Qualified Proposers: The County will screen all submitted proposals to determine if each has met the **Qualifications** set out herein and in Section IV below. For any proposal which does not meet these requirements, such Proposers will be immediately disqualified and will not be considered for evaluation under this RFP. Only qualified Proposers will be evaluated and considered based on the selection criteria set out in Sections IV in this RFP. A Proposer’s failure to qualify under this RFP is not a GROUND for protest and is not a protestable event.

7. Submission of Proposals

All proposals shall be submitted through <https://www.periscopeholdings.com/s2g>. Proposals must be filed in <https://www.periscopeholdings.com/s2g> on or before the due date and time of proposal submission, or the County may reject them as untimely.

8. Number of Responses

Only one proposal will be accepted from any one person, partnership, corporation or other entity; however, several alternatives may be included in one proposal.

9. Proposal Format and Organization

The proposal should be organized and indexed in the following format and should contain, at a minimum, all listed items in the sequence indicated:

Tab A: Letter of Transmittal

Tab B: Proposer's Corporate Information

Tab C: Project Scope Requirements and Pricing

Tab D: Proposer's Declaration including all required Appendices in numerical or alphabetical order of reference label

10. Proposal Preparation Instructions

Within each section of their proposal, Proposers should address the items in the order in which they appear in this RFP. All forms provided in the RFP should be thoroughly completed and included in the appropriate section of the proposal.

11. Non-Conforming Submissions

A submission may be deemed by the County as non-responsive and ineligible for consideration if it does not conform to the requirements of this RFP.

IV. EVALUATION, NEGOTIATIONS AND AWARD PROCESS

A. REVIEW OF PROPOSALS FOR RESPONSIVENESS

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in the RFP. A responsive proposal is one which follows the requirements of this RFP, includes all documentation, is submitted in the format in this RFP, is timely submitted, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the proposal being deemed non-responsive and, therefore, rejected.

B. EVALUATION CRITERIA

Proposals will be evaluated by the Evaluation Committee members who will independently evaluate and rate proposals based on criteria listed below. The following are the requirements for a Proposer to qualify to participate in this RFP process:

i. **Recommended Qualifications**

1. **Public Sector Experience** – It is recommended that the Proposer have successfully completed two (2) projects within the past five (5) years for a public sector governmental agency (Federal, State, and/or Local) within the State of California.

ii. **Proposal Evaluation**

Proposals will be evaluated by the Evaluation Committee members who will independently evaluate and rate proposals based on criteria listed below. The criteria are itemized with their respective weights for a maximum total of one hundred (100) points per Evaluation Committee member.

1. **Proposer's Organization: Competence and capacity of Project Team** – Project Manager, Principal and Sub-consultants staff demonstrate relevant experience working on similar projects with adequate in-house staffing and/or experienced Sub-consultants. (20 points)
2. **Scope of Work and Experience** – Proposer has provided a comprehensive Scope of Work demonstrating that the Proposer understands the methodology, strategy and tools necessary to perform required services as indicated in Section II, "Scope of Work". (20 points)
3. **Proposer's Experience with Parks** – Proposer has demonstrated experience on a variety of marketing projects working with parks and recreation public agencies, or publicly accessible open space land agencies. (10 points)
4. **Past Performance & Experience with Media Outlet Affiliates within County** – Proposer has experience working with and having contacts with media outlet affiliates within Santa Clara County. Proposer has successfully described how Proposer has negotiated free advertising with media outlet affiliates for public agencies located within Santa Clara County and has provided the estimated value of such free advertisement. (10 points)
5. **Public Outreach and Meeting Facilitation** – principal, project manager, and support team of sub-consultants demonstrate relevant experience, and expertise in public outreach and meeting facilitation skills with similar projects. (15 points)
6. **Price Proposal:** please provide the hourly rate of staff or sub consultants working on this project (10 points)

7. **Proposer's Acknowledgement** – consulting firm has no modifications to Sample PSA and has signed Appendix C and is ready, willing, and able to meet all terms and conditions of the attached “Professional Services Agreement (PSA)” (Attachment 1) at the time of submission of proposal and at the award of contract. (10 points)
8. **Declaration of Local Business** – Proposer (main Proposer only, not the Sub-consultants) is located in the Santa Clara County as per outlined Board policy and has signed Appendix F of this RFP. (5 points)

*LOCAL PREFERENCE POLICY (reproduced from Board of Supervisors Policy Manual, Section 5.6.5.2).

In a formal solicitation of goods or services, the County of Santa Clara shall give Local Businesses the preference described below.

“Local Business” means a lawful business with a physical address and meaningful “production capability” located within the boundary of the County of Santa Clara. The term “production capability” means sales, marketing, manufacturing, servicing, provision of services, or research and development capability that substantially and directly enhances the firm's or bidder’s ability to perform the proposed contract. Post Office box numbers, residential addresses, a local sales office without any support and/or a local subcontractor hired by the contractor may not be used as the sole basis for establishing status as a “Local Business.”

In the procurement of goods or services in which best value is the determining basis for award of the contract - for example, a Request for Proposals - five percent (5%) of the total points awardable will be added to the Local Business score.

When a contract for goods or services, as defined in this policy, is presented to the Board for approval, the accompanying transmittal document shall include a statement as to whether the proposed vendor is a Local Business, and whether the application of the local preference policy was a decisive factor in the award of the proposed contract. The local preference policy may only be applied based on the entity submitting a bid or proposal and not a subcontractor or business partner.

This Local Business preference shall not apply to the following:

1. Public works contracts.
2. Where such a preference is precluded by local, state or federal law or regulation.
3. Contracts funded in whole or in part by a donation or gift to the County where the special conditions attached to the donation or gift prohibits or conflicts with this preference policy. The donation or gift must be approved or accepted by the Board in accordance with County policy; or
4. Contracts exempt from solicitation requirements under an emergency condition in accordance with Board policy, state law and/or the County of Santa Clara Ordinance Code.

C. PROPOSAL EVALUATION

An Evaluation Committee will review, evaluate and score the proposals. The highest ranked responses may be recommended for another round of evaluation at the County’s discretion. The County reserves the right to conduct as many rounds of evaluations as it deems to be reasonable or necessary in the public interest. Each round of evaluation may result in modification of scores, further clarification or addenda being issued, and changes in the RFP process. If a proposal is not in

the competitive range, the County at its sole discretion may eliminate the proposal from further consideration.

D. ORAL PRESENTATIONS / DEMONSTRATIONS

Upon evaluation of the criteria indicated above and the rating and ranking, the Evaluation Committee may choose to conduct an oral presentation/demonstration with any Proposer(s). Upon completion of the oral presentations/demonstrations, the Evaluation Committee members may re-evaluate, re-score and/or re-rank the proposals remaining in consideration.

E. PRICE EVALUATION

The price proposal will be evaluated relative to the combination of the technical proposal, including an evaluation of how well it matches the Proposer’s understanding of the County’s needs described in this Solicitation, the Proposer’s assumptions, and the value of the proposed solution and/or services. The pricing evaluation is used as part of the evaluation process to determine the highest ranked Proposer, if points were assigned to pricing.

F. NEGOTIATIONS

The County may direct negotiations with the highest ranked Proposer, negotiations with multiple Proposers, and/or may request best and final offers. The discussions may include price and conditions attendant to price. Each Proposer agrees that its proposal shall constitute a firm offer that it is bound to, and that the County may accept for at least one year after the closing of the Solicitation.

The County always reserves the right to terminate or suspend negotiations and may begin negotiations with the other Proposer(s). This process may continue until a contract acceptable to the County has been executed or all proposals are rejected. No Proposer shall have any rights against the County arising from such negotiations, suspensions, or terminations thereof.

G. CONTRACT AWARD

Any proposed contract, resulting from this Solicitation, will be submitted to the Board of Supervisors, or County Executive or designee. All Proposers will be notified in writing of the decision with respect to the contract award. The County’s decision of whether to make the award and to which Proposer shall be final.

V. CONDITIONS GOVERNING THE PROCUREMENT

The County of Santa Clara allows the use of the County contract by other political subdivisions, municipalities, tax supported agencies and non-profit entities in the United States. Such participating agencies shall make purchases in their own name, make payments directly to the Contractor and shall be liable directly to Contractor holding the County of Santa Clara harmless.

This section contains the conditions governing the Request for Proposals (RFP) process. Proposers are required to adhere to these conditions.

A. INCURRING COST

This RFP does not commit the County to award, nor does it commit the County to pay any cost incurred in the submission of the proposal, or in making necessary studies or designs for the preparation thereof, nor procure or contract for services or supplies. Further, no reimbursable cost may be incurred in anticipation of a contract award.

B. CLAIMS AGAINST THE COUNTY OF SANTA CLARA

Neither Proposers' organization nor any of their representatives shall have any claims whatsoever against the County or any of its respective officials, agents, or employees arising out of or relating to this RFP or these RFP procedures.

C. BASIS FOR PROPOSAL

Only information supplied by the County in writing via the County's solicitation management system, <https://www.periscopeholdings.com/s2g> by the Procurement Officer in connection with this RFP should be used as the basis for the preparation of Proposer's proposal.

D. NO PUBLIC PROPOSAL OPENING

There will be no public opening for this RFP.

E. CALIFORNIA PUBLIC RECORDS ACT (CPRA)

All proposals become the property of the County, which is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Proposer's proprietary information is contained in documents submitted to County, and Proposer claims that such information falls within one or more CPRA exemptions, Proposer must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the County will make reasonable efforts to provide notice to Proposer prior to disclosure. If Proposer contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the County's deadline for responding to the CPRA request. If Proposer fails to obtain such remedy within County's deadline for responding to the CPRA request, County may disclose the requested information without penalty or liability.

Proposer further agrees that it shall defend, indemnify and hold the County harmless against any claim, action, litigation, damage or injury (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from partial or complete denial of access to, or non-disclosure or redaction of, documents arising from any representation, or any action (or inaction), by the Proposer.

F. CONFIDENTIALITY

All data and information obtained from the County of Santa Clara by the Proposers and their agents in this RFP process, including reports, recommendations, specifications and data, shall be treated by the Proposer and its agents as confidential. The Proposers and its agents shall not disclose or communicate this information to a third party or use it in advertising, publicity, propaganda, marketing, or in another job or jobs, unless prior written consent is obtained from an authorized representative of the County. Generally, each proposal and all documentation, including financial information, submitted by a Proposer to the County is to be treated as confidential by a Proposer. Notwithstanding the foregoing, the proposal and all documentation are subject to the California Public Records Act, as described in Section V.E. of this RFP.

G. ELECTRONIC SUBMISSIONS OF THE RFP

1. This RFP is being made available by electronic means. As part of the RFP, Proposers will be required to download, complete and upload certain documents. Proposers acknowledge and accept full responsibility to ensure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Proposer's possession and the version maintained by the Issuing Department the version maintained by the Issuing Department shall govern.
2. All proposals must be submitted electronically in <https://www.periscopeholdings.com/s2g> in accordance with the County requirements or the County may reject the proposals as nonresponsive.
3. Proposers may modify or withdraw their proposals submitted in <https://www.periscopeholdings.com/s2g> until the RFP closing date and time. The County will only consider the latest version of the proposal submitted through <https://www.periscopeholdings.com/s2g>.
4. Proposers should allow adequate time to submit proposals electronically. Submission of a proposal may not be instantaneous and may be affected by several events, such as temporarily losing connection to the internet.
5. Proposers are solely responsible for ensuring their responses are completed and submitted electronically in <https://www.periscopeholdings.com/s2g> prior to the closing date and time for this RFP.
6. The County has the capability of viewing documents submitted in the following formats: Microsoft Word, Microsoft Excel, portable document format file (PDF) only.
7. If the County is unable to open a file due to a virus or because the file has been corrupted, the proposal response may be considered incomplete or non-responsive and may be disqualified from further consideration.
8. Electronic proposal submissions may require uploading of electronic attachments. The submission of attachments containing embedded documents or proprietary file extensions is prohibited. Each document should be attached as a separate file.
9. All information submitted is subject to disclosure under the California Public Records Act as specified above.

H. ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS

In submitting a response to a solicitation issued by the County, the responding person and/or entity offers and agrees that if the response is accepted, it will assign to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by

the responding person and/or entity for sale to the County pursuant to the solicitation document. Such assignment shall be made and become effective at the time the County tenders final payment to the responding person and/or entity.

I. COUNTY RIGHTS

The County reserves the right to do any of the following at any time:

1. Reject any or all proposal(s).
2. Waive or correct any minor defect, irregularity or error in a proposal or the RFP process.
3. Request that Proposers supplement or modify all or certain aspects of their proposals or other documents or materials submitted.
4. Terminate the RFP, and, at its option, issue a new RFP.
5. Procure any equipment or services specified in this RFP by any other means.
6. Modify the selection process, the specifications or requirements for materials or services, or the contents or format requirements for proposals.
7. Extend a deadline specified in this RFP, including deadlines for accepting proposals.
8. Accept proposals through other sources (besides Periscope Holdings) and beyond the due date and time at its sole discretion.
9. Negotiate with any or none of the Proposers.
10. Modify in the final agreement any terms and/or conditions described in this RFP.
11. Terminate failed negotiations with a Proposer without liability and negotiate with other Proposers.
12. Disqualify any Proposer on the basis of a real or apparent conflict of interest or evidence of collusion evaluated by the County.
13. Eliminate, reject or disqualify a proposal of any Proposer who is not a responsible Proposer or fails to submit a responsive offer as determined solely by the County; and/or
14. Accept all or a portion of a Proposer's proposal.

J. PROTEST PROCESS

The County's Protest Process is located on the [Procurement Department's website](#) and is [linked here](#).

VI. PROPOSER'S SUBMISSION

This section contains requirements and relevant information Proposers should use for the preparation of their proposals. Proposers should thoroughly respond to each requirement. Proposals shall be submitted on a letter size format (8½" by 11") in size 12-font. Any smaller font size will not be considered. Proposers wishing to respond to the RFP must supply to the County the following information in the **order listed below** (organized in tabs as Tab A through Tab D) by the RFP deadline for submission. Within each Tab section of the proposal, Proposer must address the requirements in order in which they appear in this RFP. Proposer shall complete and include applicable Appendices that need to be followed, used, completed and/or signed and attached in a specific Tab section.

Tab A – LETTER OF TRANSMITTAL

Company Information

Each proposal received should include a letter of transmittal and table of contents. The letter of transmittal should do all of the following:

1. **Date** – of proposal submitted.
2. **Legal Name of Submitting Proposer** – identify the Proposer's legal name, primary business address, (headquarter location if different from primary business address), phone numbers of the principal office (headquarters) and local office.
3. **Type of organization** – identify the type of organization, e.g., corporation, partnership, sole proprietorship, limited liability company.
4. **Contact Information** – identify the name, title, telephone number(s), and email address of a person to be contacted by the County regarding the proposal.
5. **Contract Negotiation and Authorization** – identify the name, title, telephone number(s), and e-mail address of the person authorized to negotiate and to sign a contract that will contractually bind and obligate the Proposer.
6. **Be signed** – by the person authorized to contractually obligate the organization.
7. **Acknowledge** – acknowledge receipt of any and all addenda to this RFP. (Appendix D)
8. **Proprietary/Confidential** – identify all sections of the proposal that the Proposer claims contain "proprietary" or "confidential" information.
9. **Executive Summary** – which should be a one or two-page summary intended to provide overview of the significant business features of the proposal.
10. **Intent to Respond** – include in the proposal after you have submitted this Appendix A by the deadline. (Appendix A)

Tab B – PROPOSERS CORPORATE INFORMATION

Proposer's Team

1. PROPOSER'S EXPERIENCE AND OTHER INFORMATION

Proposers should provide the following information:

- a. **Jurisdiction** – the name of the jurisdiction in which the Proposer is organized and the date of such organization.
- b. **Length of time** – the Proposer has been providing the proposed goods and/or services.
- c. **Description of the Proposer** – provide a short description of the primary services provided by the Proposer, background, organization, including names of principals, number of employees, client base, areas of specialization and expertise, any other information that will assist the Evaluation Committee in formulating an opinion about the stability and strength

of the organization and any other information that will assist the Evaluation Committee in formulating an opinion about the stability and strength of the organization.

- d. **Disclosure** – provide a complete disclosure if Proposer, its subsidiaries, parent, other corporate affiliates, or subcontractors have defaulted in its performance on a contract during the past five years which has led the other party to terminate the contract. If so, identify the parties involved and the circumstances of the default or termination. If there are no such incidents, then indicate this to the best case and sign/date the statement.
- e. **Lawsuits** – a list of any lawsuits filed against the Proposer, its subsidiaries, parent, other corporate affiliates, or subcontractors in the past five years and the outcome of those lawsuits. Identify the parties involved and circumstances. Also, describe any civil or criminal litigation or investigation pending.
- f. **Relevant Experience** – a statement of relevant experience. The Proposer should thoroughly describe, in the form of a narrative, its experience and success as well as the experience and success of its subcontractors, if applicable, in providing and/or supporting the proposed solution.
- g. **Sub-consultants** – identify all sub-consultants that Proposer may use in the performance of the contract. Include the sub-consultant’s company name, business address, headquarters location, and all office locations relevant to the proposed services. Explain what services the sub-consultants will provide. Provide resumes for staff of sub-consultant (maximum one page per individual). If no sub-consultants will be used, then state: “No sub-consultant will be utilized in the performance of the contract.”

2. **FINANCIAL STABILITY/PROPOSER FINANCIAL INFORMATION**

Proposers should submit copies of the most recent years independently audited financial statements, as well as those for the preceding three years, if they exist. The submission should include the audit opinion, balance sheet, income statement, retained earnings, cash flows, and notes to the financial statements. If independently audited financial statements do not exist for the Proposer, the Proposer should state the reason and, instead, submit sufficient information for example Dun and Bradstreet report or any other supporting document to enable the Evaluation Committee to determine the financial stability of the Proposer.

Proposers should provide this information with their proposal and not defer submission to a later date. The Procurement Officer may request, and the Proposer should supply any additional financial information requested in a timely manner.

3. **PAST PERFORMANCE (REFERENCES)**

The Proposer’s submittal should include at least three (3) different external references using (Appendix B) clients who have completed same or similar programs in the last three (3) years, who are willing to validate the Proposer’s past performance on similar programs of size and scope. **References are preferred to be of previous or existing public sector clients.** The minimum information that should be provided for each client reference follows:

- a. Name of the contact person
- b. Name of the company or governmental entity
- c. Address of the contact person
- d. Telephone number of contact person
- e. Email address of the contact person
- f. Dates the services were provided

g. A description of the services provided and.

4. INDEMNITY AND INSURANCE REQUIREMENTS

Proposers should provide a certificate(s) of insurance or a copy insurance declaration page(s) with their proposals as written evidence of their ability to meet the insurance certificate and other applicable County insurance requirements in accordance with the provisions listed in the County Insurance Requirements Exhibit of the RFP. In addition, Proposers should provide a letter from an insurance agent or other appropriate insuring authority documenting their willingness and ability to endorse their insurance policies naming the County as an additional insured.

5. TERMS AND CONDITIONS

If Proposer objects to any of the County's terms and conditions listed in the County of Santa Clara Standard Terms and Conditions Exhibit and/or any other contract exhibits included in this RFP, Proposer must indicate their objection and reason for their objection. Proposer should also propose specific alternative language. The County may or may not accept the alternative language. The County will not accept general references to the Proposer's terms and conditions or attempts at complete substitutions. Proposer should provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

In addition, Proposer must submit with their proposal any additional terms and conditions that they propose to have included in the contract negotiated with the County. Proposer must provide specific proposed wording and a brief discussion of the purpose and impact, if any. Proposer must also include any applicable required agreement, such as license, service level, maintenance, etc.

Failure to specifically object to terms and conditions, propose additional terms or conditions, or provide any additional required agreement may be deemed by the County as a waiver of such items. (Please provide signed Appendix C Proposer's Acknowledgement in this section)

Tab C – INFORMATION REGARDING PROJECT SCOPE REQUIREMENTS, EXPERIENCE AND PRICING

As outlined in Section II the Department will actively seek help from the Marketing consultant to secure cash/trade sponsorships, provide public relations, promote and provide active website/social media engagement, and solicit free promotions.

1. Scope of Work (SOW)

This section is for the Proposer to discuss its experience needed for the work as outlined in Section II. Proposer must provide a narrative response that the consulting firm is thoroughly familiar with the scope of work, understands the methodology, strategy, and tools to perform required services for ROI, sponsorships, PR, social media, public awareness/education, and advertisement for parks' visitation at off-peak times or seasons. Please follow Section II and elaborate on the: 1. Return on Investment (ROI); 2. Increase Public Awareness; 3. Advertising; 4. Social Media; and 5. Parks' Visitation at Off-peak-times or Seasons.

2. Past Performance & Experience with Media Outlet Affiliates within the County

Describe your experience working with media outlet affiliates within the Santa Clara County (negotiated free advertising with media outlet affiliate for any of Santa Clara County public agency, and the estimated value of such free advertisement.

3. Public Outreach & Meeting Facilitation

Describe relevant experience team members (principal, project manager, and support team of sub-consultants) have public outreach and meeting facilitation skills with similar projects for a public agency.

4. Proposer's Experience with Parks

Provide relevant information about past performance, experience working with parks public agencies. In addition, please provide a list of no more than three (3) similar projects completed by the Proposer for a public agency as a prime consultant. Include the contract amount for each project, brief description of each project, and explain how were these projects similar to proposed projects for the County.

5. Hourly Rates

State the current hourly rates of the Project Principal, Project Manager, other staff who would be assigned to the County's Project team, and any sub-consultants who may perform work on this contract.

6. Contractor Travel Costs

If travel by vendors, contractors, and professional consultants (hereafter referred to as Contractors) will be required or requested by the County and the County agrees to compensate the Contractor for travel costs, any travel costs for Contractors must be incorporated into the rates or pricing schedule charges in the contract. These rates or pricing schedule must be agreed upon by the County and Contractor. The County will not reimburse itemized travel costs.

Tab D – PROPOSER'S DECLARATION

Proposer should complete the Declaration of Local Business Form (Appendix F), Declaration of Submittal Form (Appendix G) containing Non-Collusion Declaration, Declaration of Compliance with Equal Opportunity/Nondiscrimination, Wage Theft Prevention, and the Declaration of Intent to Comply with County COVID-19 Requirements.

Appendix A
Intent to Respond

*[Include Appendix A in **Tab A** of your proposal after you have submitted this Appendix by the deadline as indicated in Section III. Schedule of Events]*

Proposers intending to respond to the solicitation must submit this “Intent to Respond”, to the Procurement Officer by the deadline specified in Section III. This Intent to Respond must be submitted through <https://www.periscopeholdings.com/s2g>.

The contact information provided below will be used to transmit information and updates from the County of Santa Clara (“County”) as may be required or needed during the proposal process. You acknowledge, accept and understand that all transmittals from the County to you (including any and all RFP Addenda) will be provided through <https://www.periscopeholdings.com/s2g>. The County will have no obligation to provide materials to you by any other means.

We/I, _____, intend to submit a response to the County of Santa Clara Request for Proposal eRFP-PRK-FY23-0503. for Marketing/Media Consulting Services for Various Projects for Santa Clara County Parks and Recreation Department. We/I determine that we/I have sufficient information as obtained from the solicitation documents to enable us to submit a proposal to the County.

Signature of Authorized Representative of Proposer

Date Signed

Name and Title of Authorized Representative

Company Name (Proposer)

Address

Phone Number(s)

Email Address

End of Appendix A

Appendix B Client References

*[Include Appendix B in **Tab B**]*

REFERENCE 1

Name of the Contact Person: _____ Project Name: _____

Name of the company or government entity: _____

Address of the contact person: _____

Phone number of contact person: _____

Email address of the contact person: _____

Dates the services were provided: from _____ to _____

Description of the services provided: _____

REFERENCE 2

Name of the Contact Person: _____ Project Name: _____

Name of the company or government entity: _____

Address of the contact person: _____

Phone number of contact person: _____

Email address of the contact person: _____

Dates the services were provided: from _____ to _____

Description of the services provided: _____

REFERENCE 3

Name of the Contact Person: _____ Project Name: _____

Name of the company or government entity: _____

Address of the contact person: _____

Phone number of contact person: _____

Email address of the contact person: _____

Dates the services were provided: from _____ to _____

Description of the services provided: _____

End of Appendix B

Appendix C
Proposer's Acknowledgement

*[Include Appendix C in **Tab B**]*

By this Acknowledgement, the undersigned declares the following under penalty of perjury under the laws of the State of California.

1. The Proposer is ready, willing, and able to meet all terms and conditions of the County of Santa Clara's ("County") sample templated Professional Services Agreement ("PSA") as attached is Attachment 1).
2. All statements in the Proposer's response to this RFP are true and correct.
3. The undersigned declares that he or she is an official/agent of responding firm, company or individual and is empowered to represent, bind, and execute contracts on behalf of the firm, company or individual.
4. The Proposer has full knowledge that any knowingly incomplete, false, or dishonest response may be grounds for denial or revocation of the proposal and may result in the County barring the Proposer from submitting further proposals or contracting with the County, and/or other legal consequences.

Company Name (Proposer)

Signature of Designated Authorized Representative

Name and Title of Authorized Representative

Date of Signature

End of Appendix C

Appendix D
RFP Addenda Acknowledgement of Receipt

*[Include Appendix D in **Tab A**]*

By Signing this Acknowledgement, Proposer represents, certifies, acknowledges and agrees that Proposer has received any and all Addenda to the Request for Proposal.

Name of
Proposer: _____

Proposer's or Authorized Representative
Signature: _____

Proposer's Name & Title
(Print): _____

Date Signed: _____

End of Appendix D

B-2 (Revised) INSURANCE REQUIREMENTS FOR
STANDARD CONTRACTS ABOVE \$100,000

Indemnity

The Contractor 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 Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole 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 Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor 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 Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

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

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

B. Qualifying Insurers

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

EXHIBIT B-2 (revised)

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. Products/Completed Operations aggregate - \$2,000,000
- d. Personal Injury - \$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Personal Injury liability
- d. 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

EXHIBIT B-2 (revised)

additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

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. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

EXHIBIT B-2 (revised)

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 of Appendix E

Appendix F

Declaration of Local Business

*[Include Appendix F in **Tab D**]*
*(Check one: **main** Proposer only, not the subs)*

Local business: Yes (complete below) No (go to Appendix G)

Santa Clara County gives local businesses a preference in formal solicitations of goods and services as set forth in the Board Policy, Section 5.6.5.2. A Proposer has the option of qualifying for the preference by self-declaring its qualification as a “local business.” By signing below, a Proposer is certifying its qualification as a “local business” for purposes of application of Santa Clara County’s policy and is deemed to be applying for the local preference.

All information submitted is subject to investigation, as well as to disclosure to third parties under the California Public Records Act. Incomplete, unclear, or incomprehensible responses to the following will result in the proposal not being considered for application of Santa Clara County’s local preference policy. False or dishonest responses will result in rejection of the proposal and curtail the firm or individual’s ability to conduct business with the County in the future. It may also result in legal action. Provide the complete physical address of your business with meaningful “production capability” located within the boundary of the County of Santa Clara. The term “production capability” means the term “production capability” means sales, marketing, manufacturing, servicing, provision of services, or research and development capability that substantially and directly enhances the Proposer’s ability to perform the proposed contract. Post Office box numbers, residential addresses, a local sales office without any support and/or a local subcontractor hired by the contractor may not be used as the sole basis for establishing status as a “Local Business.” If you have more than one physical address in Santa Clara County, please provide an attachment with all of the addresses in the form specified below.

Please Indicate Business Organization (Check One)

- | | |
|--|--------------------------------------|
| <input type="checkbox"/> Individual Proprietorship | <input type="checkbox"/> Corporation |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Other |

By filling this form Proposer declares its qualification as a local business as defined in County of Santa Clara Board Policy, Section 5.6.5.2. The undersigned declares that he or she is an official/agent of responding firm, company or individual and is empowered to represent, bind, and execute contracts on behalf of the firm, company or individual.

The undersigned declares under penalty of perjury, under the laws of the State of California, that all statements in this Declaration and response are true and correct, with full knowledge that all statements are subject to investigation and that any incomplete, unclear, false or dishonest response may be grounds for denial or revocation of the accompanying proposal and may result in being barred from doing business with Santa Clara County as well as additional legal consequences.

Company Name (Proposer)

Signature of Designated Authorized Representative

End of Appendix F

Appendix G Declaration Submittal Form

*[Include Appendix G in **Tab D**]*

| | |
|---|--|
| Solicitation No: | Solicitation Title: |
| Legal Company Name (include dba as if applicable): | Federal Tax Identification Number: |
| Type of Business (Check One): <input type="checkbox"/> Individual Proprietorship <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other: _____ | Company Address: If declaring Local Business (Appendix F), address must be in Santa Clara County): |
| Company Contact Person: | Company Internet Web Address: |
| Email Address: | Phone Number: |
| <p>NON-COLLUSION DECLARATION</p> <p>The party making the foregoing proposal declares that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the Proposer has not in any manner directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Proposer or any other Proposer, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the Proposer has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a</p> | |

collusive or sham bid.

DECLARATION OF COMPLIANCE WITH EQUAL OPPORTUNITY/NONDISCRIMINATION AND WAGE THEFT PREVENTION

The County of Santa Clara does not tolerate acts of discrimination or wage theft as defined below. Accordingly, Santa Clara County Board of Supervisors’ Policy Manual, Section 5.5.5.4, includes the following:

Equal Opportunity/Nondiscrimination

No party contracting with the County will discriminate against any subcontractor, employee, or applicant for employment, because of age, race, color, national origin, ancestry, religion, sex, gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status with respect to recruitment, selection for training including apprenticeship, hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. It is further the policy of the County that no party contracting with the County may discriminate in the provision of services under the contract because of age, race, color, national origin, ancestry, religion, sex, gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

It is the policy of the County that parties contracting with the County must comply with all applicable federal, state, and local pay equity laws, including, but not limited to, the Federal Equal Pay Act, Title VII of the Civil Rights Act of 1964, the California Fair Pay Act, and the California Fair Employment and Housing Act. A potential contractor that has submitted a formal bid to provide goods and/or services to the County may be disqualified if the potential contractor has been found, by a court, arbitrator, arbitral panel, or a final administrative action of an investigatory government agency, to have violated applicable pay equity laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court, arbitrator, arbitral panel, or final administrative action of an investigatory government agency to have violated applicable pay equity laws, in the five years prior to or during the term of the contract with the County, may be in material breach of its contract with the County if the violation is not fully disclosed and/or satisfied per County guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan. Pay equity violations disclosed by a contractor or potential contractor will be assessed on a case-by-case basis in light of the totality of the circumstances, including whether the violation is serious, repeated, willful, and/or pervasive, the size of the contractor, and any mitigating factors.

Wage Theft Prevention

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

remediation plan.

Please complete the certification below:

- Check mark here if Proposer has no violations to disclose pursuant to Board Policy Manual § 5.5.5.4.
- Check mark here if Proposer has been found by a court or final administrative action of an investigatory government agency to have violated federal, state, or local wage and hour laws within the last five (5) years.
- Check mark here if Proposer has included in the proposal response the following for each violation: (1) a copy of the court order and judgment and/or final administrative decision; and (2) documents demonstrating either that the order/judgment has been satisfied, or, if the order/judgment has not been fully satisfied, a written and signed description of Proposer's efforts to date to satisfy the order/judgment.

DECLARATION OF INTENT TO COMPLY WITH COUNTY COVID-19 REQUIREMENTS

The County of Santa Clara requires contractors and subcontractors to comply with all County requirements relating to COVID-19 for their personnel who routinely perform services for the County onsite and share airspace with or proximity to other people at a County facility as part of their services for the County, including but not limited to vaccination, as applicable and periodically updated, and available at <https://procurement.sccgov.org/doing-business-county/contractor-vaccinations>. Proposer acknowledges that if awarded a contract resulting from this solicitation, Proposer and any subcontractors (at any tier) shall, for the duration of the contract, comply with the County's COVID-19 vaccination mandate and other workplace safety protocols (e.g., masking) as set forth in the COVID-19 REQUIREMENTS contract term in the contract template incorporated into this solicitation. All contractors subject to the vaccination requirement must certify their compliance with the vaccination mandate using the form available on the website.

The undersigned declares that he or she is an official/agent of responding firm or individual and is empowered to represent, bind, and execute contracts on behalf of the firm or individual. The undersigned declares under penalty of perjury, under the laws of the State of California, that all statements in this Submittal Form and response are true and correct, with full knowledge that all statements are subject to investigation and that any incomplete, unclear, false or dishonest response may be grounds for denial or revocation of the accompanying bid or proposal and may result in being barred from doing business with the County of Santa Clara as well as additional legal consequences.

| | |
|--|--------------------|
| Proposer's Authorized Representative Signature: | Print Name: |
| Title: | Date: |

Revised 1.10.22

End of Appendix G

Attachment 1
Sample Template
Professional Services Agreement ("PSA")



sample

PROFESSIONAL SERVICES AGREEMENT (PSA) for

Marketing Consulting Services

Between

THE COUNTY OF SANTA CLARA

And

???? Consultant

EFFECTIVE DATE: ??/??/2023

[dba = doing business as]

County of Santa Clara

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PROFESSIONAL SERVICES AGREEMENT FOR
MARKETING CONSULTING 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 **Consultant, (doing business as "???)**, with its principal place of business located at ?????? (hereinafter "Consultant"). Consultant and County are each "Party" and collectively the "Parties" to this Agreement.

- 1.01** WHEREAS, County desires to hire Consultant under a Professional Services Agreement for Marketing Consulting Services (hereinafter referred to, interchangeably, as "PSA" or "Agreement") for various Marketing Consultant Services (hereinafter "Services") on an as-needed basis; and
- 1.02** WHEREAS, County selected Consultant by means of the County's consultant selection process, based on Consultant's representation that Consultant is a professional having the requisite qualifications and expertise to perform the Services for various projects; and
- 1.03** WHEREAS, considering Consultant's prior experience and qualifications in this area, County desires to have Consultant provide such professional services and Consultant agrees to perform the Services.
- 1.04** WHEREAS, this Professional Services Agreement (hereinafter referred to, interchangeably, as "PSA" or "Agreement") sets forth the terms and conditions pursuant to which Consultant will provide Marketing Consulting Services and Deliverables (hereinafter referred to, interchangeably, as "Services" or "SOW" or "Scope 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, interchangeable, 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 the County.
- 1.05** Consultant will perform such Services pursuant to separately issued Project Agreements issued by County pursuant to this PSA. The County, 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** 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 sub-consultants and employees, if any; and (7) process for coordination between Consultant and County and communication of relevant approvals and decisions.

Definitions: Capitalized terms found in this PSA are defined within this PSA herein below or



elsewhere in this PSA.

Services and Deliverables: 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: Specific points along a project timeline identifying goals for project completion. 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.

Maximum Compensation Limit (MCL)

The sum of all Project Agreements issued pursuant to this PSA shall not exceed ?????? Dollars (\$00) (“Maximum Compensation Limit” or “MCL”). If Consultant performs Services or incurs expenses beyond the amount authorized in a 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, amounts owed or expended.

2.02 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 ??/??/2028. 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.

2.03 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 Project Agreement 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 FEES

3.01 County Provide Information

- A. If required for a PA project the County may provide, or direct the Consultant to provide, any of the following for Consultant’s use in connection with the Services and Deliverables: Specialized studies of existing site conditions, including the presence of hazardous materials, integrity and functionality of structural, HVAC, and electrical systems, soil, air, water, pollution, traffic, noise, archaeology, environmental impacts, etc.
- 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 the need for any study or survey that the Consultant believes is required for the PA Project that is not included within Consultant’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 a "Governmental Agency").

PART 4 - PROJECT AGREEMENTS (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 CAR designated manager is responsible for overseeing this PSA and each PA issues within on behalf of the County of Santa Clara Parks and Recreation Department.
- C. County hereby approves all PAs executed by CAR within the limits of this PSA. CAR does not have the authority to negotiate or authorize payments or scope beyond the Maximum Compensation Limit or scope stated 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 advise County in writing 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 AR and Consultant's compensation will be subject to a commensurate reduction in compensation.

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

5.01 Consultant as Independent Contractor

Consultant is performing and providing all Services and Deliverables 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 Agreement, 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 E of this PSA only with the prior written approval 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. 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.

B. Equal Opportunity/Nondiscrimination

Consultant shall comply with all applicable federal, state, and local laws and regulations including the County's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964, as amended; Americans with Disabilities Act of 1990; the Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Consultant shall not discriminate against any subconsultant, subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status including but not limited to in recruitment, selection for training, apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Consultant shall not discriminate in provision of services provided under this PSA because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

5.04 Services – General Scope of Work

- A. Recognizing the increasing need to provide recreational and open space opportunities the Department actively invests in essential capital improvements and continues to educate the public about events, recreational opportunities and conservation efforts within the parks system. The Department's goal is to meet the needs of a diverse customer base while managing the parks system in a sustainable manner. That requires creative approaches to host community events and programs designed to increase visitor attendance and provide unique ways for the residents to enjoy the County parks system. To that end, the Consultant shall, pursuant to individual County-issued Project Agreements, perform marketing consultant services, including but not limited to the following, as needed:
 - a. Consultant shall actively assist the County in locating, developing and implementing programs and marketing efforts to secure trade sponsorships, provide public relations, promote and provide active website/social media engagement, and solicit free promotions. The objective is to:

- i. Reduce costs associated with production and promotion of such Department’s sponsored special events;
 - ii. Increase attendance in County parks using tools such as social media, advertising, website, etc.; and
 - iii. Inform and educate the public about the benefits of recreating in the parks.
 - b. The following outlines, in additional detail, the objectives and goals of the County which will be addressed pursuant to County issued Project Agreement(s), as needed:
 - i. Return on Investment (ROI) – Consultant shall develop and assist the County in implementing strategies and methodologies to reach and obtain corporate sponsors for various County sponsored events, inclusive of critical elements of a sponsorship campaign. Consultant shall help County assess and identify the County’s unique “selling” points and position; determine the most appropriate communication and marketing strategies that will provide the highest return on investment; and, implement those marketing strategies that guarantee a ROI of at least three to one.
 - ii. Increased Public Awareness – Consultant shall develop and assist the County in implementing strategies and tools, especially social media, to be used to influence public awareness, including the development of measurable analytics tools to provide the County a sense that the public relations effort are working, and “Public Awareness of County Parks” is heightened.
 - iii. Advertising – Consultant shall develop and assist the County in implementing strategies and tools to leverage potential media outlet affiliates within Santa Clara County and within the San Francisco Bay Region in a marketing campaign for the Department. Develop measurable analytics, evaluation tools, key indicators and milestones that demonstrate or quantify how a campaign was successful or not successful.
 - iv. Social Media Campaign – Consultant shall develop and assist the County in implementing successful social media campaigns.
 - v. Parks’ Visitation – Consultant shall develop and assist the County in implementing methodologies and approaches that could work to increase park visitation including but not limited to peak-time, off-peak-time, or seasons.
 - c. Other related marketing consulting services pursuant to individual County-issued Project Agreements, as needed.
- B. Provide and distribute on a timely basis all progress reports as directed by the County’s Project Manager.
- C. Provide a final signed report to the County’s PA Project Manager, where required by the CAR or as otherwise stated in the PA.
- D. 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.

- E. 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.
- F. When a particular phase of Services is authorized in an individual Project Agreement, Consultant must provide his 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 falls 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 within the time and project schedule stated in the Project Agreement, including milestones, if any. Consultant shall perform his Services expeditiously and on budget.
- 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 B 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 - COMPENSATION & PAYMENT

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

9.01 Maximum Compensation Limit (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, and compensation for which will not exceed the specified PA MCL. The total maximum compensation limits of all Project



Agreements under this PSA cannot exceed the PSA Maximum Compensation Limit (“MCL”) and if they do, then Consultant shall be solely responsible and liable for such excess amount without any obligation of the County to reimburse Consultant for such excess amounts.

9.02 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 Bay Area and the increased cost of providing the Service. 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 amendment shall explain the reason for the modification and if the modification is an increase in the rate(s). The amendment shall also include the justification for the increased cost of providing the Service.
- C. Sub-consultant’s hourly rates are subject to approval by the CAR and documented in a Project Agreement. 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.

9.03 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.

9.04 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.

9.05 Reimbursable Expenses

- A. When travel is 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 costs 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 Total Compensation Limit of any Project Agreement (if authorized in the PA):

1. Extra-ordinary “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 must be part of the PA MCL identified in the PA and not an amount that is in addition to such PA MCL amount.

9.06 Payment

A. Payment Requests

The payment Term is **Net 30** (payment(s) will be made 30-days after the County’s approval of the Consultant’s correct Payment Request (invoice).

B. Invoices

Consultant will submit hard copy of the Payment Requests 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.

9.07 Release of All Claims

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

9.08 Timely Billings

A. Consultant agrees to bill County on a timely basis and not later than ninety (90) Calendar Days after:

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 above-stated accounting and audit requirements into all subcontracts exceeding Five Thousand Dollars (\$5,000) in value.

9.09 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.

C. 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, or affecting any changes or modifications to this PSA or any PA.

PART 10 - TERMINATION

10.01 County's Rights

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 Project Agreement, or if Consultant fails to fulfill in a timely and proper manner his obligations pursuant to this PSA or any Project Agreement, and does not cure such failure or violation within thirty (30) calendar days, or such shorter period as the County may determine is necessary and appropriate, after receipt of written notice from County's Authorized Representative specifying such failure or violation, County may terminate this PSA and any or all Project Agreements.
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, which is allowed by this PSA for a termination for convenience.

10.02 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 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 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 County's direction, assigning to 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 County.
 7. Taking such action as may be necessary, or as 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.

10.03 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 his 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.

10.04 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 his records, if authorized by County.

PART 11 - DISPUTE RESOLUTION

11.01 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 his 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 12 - MISCELLANEOUS PROVISIONS

12.01 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 or Deliverables; or
 4. Titles of other documents.
- B. Unless otherwise indicated, **highlighted**, **emboldened**, *italicized* or underlined, any text is not indented to 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.

12.02 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.

12.03 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.

12.04 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.

12.05 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 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 County or as a result of the use of premises leased, owned, or contracted for by 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 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 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 County, or on termination or suspension of this PSA or any PA. Consultant may retain a copy for its records, if

authorized by County.

12.06 Reliance

- A. County may rely on the accuracy and technical quality of documents provided by Consultant or by or through Consultant or his 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, but 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.

12.07 Smoking Prohibited

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

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

- A. **Compliance with All Other 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 subcontractor, 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 it has disclosed any final judgments that (1) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (2) found that Consultant violated an applicable wage and hour law or pay equity law. Consultant further affirms that it has satisfied and complied with or has reached Agreement with the County regarding the manner in which it 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 him 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 him 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 (1) at least once in the first year of this Agreement and annually thereafter, provide each of his 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 (2) 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 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 it 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.

12.09 Contracting Principles.

Consultant agrees to comply with the County’s Contracting Principles set forth in the Board Policy Manual. The Contracting Principles require, among other things, that Consultant be a fiscally responsible entity and treat his 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.

12.10 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.

12.11 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.



12.12 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.

12.13 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 the Consultant Representatives to fully cooperate, in connection with the prosecution or defense of any such legal proceedings.

12.14 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 his own cost, liability and expense to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County at least two (2) days before the County deadline to respond to the CPRA request. If Consultant fails to obtain such a remedy before the County responds to the CPRA request, County will disclose the requested information and shall not be liable or responsible for such disclosure. Consultant agrees that it shall defend, indemnify and hold County harmless for, from and against 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.

12.15 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.

12.16 Changes to Scope of Services

On County's reasonable request and prior to making any changes to the Services, 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.

12.17 Subconsultants

If any obligation is performed for Consultant through any Consultant employee, subconsultant, agent, contractor, representative, officer, director, affiliate, parent company or subsidiary (collectively and each, the "Consultant Representatives"), 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 his 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.

12.18 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.

12.19 Conflict of Interest

- A. Consultant represents and warrants that (1) no official or employee of County has been employed or paid by him 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 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 his 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 his own behalf and on behalf of his subconsultants, further covenants that, in the performance of this PSA, he and his 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 subcontractors, 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 it is 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.

12.20 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.

12.21 Entire PSA – Governing Language

This PSA constitutes the entire agreement by and between the parties with respect to the subject matters hereof, and supersedes all prior understandings and agreements relating thereto. This PSA comprises the complete and final expression of the rights, obligations, duties, and undertakings of the parties and sets forth all consideration, covenants, understandings and



inducements pertaining thereto. Any translation of this PSA is done for local requirements and in the event of a dispute between the English and any non-English version, the English version of this PSA shall govern. No alteration, amendment, waiver, cancellation or other change in any term or condition of this PSA shall be valid or binding on either party unless the same has been agreed to in writing and signed by both parties. Each party represents and warrants that f/he has executed this PSA freely, fully intending to be bound by the terms and provisions contained in this PSA.

12.22 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.

12.23 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.

12.24 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.

12.25 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 express written consent of the County.

12.26 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.

12.27 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 subcontractors, where the contract value is \$100,000 or more ("Direct Services Contract"), must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair work week, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If Consultant and/or a subcontractor violates this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following: (a) Suspend, modify, or terminate the Direct Services Contract; (b) Require the Consultant and/or Subcontractor to comply with an appropriate remediation plan developed by the County; (c) Waive all or part of Division B36 or the Living Wage Policy. This provision shall not be construed to limit an employee's rights to bring any legal action

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

12.28 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 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.

12.29 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.

12.30 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 to him 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.

12.31 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 his 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.

12.32 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 his 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.

12.33 Debarment

Consultant represents and warrants on behalf of itself and his 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.

12.34 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.

12.35 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.

12.36 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.

12.37 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 his obligations under this PSA.
- B. Consultant has the full right, power and lawful authority to enter into this PSA and his execution and delivery of this PSA by him or on his behalf has been fully authorized by all requisite actions.
- C. Consultant has provided County with true and correct copies of documentation reasonably acceptable requested by acceptable to County designating the parties authorized to execute this PSA on his behalf.
- D. Consultant's execution, delivery and performance of his obligations under this PSA will not violate any applicable laws, regulations, or rules nor to his knowledge after due inquiry, constitute a



breach or default under any contract, agreement, or instrument to which he 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 of or trustee for him or any substantial part of his property, or commenced any proceeding relating to him 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 him any proceeding of the nature described in the first sentence of this subsection. No order for relief has been entered with respect to him under the Federal Bankruptcy Code.
- F. All documents, instruments, and other information delivered by Consultant to the County pursuant to 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, subcontractors or consultants.
- G. This PSA, when executed by him 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 his receipt of knowledge that any fact or condition which would cause any warranty or representation made by him 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.

12.38 County Reliance and Consequential Damages

Acceptance by County of the Services (in whole or in part) performed under this PSA 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.

12.39 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.

12.40 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.

12.41 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.

12.42 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.

12.43 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 purchase order and SOW 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.

12.44 Transitions Rights

Upon a complete or partial termination of this Agreement or SOW(s) and related purchase order(s) 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 Agreement 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 the applicable SOW and related purchase order. 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 and the County Representatives 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.

12.45 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.

Cap on County Damages. 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.

12.46 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 be performed 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 it 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.

12.47 Taxes

Responsibility for Taxes. Each Party will be responsible for any taxes on property he owns or leases, for any franchise or privilege tax on its/his business, and for any tax based on its/his 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.

12.48 Late Payment Charges or Fees

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

12.49 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. The packing list shall contain, without limitation, the applicable contract release purchase order number.

Unless otherwise specified in writing, all shipments by Consultant to County will be **Freight on Board (F.O.B.)** point of destination. Freight or handling charges are not billable unless such charges are referenced on the order. Transportation receipts, if required by contract release purchase order, must accompany invoice. Regardless of F.O.B. point, Consultant shall bear all risks of loss, injury, or destruction to Deliverables and materials ordered herein which occur prior to acceptance by County; and such loss, injury or destruction shall not release Consultant from any obligation hereunder. Any shipments returned to the Consultant shall be delivered as F.O.B. shipping point.

12.50 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.

12.51 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 his 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.

12.52 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.

12.53 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.

12.54 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.

12.55 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).

12.56 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.

12.57 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.

12.58 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.

12.59 Survival

Those sections and provisions of this PSA that by their nature should survive termination, cancellation or expiration of this PSA, shall so survive, and each Subpart and Subsection contained therein.

PART 13 - 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 14 - 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 15 - 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, "Insurance Requirements"
3. Exhibit C, "Sample Project Agreement (PA)"
4. Exhibit D, "Sample Invoice Format"
5. Exhibit E, "Consultant's Staff & Subconsultants"
6. Exhibit F, "Notices"
7. Exhibit G, "Nondisclosure Agreement" (to be signed at same time PSA is signed)"
8. Exhibit H, "Contractor Certification of Compliance with COVID-19 Vaccine Requirements"
9. Exhibit I, "Paper Product and Printing Services Vendor Certification Form"



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PART 16 - SIGNATURES

By signing below, each signatory for a Party warrants and represents that they executed this PSA, in their authorized capacity, that they have the authority to bind the entity or person for whom they sign to contractual obligations and that, by their signature, the entity or person on behalf of which they 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:

Tiffany Lennear
Clerk of the Board of Supervisors

Date

APPROVED AS TO FORM AND LEGALITY:

Elizabeth Vissers
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 CAR shall take effect on the yearly anniversary of the Board of Supervisors' approval 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 SF 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 |
|--|---|---|---|---|---|
| Job Title: | | | | | |
| ???? Project Principal | \$?? | \$?? | \$?? | \$?? | \$?? |
| ???? Project Principal | \$?? | \$?? | \$?? | \$?? | \$?? |
| ???? Project Principal | \$?? | \$?? | \$?? | \$?? | \$?? |
| ???? 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 Principal | \$?? | \$?? | \$?? | \$?? | \$?? |
| ???? Project Principal | \$?? | \$?? | \$?? | \$?? | \$?? |



| 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 Principal | \$?? | \$?? | \$?? | \$?? | \$?? |
| ???? Project Principal | \$?? | \$?? | \$?? | \$?? | \$?? |

| 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 Principal | \$?? | \$?? | \$?? | \$?? | \$?? |
| ???? Project Principal | \$?? | \$?? | \$?? | \$?? | \$?? |

| 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 Principal | \$?? | \$?? | \$?? | \$?? | \$?? |
| ???? Project Principal | \$?? | \$?? | \$?? | \$?? | \$?? |

*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

B-2 (revised) INSURANCE REQUIREMENTS FOR STANDARD CONTRACTS ABOVE \$100,000

Indemnity

The Contractor 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 Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole 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 Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor 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 Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

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

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

B. Qualifying Insurers

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

EXHIBIT B

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. Products/Completed Operations aggregate - \$2,000,000
- d. Personal Injury - \$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Products/Completed
- c. Personal Injury liability
- d. 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

EXHIBIT B

additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

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. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

EXHIBIT B

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 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 County sufficient to draft the PA.)

| PROJECT AGREEMENT NO. ?? TO PSA BETWEEN THE COUNTY OF SANTA CLARA AND ????, Inc. (????) FOR MARKETING CONSULTING SERVICES | | | | | |
|---|-------------|----------------|---------------|--------|------|
| PROJECT TITLE: ?????????????? | | | | | |
| Account Assignmen t | G/L Account | Cost Center | WBS | Amount | Fund |
| ??? | ??? | ??? | WBS 710-????? | \$???? | 00?? |

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 and Project Agreement No. 30 are incorporated into 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 PA 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 ??/??/2028.
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
 - Attachment 5: Listing of Sub-consultants
 - Attachment 6: Contractor Certification of Compliance with COVID-19 Vaccine Requirements
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, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the County.
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 they executed this PA, in their authorized capacity, that they have the authority to bind the entity or person for whom they sign to contractual obligations and that, by their signature, the entity or person on behalf of which they acted executed this PA..
- 11. **COUNTY COVID-19 REQUIREMENTS.** Consultant shall comply with all County requirements relating to COVID-19 for persons who routinely perform services for the County onsite and share airspace with or proximity to other people at a County facility as part of their services for the County, including but not limited to vaccination, as applicable and periodically updated, and available at <https://procurement.sccgov.org/doing-business-county/contractor-vaccinations> and incorporated herein by this reference. If applicable, Consultant shall complete the Contractor Certification of Compliance with COVID-19 Vaccine Requirements (“Certification”), attached hereto as Attachment 6. Consultant shall comply with the requirements of this Section for the entire term of this Project Agreement. Consultant shall comply with all reasonable requests by County for documentation demonstrating Consultant’s compliance with this Section. Failure by Consultant to comply with any of the requirements of this Section (including but not limited to vaccination and masking requirements and completion and submittal of the Certification) is a material breach of this Project Agreement, and the County may, in its sole discretion terminate this Project Agreement immediately or take other action as the County may determine to be appropriate.

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 _____

Name: _____

Title: _____



COUNTY: COUNTY OF SANTA CLARA

By: _____
?????
Director, Parks and Recreation Department

Date

By: _____
?????
County Executive

Date

APPROVED AS TO FORM AND LEGALITY:

Elizabeth Vissers
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 pursuant to PSA

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

1. Services:

2. Deliverables:

III. Supplementary Services pursuant to PSA

[If none, state NA. Otherwise, cite the applicable reference.]

IV. 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.

V. 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 10.03.

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 ??/??/2025 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.

| Tasks | Description of Tasks | Target Date |
|--------|-----------------------|----------------|
| TASK 1 | Project Management??? | J???? 27, 2024 |
| TASK 2 | Fieldwork??? | J???? 27, 2024 |
| TASK 3 | Fieldwork??? | J???? 27, 2024 |
| | | |

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 NTE on time & materials] for Basic Services | \$?? |
| | Contingency Allowance (if allowed) | |
| | Allowance for Reimbursable Expenses ¹ (if allowed) | |
| | TOTAL (Maximum Compensation Limit) | \$?? |

¹ Allowance for Reimbursable Expenses pursuant to PSA Part 9, Section 9.05.

2. PAYMENT TERM

The Payment Term is **Net 30** (payment will be made 30-days after County's approval of the invoice).

3. 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 identifying personnel listed in Exhibit A or E to the PSA 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's and sub-consultant's Fees for performed services will be paid as per PSA Exhibit A Consultant's and sub-Consultant's Hourly Rates.



- f. 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.
- g. County will reimburse only pre-authorized reimbursable expenses at cost consistent with PSA Section 9.05.
- h. Consultant shall not employ sub-consultants, unless approved in advance by County. Any sub-consultants so approved must be appropriate to the complexity and nature of the Project pursuant to the requirements of this PA. Such sub-consultants must be licensed or certified, as appropriate, in the State of California for their particular area of expertise. Consultant is solely responsible for managing and coordinating the work of sub-consultants, and for compensating the sub-consultant for Services and Deliverables provided in accordance with the terms of the PSA and this PA.
- i. **No mark-ups are allowed:** County will not pay any mark-ups for managing and coordinating the Project for any sub-consultants or any other third parties.
- j. **Travel:** County will only reimburse Consultant for travel expenses that are pre-authorized in this Project Agreement. Travel expenses must first be pre-approved and shall only be for costs authorized by County's Travel Policy. No mark ups are allowed.

End Attachment 3 to PA No__



(Continued)

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

CONSULTANT'S STAFF & SUB-CONSULTANTS

- A. Consultant may employ sub-consultants that Consultant deems appropriate to the complexity and nature of the required Services and said sub-consultants 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 sub-consultants pursuant to the terms of the PSA. Upon County's request Consultant must provide copies of all sub-consultant contract agreements to County. Consultant is solely responsible for managing and coordinating the work of sub-consultants, and for compensating sub-consultants for Services and Deliverables provided.
- B. Consultant shall provide the County the names, phone numbers, email addresses and other contact information of each assigned Consultant staff and sub-consultants who will be working on this Project in advance of start of work. Consultant may not replace or add a sub-consultant without County's prior written approval. If Consultant's designated PA Project Manager, or any designated key staff person or sub-consultant, 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.
- C. Consultant represents and warrants that all assigned sub-consultant(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 meet the professional qualifications necessary for the satisfactory performance of the services required. Consultant further warrants and represents that the sub-consultant'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 sub-consultant and Staff contract agreements to County.
- D. Consultant represents, warrants, and agrees that (1) Consultant is solely responsible for managing and coordinating the work and services performed by sub-consultants and staff, (2) Consultant is at all times solely liable and responsible for payment of all sub-consultants and staff, (3) County is not responsible or liable for payment or other obligations to Consultant's sub-consultants and staff, and (4) County is not, nor shall County be considered or alleged to be, an employer of Consultant's sub-consultants or staff.

| List of Sub-Consultants Contacts | Services | Consultant's Team Contacts (Principal's Name; Phone #; Email; Address) |
|----------------------------------|----------|--|
| 1. ??? | ??? | ??? |
| 2. ??? | ??? | ??? |

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 Consultant Project Manager

Date

Signature of County Project Manager

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

CONSULTANT'S STAFF & SUBCONSULTANTS

A. Consultant declares that the following staff will work with the County:

Principal-in-Charge: ???

Project Manager: ???

B. Consultant will employ Sub-consultants he deems appropriate to the complexity and nature of the required Services and said Sub-consultants 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 Sub-consultants pursuant to the terms of the PSA. Upon County's request Consultant must provide copies of all Sub-consultant contract agreements to County.

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

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. Sub-consultants: Firm Name, address, phone, key personnel, email address:

Firm: ???

Ph: 408-???-0000; Cell: 408-???-0000

Email: ???

Address: ???

H. Consultant represents and warrants that the above-named sub-consultant(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 sub-consultant'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 sub-consultant and Staff contract agreements to County.

I. None of the above-named staff or sub-consultants 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 sub-consultants 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 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 – ?????

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

2. Consultant:

????, (dba ????)

Headquarters address: ???? Street, ????, CA ????

Attention: Principal-in-Charge – ????

Phone: 408-??-????; email: ??????

Consultants Working Office: same as above

Project Manager working with the County: ????

Phone: 408-??-????; email: ??????

END EXHIBIT F



EXHIBIT G

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“NDA”) by and between ????? (“Consultant”) and the County of Santa Clara (referred to interchangeably as “County” or “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 the business relationship between the County and the Receiving Party, or for a period of one year following execution of this NDA, whichever is longer. The obligations with respect to the treatment of all Confidential Information that is received under this NDA will survive termination or expiration of this NDA.
2. The Receiving Party will return all Confidential Information received from the County upon termination or conclusion of this NDA. The Confidential Information will remain the exclusive property of the County, and no copies will be made or retained without the written consent of the County.
3. “Confidential Information” will mean any and all tangible and intangible information, whether written, oral or in any other medium, originated by or uniquely within the knowledge of the County and not generally available to third parties. Confidential Information may include, without limitation, any and all network diagrams, network schematics, network and system documentation, network address information, system and device configurations, trade secrets, data captured from a County network or information system, financial information, know-how, designs, methodologies, processes, manuals, marketing information, price lists, customer lists, supplier lists, employee information, facility infrastructure, computer programs, and systems designs.
4. Receiving Party shall review and maintain the Confidential Information in accordance with the following terms and conditions:
 - a. Receiving Party agrees to treat all Confidential Information (as defined above) as confidential and not to disclose the same to any third party. The Receiving Party shall keep the Confidential Information in strict confidence, using the same standard of care as it does with respect to its own Confidential Information, but in no event less than a reasonable degree of care.
 - b. No copies of the Confidential Information shall be made, unless agreed to in writing by the County.
 - c. All of the Confidential Information shall be kept and maintained in a safe and secure place with adequate safeguards to ensure that unauthorized persons do not have access to the Confidential Information. Receiving Party shall, at all times, keep the County informed in writing of the location of the Confidential Information.
 - d. The Receiving Party will permit access to Confidential Information only to individuals authorized in writing by the County and who have a bona fide need to know, provided that



all such persons must be required to comply with the terms of this NDA with respect to such Confidential Information.

- e. The Confidential Information shall be used solely by Receiving Party for the limited purpose stated in this NDA.
 - f. Any oral discussions between the County and Receiving Party that relate to the Confidential Information shall be kept secret and confidential and are deemed to be Confidential Information.
 - g. Upon the request of the County or after the termination of this NDA, Receiving Party shall promptly return all of the Confidential Information including all work products of Receiving Party containing Confidential Information to the County. Receiving Party shall certify that all Confidential Information and copies or extracts thereof have been returned or destroyed.
 - h. Receiving Party shall immediately notify the County in writing of any misuse or misappropriation of the Confidential Information or violation of this NDA that may come to its attention.
 - i. Receiving Party, its agents, employees, representatives, subsidiaries, affiliated, or parent companies shall not, for themselves or for the benefit of any person or entity, other than the County, use, or disclose the Confidential Information whether written or oral, software technology, or otherwise or any portion thereof, for any purpose, at any time or in any place, without the express prior written approval of the County.
5. Confidential Information will not include any information that the Receiving Party can demonstrate that, absent breach of this NDA, was/is:
- a. Publicly known at the time of disclosure by the Disclosing Party, or becomes publicly known through no fault of the Receiving Party;
 - b. Rightfully received from a third party without a duty of confidentiality;
 - c. Already known to the Receiving Party at the time of receiving such Confidential Information or is independently developed by the Receiving Party without reference to the Confidential Information;
 - d. Permitted to be disclosed by written consent of the Disclosing Party; or;
 - e. Required to be disclosed by law or by an order of a governmental agency, legislative body or court of competent jurisdiction; provided that the Receiving Party provides the Disclosing Party with prompt notice of such requirement, so that the Disclosing Party may seek an appropriate protective order and/or waive compliance with this NDA.
6. Disclosure by the County of Confidential Information does not constitute a warranty that the Confidential Information is accurate, complete, or adequate for the purposes contemplated by the Receiving Party. Confidential Information is provided "AS IS". COUNTY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, AND ANY EXPRESS WARRANTY WITH RESPECT TO ANY OF THE CONFIDENTIAL INFORMATION AND DOCUMENTATION DISCLOSED HEREUNDER. County accepts no responsibility as a result of any expenses, losses, damages, or actions incurred or undertaken by the Receiving Party as a result of the Receiving Party's receipt or use of any Confidential Information or documentation.

7. County may in its sole discretion terminate this NDA in whole or in part by providing three (3) calendar days written notice to Receiving Party. Termination under this provision shall not relieve Receiving Party of any obligation occurring prior to termination, such as confidentiality, payments, and other provisions which by their nature would survive termination.
8. Upon the end of term of this NDA, or its termination, or at any time upon written demand by the County, all Confidential Information, together with any copies, memoranda, working papers, notes and photographs thereof, will, at the County's option, be returned or destroyed by the Receiving Party. The return of any Confidential Information will not relieve the Receiving Party of its obligation to maintain the confidentiality of the Confidential Information for the full period contemplated by this NDA; said confidentiality obligation shall survive termination of this NDA.
9. Neither party has any obligation to enter into any further agreement with the other except as such party in its sole judgment may deem advisable.
10. This NDA contains the entire understanding and agreement of the parties with respect to the disclosure of the Confidential Information and supersedes all prior agreements and discussions concerning the subject matter hereof, whether oral or written.
11. The parties agree that a breach of this NDA is likely to cause irreparable harm to the County for which money damages alone would be an inadequate remedy. Accordingly, the County will be entitled to seek specific performance and injunctive or other equitable relief as a remedy for breaches of this NDA.
12. If any provision of this NDA is held illegal, invalid, or unenforceable by any court of competent jurisdiction, such provision will be deemed separable from the remaining provisions hereof and the remaining portions shall remain in full force and effect.
13. All sections of this NDA shall survive termination of this NDA for any reason.
14. Receiving Party shall indemnify, defend, and hold harmless the County, its officers, agents and employees from any claim, liability, loss, injury or damage (collectively, "Litigation") arising out of, or in connection with, performance of this NDA due to the negligence, recklessness, or willful misconduct of Consultant and/or its agents, employees or sub-contractors, excepting only to the extent such loss, injury or damage is caused by the negligence, recklessness or willful misconduct of personnel employed by the County. It is the intent of the parties to this NDA to provide the broadest possible coverage for the County.
15. Unless where preempted by Federal laws such as in Copyright Laws, this NDA shall be enforced and interpreted under the laws of the State of California and the County of Santa Clara, without any regards to the conflict of law principles.
16. The parties to this NDA hereby agree to submit to the exclusive jurisdiction of and venue in the courts of competent jurisdiction, federal or state, in the County of Santa Clara in any disputes related to or arising out of this NDA.
17. No delay or failure to require performance of any provision of the NDA shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing and shall apply to the specific instance expressly stated.
18. Receiving Party shall not assign or transfer this NDA, or all or any part of its rights hereunder, by operation of law or otherwise, without the prior written consent of County. Any unauthorized assignment or transfer shall be null and void and shall constitute grounds for



immediate termination of this NDA by County. This NDA shall inure to the benefit of and be binding upon any permitted successor or assign.

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

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

County of Santa Clara:

Consultant: ????? (dba, ???):

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: President, Board of Supervisors

Title: _____

Date: _____

Date: _____

END EXHIBIT G



EXHIBIT H

COVID 19 Certification Form



Exhibit H

CONTRACTOR CERTIFICATION OF COMPLIANCE WITH COVID-19 VACCINE REQUIREMENTS (Version Effective April 1, 2022)

Contractor Information:

Contractor Name:

Name of Contractor representative:

Principal Date

Contractor phone number:

Contractor email address:

Contractor Certification. On behalf of Contractor, I hereby certify that:

1. Contractor has reviewed and is in compliance with all current County requirements regarding COVID-19 vaccination applicable to contractor's employees working at County facilities, including but not limited to the requirements in the County's memorandum regarding COVID-19 Vaccine Requirement for County Personnel ("County Vaccine Policy"), the County's memorandum regarding Application of COVID-19 Vaccination Requirement to County Contractors, Interns, and Volunteers, all current State and County Health Officer orders, and any other County requirements. These memoranda and current County policies are accessible at <https://procurement.sccgov.org/doing-business-county/contractor-vaccinations>. Contractor understands that it is responsible for reviewing and maintaining compliance with all subsequent revisions or amendments to State and County orders and requirements regarding COVID-19.
2. As of the date signed below:
 - a. Contractor understands that it must confirm, and has confirmed, that all of contractor's workers (including any subcontractor workers) who routinely perform services for the County onsite and share airspace with or proximity to other people at a County facility as part of their services for the County¹ are:
 - i. Fully vaccinated against COVID-19 and up-to-date on any boosters for which they are eligible as defined and required in the County Vaccine Policy; **or**
 - ii. Have a legally sufficient and approved medical, disability, or religious exemption from vaccination that has been granted by contractor.

¹ As established in the County's Memorandum Regarding Application of COVID-19 Vaccination Requirement to County Contractors, Interns, and Volunteers, contractors performing work at closed construction sites are not required to comply with the County's vaccination requirements, but must comply with all applicable federal, state, and local public health laws, including but not limited to vaccination, testing, and masking requirements.

- b. Contractor has verified and will continue to verify the vaccination status of all staff working on site at any County facility, and has obtained proof of vaccination from its staff in a form consistent with the California Department of Public Health's Vaccine Records Guidelines and Standards.
3. If contractor seeks to send any workers who are not fully vaccinated and up-to-date on boosters for which they are eligible to work indoors at any County facility because the contractor has granted them an exemption, contractor shall notify the County in writing by providing a list of any such workers to the COVID-19 Designee for the department that manages the facility where the contractor personnel will be working at least 96 hours in advance of any such worker arriving onsite so that the department has sufficient time to determine whether it will approve the contractor's requests that its personnel work onsite and, if approved, can ensure that the contractor has complied with all applicable COVID-19 safety requirements for unvaccinated individuals, including, where applicable, regular testing and the use of a fit-tested N95 mask.² Notice must be separately provided to each department that manages a facility where contractor seeks to assign personnel to work onsite. Regardless of exemption status, personnel who are not fully vaccinated and up-to-date on boosters for which they are eligible may not work in high-risk roles at County facilities.
 4. If any of contractor's workers are noncompliant with vaccination or testing requirements, contractor will notify the County Department for which they are providing services immediately and will not permit those workers to go onsite at a County facility without express written permission from the County.
 5. Contractor will comply with all reasonable requests by the County for documentation demonstrating the contractor's compliance with this Certification.

I verify the truth and accuracy of the statements in this Certification under penalty of perjury under the laws of the State of California.

| | |
|---|-------|
| Name of authorized representative of Contractor | Title |
| Signature | Date |

² If contractor sends workers who are not fully vaccinated and up-to-date on boosters for which they are eligible, it is contractor's obligation to ensure that it has any necessary authorization under the California Confidentiality of Medical Information Act, Cal. Civ. Code §§ 56 *et. seq.*, and under any other laws to share this information with the County.

Exhibit I

**Paper Product and Printing Services Recycled Content and
Recyclability Requirements & Vendor Certification Form**



Exhibit I
PAPER PRODUCT AND PRINTING SERVICES
RECYCLED-CONTENT AND RECYCLABILITY REQUIREMENTS

In November 2020, the California Department of Resources Recovery and Recycling (“CalRecycle”) adopted regulations pursuant to Senate Bill 1383 (“SB 1383”) to divert organic waste from landfills. As relevant here, the CalRecycle regulations (California Code of Regulations Title 14, Division 7, Chapter 12) require the County to procure recycled-content and recyclable paper products under certain circumstances. To facilitate County compliance with CalRecycle’s SB 1383 regulations, the Contractor shall satisfy the following requirements.

1. SB 1383 Compliant Paper Product Requirements for Product Catalog

- A. For purposes of this Exhibit, “paper products” shall mean those products defined in 14 C.C.R. Section 18982(a)(51).
- B. The only paper products Contractor shall offer for County to purchase or use to provide printing services under this Agreement shall be those paper products that satisfy the recycled-content and recyclability requirements specified in 14 C.C.R. Sections 18993.3 and 18993.4 and as indicated in subsection (i) and (ii) below (“compliant paper products”), unless the County approves noncompliant paper products pursuant to section (1)(E). Contractor shall identify the compliant paper products available for sale to the County or used to provide printing services under the Agreement in the Paper Product and Printing Services Vendor Certification Form. All paper products offered for purchase to County or used by Contractor to provide printing services shall meet the following standards:
 - i. Recycled-Content Standard: Contain at least 30 percent post-consumer fiber by fiber weight.
 - ii. Recyclability Standard: Be eligible to be labeled with an “unqualified recyclable label” as defined in Code of Federal Regulations Title 16, Section 260.12. A product is eligible to be labelled with an unqualified recyclable label if (i) recycling facilities are available to a substantial majority (at least 60 percent) of consumers or communities where the item is sold, and (ii) the entire product, excluding minor incidental components, is recyclable.
- C. To the extent possible, any product catalog shall specify the minimum percentage or the exact percentage of post-consumer recycled fiber in each paper product.
- D. Contractor shall set contract ordering controls to ensure compliance with the requirements in this section 1. Contractor sales staff shall be knowledgeable about CalRecycle’s SB1383 regulations and the County’s requirements and shall identify compliant products when needed by County personnel for purchases or services under this contract, including for product substitutions. When compliant product substitutions are not available, the County Contract Administrator shall

be notified to work directly with Contractor to resolve product and service offering.

- E. Paper products that do not meet the 30-percent recycled-content standard may be offered and sold to County personnel or used for printing services provided to County only if specifically approved in advance by the County and identified as County-approved noncompliant products in the Paper Product and Printing Services Vendor Certification Form.

2. SB 1383 Compliant Invoicing and Record-Keeping Requirements

- (A) Contracts for products: With each purchase order, Contractor shall provide an invoice or receipt that details the paper products purchased by product description (*i.e.*, brand, product, and/or model numbers), quantity, unit price, and total price to the County Department or Agency that submits the order.
- (B) Contracts for services: With each purchase order, Contractor shall provide invoices or receipts that detail the paper products used for services provided under this agreement by product description (*i.e.*, brand, product, and/or model numbers), quantity, unit price, and total price.
- (C) Contractor shall maintain all documents supporting compliance with the cited regulations for a period of not less than five years from the date of purchase.

3. Ongoing Sustainable Purchasing Practices:

During the term of this Agreement, the Contractor shall:

- (A) Notify the County Contract Administrator when and if SB 1383 compliant paper products offered for purchase or used for services under this Agreement are temporarily or permanently unavailable and timely suggest alternative compliant products.
- (B) Provide compliant product samples to County users for fitness and quality testing, upon request.
- (C) Identify additional opportunities for the County to reduce its environmental impact as opportunities become available, including by identifying new cost-conscious, environmentally friendly, and sustainable products that meet or exceed the County's desired fitness and quality standards.

PAPER PRODUCT AND PRINTING SERVICES VENDOR CERTIFICATION FORM

1. Approved Compliant Paper Products

In accordance with Exhibit I , Paper Product and Printing Services Recycled Content and Recyclability Requirements, Contractor shall complete the following table of Approved Compliant Paper Products to list the paper products available for sale to the County or used to provide printing services under the Agreement and specify the minimum or exact post-consumer recycled fiber content for each item.

| Approved Compliant Paper Products | | |
|---|----------------------------------|--|
| Product, Product Category, or Services | Detailed Item Description | Minimum or Exact Percentage of Post-Consumer Recycled Fiber Content |
| Example: Food Service Ware | Paper Plates | 83% post-consumer |
| | | |
| | | |
| | | |
| | | |
| | | |

2. Approved Non-Compliant Paper Products

If non-compliant products are approved by the County, Contractor shall complete the following table of Approved Non- Compliant Paper Products to list the paper products available for sale to the County or used to provide printing services under the Agreement and specify the minimum or exact post-consumer recycled fiber content for each item. The County authorizes Contractor to offer or use the paper products in the table of Approved Non-Compliant Paper Products that do not meet the minimum 30-percent recycled-content standard.

| Approved Non-Compliant Paper Products | | |
|---|----------------------------------|--|
| Product, Product Category, or Services | Detailed Item Description | Minimum or Exact Percentage of Post-Consumer Recycled Fiber Content |
| Example: Food Service Ware | Paper Cups | 10% post-consumer |
| | | |
| | | |
| | | |

3. Contractor Explanation for Non-Compliant Paper Products

Contractor shall further provide an explanation and supporting documentation as necessary for all Non-Compliant Paper Products listed above that deviate from the County’s requirements detailed in Exhibit I , Paper Product and Printing Services Recycled Content and Recyclability Requirements, including documenting limited or non-existent market availability and inadequate fitness or quality. Contractor shall further inform the County when compliant products are available to replace Non-Compliant Paper Products.

| Contractor Explanation for Non-Compliant Paper Products | |
|--|--|
| | |

4. Recyclability Certification

Pursuant to 14 C.C.R. Section 18993.3(c)(2), Contractor shall certify by signing the declaration below that all paper products sold to the County or used to provide services under the Agreement are eligible to be labeled with an “unqualified recyclable label” as defined in 16 Code of Federal Regulations Section 260.12.

| Recyclability Certification | |
|---|--|
| <p>I hereby certify, on behalf of _____, that all paper products sold to the County through this Agreement or used to provide services under this Agreement are eligible to be labeled with an “unqualified recyclable label” as defined in 16 Code of Federal Regulations Section 260.12.</p> | |
| <p>Signature: _____</p> | |
| <p>Date: _____</p> | |
| <p>Print Name and Company Title: _____</p> | |

COUNTY OF SANTA CLARA

| | | | |
|-----------|-------|------------------------------|-------|
| _____ | _____ | _____ | _____ |
| Signature | Date | For: Director of Procurement | Date |

Agency or Department Head

Agency or Department Name