REQUEST FOR PROPOSALS

RFP NO. 2019-005
Architectural Design and Engineering Services –
East Palo Alto Government Center

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<th>Solicitation Number</th>
<th>NO. 2019-005</th>
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<tbody>
<tr>
<td>Solicitation Title</td>
<td>Architectural Design and Engineering Services East Palo Alto Government Center located at 2415 University Ave., East Palo Alto, CA 94303</td>
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<tr>
<td>Funding Sources</td>
<td>☐ Federal ☐ State ☒ County ☒ Other</td>
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<td>Options to Extend</td>
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<tr>
<td>Owner</td>
<td>County of San Mateo</td>
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<tr>
<td>Authorized Contact Person</td>
<td>Tory Newman</td>
</tr>
<tr>
<td>Authorized Contact Person E-mail</td>
<td><a href="mailto:tnewman@smcgov.org">tnewman@smcgov.org</a></td>
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<tr>
<td>County Website Address</td>
<td><a href="https://publicworks.smcgov.org">https://publicworks.smcgov.org</a></td>
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<tr>
<td>Protest Contact Person</td>
<td>Kevin Sporer</td>
</tr>
<tr>
<td>E-mail Address for Protests</td>
<td><a href="mailto:ksporer@smcgov.org">ksporer@smcgov.org</a></td>
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<tr>
<td>RFP Released</td>
<td>May 30, 2019</td>
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<tr>
<td>Pre-proposal meeting date and time (mandatory)</td>
<td>June 19, 2019, 3:00 to 4:00 pm PST</td>
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<td>2415 University Ave., East Palo Alto, CA 94303</td>
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<tr>
<td>Deadline for Questions, Comments and Exceptions</td>
<td>June 26, 2019 3:00 p.m. PST</td>
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<td>Respond to Questions</td>
<td>July 3, 2019</td>
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<td>Proposal Due Date and Time</td>
<td>July 10, 2019 3:00 p.m. PST</td>
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<td>Interviews (optional)</td>
<td>July 2019</td>
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<tr>
<td>Anticipated Contract Award Date</td>
<td>August 2019</td>
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SECTION I - GENERAL INFORMATION

This Request for Proposals (RFP) is not a commitment or contract of any kind. San Mateo County (County) reserves the right to pursue any and/or all ideas generated by this request. Costs for developing the proposals are entirely the responsibility of the proposers and shall not be reimbursed. The County reserves the right to reject any and all proposals. The County reserves the right to waive any requirements of this RFP when it determines that waiving a requirement is in the best interest of the County.

General Provisions Regarding Public Nature of Proposals. Government Code Section 6250 et. seq., the Public Records Act, defines a public record as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. The Public Record Act provides that public records shall be disclosed upon request and that any citizen has a right to inspect any public record, unless the document is exempted from disclosure.

Proposer’s Rights regarding Confidentiality of Proposals. The County cannot represent or guarantee that any information submitted in response to the RFP will be confidential. If the County receives a request for any document submitted in response to this RFP, it will not assert any privileges that may exist on behalf of the person or business submitting the proposal. If a proposer believes that a portion of its proposal is confidential and notifies the County of such in writing, the County may, as a courtesy, attempt to notify the Proposer of any request for the proposal. However, it would be the sole responsibility of that proposer to assert any applicable privileges or reasons why the document should not be produced, and to obtain a court order prohibiting disclosure. The Proposer understands that the County is not responsible under any circumstances for any harm caused by production of a confidential proposal.

County’s Rights Regarding Confidentiality of Proposals. To the extent consistent with applicable provisions of the Public Records Act and applicable case law interpreting those provisions, the County and/or its officers, agents and employees retains the discretion to release or to withhold disclosure of any information submitted in response to this RFP.

1.1 STATEMENT OF INTENT

The County of San Mateo, Capital Projects Group is seeking qualified Architecture Firm(s)/Consultant(s) for Architectural Design and Engineering Services at the East Palo Alto Government Center located at 2415 University Ave., East Palo Alto, CA 94303. As outlined in Section II – Scope of Work, these services include various consulting needs, as necessary for a variety of industry-standard design/architectural services and coordination with sub-consultants, such as Structural, Mechanical, Electrical, Plumbing, HVAC, Fire Protection, Security, Space Planning, and related specialties. The target start date is July 2019.

1.2 QUALIFICATIONS OF CONSULTANT

Proposals will be considered only from Consultants who can demonstrate the following minimal qualifications:

1. Consultant is a business licensed to practice architecture in the State of California and able to provide the required professional service.
2. The individual or individuals who will be assigned the responsibility to manage projects shall have significant experience in design and construction consulting within the last five years in the State of California and be a licensed professional in the State of California.

3. Consultant and staff shall be knowledgeable of all applicable building codes.

4. Consultant shall be capable of meeting the schedule set by County of San Mateo Department of Public Works.

5. The firm(s) shall also have experience working with the various regulatory agencies and have knowledge of the various County permit application processes; not limited to Planning, Building, Environmental Health, Public Works, Fire and Local/State/Federal prevailing wage(s); in addition to the following potential CEQA/EIR agencies.

6. The selected consultant(s) will become an integral member coordinating with the County’s team. The consultant(s) final selection is pending County Board of Supervisor’s approval of negotiated service agreements.
SECTION II - SCOPE OF WORK AND SPECIAL PROVISIONS

2.1 SUMMARY

1. Scope of Services
   Basic services shall include, but not limited to, the following summary scope of work referenced in the Dreyfuss and Blackford Technical Proposal (1-26-19r1 Option 1):

   Phase 1: Research, (verification of existing equipment condition and useful life),
   Phase 2: Schematic Design / including initial cost estimate.
   Phase 3: Design Development / including updated cost estimate.
   Phase 4: Construction Documents / include updated cost estimates at 60% and 90% drawings.
   Phase 5: Permitting and Bidding Assistance
   Phase 6: Construct Contract Administration
   Phase 7: Project Closeout.

2. General Description and Requirements
   This project shall be developed and designed based on (Base Scheme Option 1) and Taylor Engineering HVAC Design. Architect acknowledges its obligation to work with, coordinate with, interface with, exchange ideas and design options with, and otherwise cooperate and collaborate with the Public Works team, user groups, stakeholders, and operational matters throughout development, design and execution of the project including but not limited to change order analysis and claim assistance.

3. Analysis
   Analyze the benefits and limitations to the County maintaining services to the public during construction under the following scenarios:
   A. Reconfiguring in existing space; and/or
   B. Relocating to other office space in the immediate area; other office space site TBD.

4. Assistance
   Assist the County in evaluating current tenant/public anticipated space needs regarding organizational structure, functional requirements, and public workspace/workplace accommodation during construction:
   A. Examination of current office layout, function and feasibility;
   B. Survey of County staff to gather data on workplace requirements;
   C. Workspace allocations for employees utilizing current and projected staffing needs;
   D. Review of policies that impact workplace design;
   E. Examination of alternative workplace strategies.

5. Development
   Develop recommendations and coordination plans for the County while incorporating the following based on Option 1 Efficient, modern, and configurable furniture, fixtures, and equipment.
   A. Functional layout and organization concepts through space programming. (Include up to three 4-hour long meetings with the tenants/user groups).
   B. Provide a wide range of cost estimates and reconciliation exercises, including pre-construction, concept, budgetary, design, construction, and engineer’s estimates. Value Engineering estimation and financial analysis of design alternatives; alternatives resulting
from value engineering reviews of design and construction techniques, and costs due to site and schedule constraints.

6. Schedule
This contract is anticipated to be awarded in August 2019. With construction beginning in September 2020 and being completed by May 2021.

2.2 FINGERPRINTING AND BACKGROUND CHECKS
Potential staff are required to pass a Live Scan (DOJ and FBI) background check at the contractor’s expense prior to working in County facilities. Potential staff shall follow the directions provided by the Deputy Director of Facilities or his designee to complete this process and will not begin work in a County facility until they have been officially notified in writing by the Deputy Director of Facilities that they have received background clearance.

2.3 PREVAILING WAGE REQUIREMENT
The services contemplated under this procurement include “public works”. For all such work funded by this Agreement, the Contractor is required to comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720. In addition, comply with Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for any “public works” as that term is defined in the statues, including all applicable flow down provisions. For purposes of complying with prevailing wage laws, the Contractor must comply with the provisions applicable to an awarding body and that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

California Legislative Information; State of California – Department of Industrial Relations

https://leginfo.legislature.ca.gov/faces/home.xhtml  https://www.dir.ca.gov/dlse/dlse.html
SECTION III - INSTRUCTIONS FOR PROPOSERS

3.1 PRE-SUBMITTAL ACTIVITIES

A. Questions, Comments, Exceptions
Submit questions, comments, and exceptions, including notifications of apparent errors, to email address tnewman@smcgov.org with the subject “Architectural Design and Engineering Services – EPA” by the deadline for questions, comments, and exceptions. Questions and comments received after the deadline may not be acknowledged.

(1) Request for changes
If requesting changes to a part of this solicitation, identify the specific words or phrases and the sections and paragraphs in which they occur. State the reason for each request and provide alternative suggested language. Failure to submit requests by the deadline will be deemed a waiver of any exception. The County’s consideration of a suggestion does not imply acceptance. If sufficient proposals are received with no requested changes, the County may reject those requesting changes.

B. Revisions to the Solicitation
The County may cancel, revise, or reissue this solicitation, in whole or in part, for any reason. Revisions will be posted as addenda on County’s https://publicworks.smcgov.org web site. Proposers are responsible for ensuring that they have received all addenda from Public Works.

C. Contact with County Employees
Violation of the following prohibitions may result in a proposer being found non-responsible, barred from participating in this or future procurements, and becoming subject to other legal penalties.

(1) As of the issuance date of this RFP and continuing until it is canceled or an award is made, no proposer or person acting on behalf of a prospective proposer may discuss any matter relating to the RFP with any officer, agent, or employee of the County; other than through Public Purchase, to the Authorized Contact Person, or as outlined in the evaluation or protest procedures.

(2) Proposers may not agree to pay any consideration to any company or person to influence the award of a contract by the County, nor engage in behavior that may be reasonably construed by the public as having the effect or intent of influencing the award of a contract.

D. Pre-proposal conference and site visits
If a pre-proposal conference or site visit is scheduled, the attendee sign-in sheet and answers to questions raised during the RFP process will be posted on the County’s website.

3.2 PROPOSAL CONTENT REQUIREMENTS

A. Proposal Format
Number all pages of the proposal. Label and order each section as follows:
(1) Cover letter - no longer than one page, signed by an individual authorized to execute legal documents for the proposer, identifying the materials submitted.

(2) Authorized contacts - identify the name and title the person to contact regarding the proposal, as well as all other individuals authorized to represent the organization in contract negotiations.

(3) Table of Contents, listing all major topics and their respective page numbers.

(4) Exceptions to the solicitation, or to the final revised solicitation, if any.

(5) Proposal.

(6) Supplementary Documents, as requested.

(7) Price Proposal. (submitted in a separate sealed envelope).

B. Proposal Contents

(1) Explain responses so as to be understood by people unfamiliar with industry jargon. Use drawings, diagrams, schematics and illustrations as needed, but do not simply refer readers to an exhibit or other section of the proposal in lieu of a complete response.

(2) Addressing each requirement outlined in this solicitation in the order presented, describe how the requested goods and services will be provided.

(3) General background, staffing and experience of Consultant

(4) Detailed statement of experience and projects completed within the last five years and a list of references (includes the name of owner/representative and phone number).

(5) Name and experience of the responsible design professional

(6) Organizational Capacity and Experience, describing work of a similar nature undertaken for a similar entity

(7) Specify any needs for physical space or equipment that the County must provide during the engagement.

(8) Explain how work, equipment, and knowledge will be transitioned to the County or a new vendor at the end of the contract period.

C. Price Proposal

(1) Place all cost and pricing data in a separate sealed envelope clearly marked “PRICE PROPOSAL”.

(2) Include Note to Exceed prices for the following services:

(3) Include hourly rates for key personnel as identified of your proposed staff, base staffing levels, and if applicable, annual increases.

(4) Include, if applicable, mark-up percentage on reimbursables.

3.3 PROPOSAL SUBMISSION

A. Submit proposals as directed below.
(1) Hard Submission
   (a) Submit proposal with all required documents in a sealed package to the designated County Mailing Address. Within the package, submit the Technical Proposal, the Price Proposal and electronic copy into separate sealed and marked envelopes.
   (b) Clearly mark the following information on the Outside of the package:
       - Proposer Name
       - Return address
       - Solicitation title
       - Solicitation number

(2) Electronic Copy Submissions
   (a) Submit proposal with all required documents within the Hard Submission sealed package to the designated County Mailing Address. Within the package, submit a memory stick with the Technical Proposal, the Price Proposal and all required documents into separately named files. Clearly mark each file name with the following information:
       - Proposer Name
       - Solicitation title
       - Solicitation number
       - Proposal Type

(3) Proposals requiring a Hard and Electronic Submission proposal, follow the Hard Submission process.

(4) Hand-written responses, whether or not submitted electronically, will be rejected, with the exception that signatures may be hand-written.

(5) Submit proposals and all required documentation so as to physically reach the designated address by the Due Date and Time.

B. Errors in Proposals

   The County will not be liable for any errors in proposals. Proposals may be rejected as unresponsive if they are incomplete, are missing pages or information, or cannot be opened for any reason. The County may waive minor irregularities, but such waiver will not modify any remaining RFP requirements.

3.4 PROPOSER CERTIFICATIONS

By submitting a proposal, each proposer certifies under penalty of perjury that:

   • Its submission is not the result of collusion or any other activity that would tend to directly or indirectly influence the selection process; and
   • Proposer is able or will be able to comply with all requirements of this solicitation at the time of contract award; and
   • Neither proposer, its employees, nor any affiliated firm providing the requested goods and services has prepared plans, specifications, terms or requirements for this solicitation, or has any other actual or potential conflict of interest; and
• Proposer is aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees and is unaware of any financial or economic interest of any County officer or employee relating to this solicitation.

3.5 WITHDRAWAL OF PROPOSALS

Proposals may be withdrawn, modified, or replaced at any time prior to the Due Date and Time. After that time, whether or not a new solicitation is issued for the same subject matter, withdrawal of a proposal may preclude the proposer from participating in the procurement as a proposer or subcontractor, except that an original equipment manufacturer may participate indirectly through a reseller.

3.6 NO COMMITMENT

Neither submission of a proposal nor the County’s receipt of proposal materials confers any right to the proposer nor any obligation on the County. This RFP does not commit the County to award a contract, nor will the County defray any costs incurred in preparing proposals or participating in any presentations or negotiations.

3.7 ESTIMATED QUANTITIES

If the solicitation results in an indefinite quantity or a requirements Agreement, the goods and services actually requested by the County may be less than the maximum value of the Agreement and there is no guarantee, either expressed or implied, as to the actual quantity of goods and services that will be authorized under the Agreement.

3.8 PROPOSER SELECTION

At any time in the evaluation process, the County may request clarifications from proposers.

A. Determination of Responsiveness

A responsive proposal conforms to the instructions set forth in this solicitation and any modifications to it. Non-responsive proposals will be rejected. The County, in its sole discretion, may waive non-consequential deviations if the deviations cannot have provided an advantage over other proposers.

B. Proposal Evaluation

The County will establish an evaluation committee which will evaluate responsive proposals based on the criteria specified in the solicitation. The committee may then recommend one or more top-ranked proposers for final negotiation of contract terms or may invite one or more proposers for oral presentations and demonstrations, following which those proposers may be allowed to amend their proposals. After evaluating presentations and amended proposals, the committee may recommend one or more top-ranked proposers for final negotiation of contract terms.

C. Determination of Responsibility

The County will make a determination of the responsibility of any proposer under consideration for award, taking into consideration matters such as the proposer’s integrity, compliance with
public policy and laws, past performance, fiscal responsibility, trustworthiness, financial and technical resources, capacity, and experience to satisfactorily carry out its responsibilities. The County will notify any proposer found non-responsible and allow the finding to be contested.

3.9 **CONTRACT AWARD**

A. **Notice of Intent to Award**

Once a decision has been made to award a contract to one or more proposers, the County will post a Notice of Intent to Award, notifying the remaining proposers of their non-selection. The posting may be inclusion of the recommendation to award as an agenda item on the Board of Supervisors schedule.

B. **Award Procedure**

Contract negotiations are neither an offer nor an implicit guarantee that a contract will be executed. Award, if made, will be to the responsive, responsible proposer offering the overall best value to the County for the services and goods described in this solicitation, or as applicable, for a specific portion of the services and goods described. Any agreement reached will be memorialized in a formal agreement using the attached Standard Agreement template.

C. **Commencement of Performance**

After all parties have signed the Agreement, the County will notify the proposer and performance may proceed. Prior to County execution of the Agreement, no County employee may authorize work. Any work performed prior to that time may be uncompensated.

3.10 **PROTESTS**

Protests that do not comply with the protest procedures outlined below will be rejected.

A. **Protest Eligibility, Format, and Address**

(1) Protests or objections may be filed regarding the procurement process, the content of the solicitation or any addenda, or contract award.

(2) The County will only review protests submitted by an interested party, defined as an actual or prospective proposer whose direct economic interest could be affected by the County’s conduct of the solicitation. Subcontractors do not qualify as interested parties.

(3) Submit protests to Department of Public Works by registered mailed to:
Kevin Sporer, Deputy Director
555 County Center, 5th Floor,
Redwood City, CA 94063.

B. **Protest Deadlines**

Submit protests with any supplemental materials by 3 p.m. PST, as appropriate, on the deadlines set forth below. The date of filing is the date the County receives the protest, unless received after 3 p.m. PST, or on other than a Business Day, in which case the date of filing will be the next Business Day. Failure to file by the relevant deadline constitutes a waiver of any protest on those grounds. Supplemental materials filed after the relevant deadline may be rejected by the County.
(1) If relating to the content of the solicitation or to an addendum, file within five Business Days after the date the County releases the solicitation or addendum.

(2) If relating to any notice of non-responsiveness or non-responsibility, file within five Business Days after the County issues such notice.

(3) If relating to intent to award, file within five Business Days after the County issues notice of Intent to Award. No protests will be accepted once actual award has been made.

C. Protest Contents

(1) The letter of protest must include all of the following elements:

   (a) Detailed grounds for the protest, fully supported with technical data, test results, documentary evidence, names of witnesses, and other pertinent information related to the subject being protested; and

   (b) The law, rule, regulation, ordinance, provision or policy upon which the protest is based, with an explanation of the violation.

(2) Protests that simply disagree with decisions of the Evaluation Committee will be rejected.

D. Reply to Protest

   The County will send a written response to the protestor and to any other party named in the protest.

E. No Stay of Procurement Action during Protest

   Nothing in these protest requirements will prevent the County from proceeding with negotiations or awarding a purchase order or contract while a protest is pending.

3.11 PUBLIC RECORDS

A. General

(1) All proposals, protests, and information submitted in response to this solicitation will become the property of the County and will be considered public records. As such, they may be subject to public review.

(2) Any contract arising from this RFP will be a public record.

(3) Submission of any materials in response to this RFP constitutes:

   (a) Consent to the County’s release of such materials under the Public Records Act without notice to the person or entity submitting the materials; and

   (b) Waiver of all claims against the County and/or its officers, agents, or employees that the County has violated a proposer’s right to privacy, disclosed trade secrets, or caused any damage by allowing the proposal or materials to be inspected; and

   (c) Agreement to indemnify and hold harmless the County for release of such information under the Public Records Act; and

   (d) Acknowledgement that the County will not assert any privileges that may exist on behalf of the person or entity submitting the materials.
B. Confidential Information

(1) The County is not seeking proprietary information and will not assert any privileges that may exist on behalf of the proposer. Proposers are responsible for asserting any applicable privileges or reasons why a document should not be produced in response to a public record request.

(2) If submitting information protected from disclosure as a trade secret or any other basis, identify each page of such material subject to protection as “CONFIDENTIAL”. If requested material has been designated as confidential, the County will attempt to inform the proposer of the public records request in a timely manner to permit assertion of any applicable privileges.

(3) Failure to seek a court order protecting information from disclosure within ten days of the County’s notice of a request to the proposer will be deemed agreement to disclosure of the information and the proposer agrees to indemnify and hold the County harmless for release of such information.

(4) Requests to treat an entire proposal as confidential will be rejected and deemed agreement to County disclosure of the entire proposal and the proposer agrees to indemnify and hold the County harmless for release of any information requested.

(5) Trade secrets will only be considered confidential if claimed to be a trade secret when submitted to the County, marked as confidential, and compliant with Government Code Section 6254.7.
SECTION IV - QUALIFICATIONS, EXPERIENCE, AND EVALUATION CRITERIA

4.1 MINIMUM QUALIFICATIONS

Proposals will be accepted only from organizations that meet the following required qualifications at the time of proposal submission:

- The proposer is legally authorized to do business in the State of California.
- Firm has demonstrated extensive recent Bay Area experience (minimum of 3 years) as well as in-house resources necessary to effectively provide the required services.
- Firm should provide a straightforward, complete and concise description of the firm’s capabilities and qualifications to provide Architectural Design and Engineering Services.
- Firms shall have extensive knowledge of available project delivery systems allowed under California Public Contract Code and make such recommendations as to their applicability as appropriate.
- The personnel assigned to projects shall have significant experience in all phases of construction with successful design-bid-build projects.
- Consultant and staff shall be knowledgeable of all applicable codes (including planning and building and the ancillary permit requirements), American with Disabilities Act, Federal, State and local by-laws as applicable, including sustainability, conservation and practice of LEED principles and certification processes.
- Firms shall achieve the project completion date set by the County.

4.2 ORGANIZATIONAL CAPACITY AND EXPERIENCE

Provide all of the following regarding the prime proposer and if applicable, all joint proposers.

A. Organizational Capacity:

(1) Titles and names of staff members who will be on the team responsible for the project, as well as the expected availability of the various individuals. If requested, include the resume of a dedicated, full-time project manager.

(2) All applicable licenses and license numbers relevant to the project, the names of the holders of those licenses, and the names of the agencies issuing the licenses.

(3) If portions of work will be performed by subcontractors, names of proposed subcontractors other than suppliers and descriptions of their respective responsibilities.

B. Experience

(1) The number of years providing services similar to those contemplated.

(2) The number of years providing services to government entities.

4.3 REFERENCES

Provide at least three references from successfully completed projects of similar nature to that described in this solicitation, including the name of the organization for which work was performed, and the name, phone number, and e-mail address of an individual at the organization who was responsible for managing and accepting the work. Ensure that contact information is current. If the County cannot contact the reference because of incorrect or out-of-date information, the reference will be deemed not to have been provided.

4.4 EVALUATION CRITERIA
Proposals will be evaluated in accordance with the following evaluation criteria:

- **45% - Method and approach**
  - Apparent understanding of the scope of services to be provided.
  - Appropriateness of the proposed solution/services

- **30% - Experience and organizational capacity**
  - Qualifications and experience of both the proposer and key personnel
  - Experience with other public agencies
  - Organizational resources and staff, apparent ability to meet any required timelines or other requirements

- **25% - Price**

### The Price Proposal

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<td>Sub-Totals</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Price Grand Total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

**Rate Sheet. To establish rates for billings and changes in scope of services:**

<table>
<thead>
<tr>
<th></th>
<th>Year 1 Hourly Rate</th>
<th>Year 2 Increase %</th>
<th>Year 3 Increase %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sr. Project Architect</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Project Architect</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Project Designer</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Admin Assistant</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mark-up % on Sub-consultants</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mark-up % on Reimbursables</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
SECTION V - INSURANCE

Provide evidence of insurance for each of the checked categories

<table>
<thead>
<tr>
<th>Category</th>
<th>Coverage &amp; Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Liability</td>
<td>$1,000,000 - per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit either must apply separately to this project or must be twice the required occurrence limit.</td>
</tr>
<tr>
<td>Automobile Liability</td>
<td>$1,000,000 - per accident for bodily injury and property damage.</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>As required by the State of California</td>
</tr>
<tr>
<td>Employers’ Liability</td>
<td>$1,000,000 - each accident, $1,000,000 policy limit bodily injury by disease, $1,000,000 each employee bodily injury by disease</td>
</tr>
<tr>
<td>Professional Liability (Errors and Omissions)</td>
<td>$1,000,000 - per occurrence.</td>
</tr>
<tr>
<td>Cyber Liability</td>
<td>$5,000,000 per occurrence for Privacy and Network Security, $1,000,000 per occurrence for Technology Errors and Omissions To be carried at all times during the term of the Contract and for three years thereafter.</td>
</tr>
<tr>
<td>Pollution Liability</td>
<td>$ - Per Occurrence</td>
</tr>
<tr>
<td>Pollution Liability (Aggregate)</td>
<td>$</td>
</tr>
</tbody>
</table>

5.1 SPECIAL INSURANCE REQUIREMENTS - CYBER LIABILITY

If the work involves services or goods related to computers, networks, systems, storage, or access to County Data or to any data that may, alone or in combination with other data, become Confidential Information or Personally Identifiable Information, the following insurance is required.

(1) Privacy and Network Security

During the term of the Contract and for three years thereafter, maintain coverage for liability and remediation arising out of unauthorized use of or access to County Data or software within Contractor’s network or control. Provide coverage for liability claims, computer theft, extortion, network breach, service denial, introduction of malicious code, loss of Confidential Information, or any unintentional act, error, or omission made by users of Contractor’s electronic data or systems while providing services to the County. The insurance policy must include coverage for regulatory and PCI fines and penalties, crisis management expenses, and business interruption. No exclusion/restriction for unencrypted portable devices/media may be on the policy.

(2) Technology Errors and Omissions

During the term of the Contract and for three years thereafter, maintain coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products, including at a
minimum, coverage for systems analysis, design, development, integration, modification, maintenance, repair, management, or outsourcing any of the foregoing.

SECTION VI - ATTACHMENTS

These are attached for information only. Do not complete this form. The final agreement between the County and any successful proposer will be based on this template.
AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND [Contractor name]

This Agreement is entered into this ______ day of __________________, 20 ______, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called “County,” and [Insert contractor legal name here], hereinafter called “Contractor.

"Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and;

Whereas, it is necessary and desirable that Contractor be retained for the purpose of [Enter information here].

Now, therefore, it is agreed by the parties to this Agreement as follows

Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services
Exhibit B—Payments and Rates
Attachment H—HIPAA Business Associate Requirements
Attachment I—§ 504 Compliance
Attachment IP – Intellectual Property

1. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

2. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County’s total fiscal obligation under this Agreement exceed [write out amount] ($Amount). In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

3. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from [Month and day], 20____, through [Month and day], 20____.
4. **Termination**

This Agreement may be terminated by Contractor or by the [Title of County Department Head] or his/her designee at any time without a requirement of good cause upon thirty (30) days’ advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

5. **Contract Materials**

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as “contract materials”) prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

6. **Relationship of Parties**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

7. **Hold Harmless**

   a. **General Hold Harmless**

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

   (A) injuries to or death of any person, including Contractor or its employees/officers/agents;

   (B) damage to any property of any kind whatsoever and to whomsoever belonging;
(C) any sanctions, penalties, or claims of damages resulting from Contractor’s failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor’s duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

b. **Intellectual Property Indemnification**

Contractor hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as “IP Rights”) except as otherwise noted by this Agreement.

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party’s IP Rights provided any such right is enforceable in the United States. Contractor’s duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor’s expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County’s prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County’s prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor’s opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County’s reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor’s option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; and/or (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
8. **Assignability and Subcontracting**

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County’s prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

9. **Insurance**

   a. **General Requirements**

   Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County’s Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor’s coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days’ notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

   b. **Workers’ Compensation and Employer’s Liability Insurance**

   Contractor shall have in effect during the entire term of this Agreement workers’ compensation and employer’s liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

   c. **Liability Insurance**

   Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor’s operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

   i. Comprehensive General Liability… $1,000,000

   ii. Motor Vehicle Liability Insurance… $1,000,000

   iii. Professional Liability………………. $1,000,000

   County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

   In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may,
 notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

10. **Compliance With Laws**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Further, Contractor certifies that it and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware. Accordingly, Contractor shall not use any non-recyclable plastic disposable food service ware when providing prepared food on property owned or leased by the County and instead shall use biodegradable, compostable, reusable, or recyclable plastic food service ware on property owned or leased by the County.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. **Non-Discrimination and Other Requirements**

a. **General Non-discrimination**

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. **Equal Employment Opportunity**

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor’s equal employment policies shall be made available to County upon request.

c. **Section 504 of the Rehabilitation Act of 1973**

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.
d. **Compliance with County’s Equal Benefits Ordinance**

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Contractor’s employee is of the same or opposite sex as the employee.

e. **Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60–741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. **History of Discrimination**

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

g. **Reporting; Violation of Non-discrimination Provisions**

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled “Compliance with Laws”. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

i. termination of this Agreement;

ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;

iii. liquidated damages of $2,500 per violation; and/or

iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.
12. **Compliance with County Employee Jury Service Ordinance**

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement’s total value listed in the Section titled “Payments”, is less than one-hundred thousand dollars ($100,000), but Contractor acknowledges that Chapter 2.85’s requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

13. **Retention of Records: Right to Monitor and Audit**

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County’s authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

14. **Merger Clause: Amendments**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document’s date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

15. **Controlling Law: Venue**

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without
regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be
venued either in the San Mateo County Superior Court or in the United States District Court for the
Northern District of California.

16. **Notices**

Any notice, request, demand, or other communication required or permitted under this Agreement shall be
demed to be properly given when both: (1) transmitted via facsimile to the telephone number listed
below or transmitted via email to the email address listed below; and (2) sent to the physical address
listed below by either being deposited in the United States mail, postage prepaid, or deposited for
overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number
showing confirmation of receipt.

In the case of County, to:

<table>
<thead>
<tr>
<th>Name/Title:</th>
<th>[insert]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>[insert]</td>
</tr>
<tr>
<td>Telephone:</td>
<td>[insert]</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>[insert]</td>
</tr>
<tr>
<td>Email:</td>
<td>[insert]</td>
</tr>
</tbody>
</table>

In the case of Contractor, to:

<table>
<thead>
<tr>
<th>Name/Title:</th>
<th>[insert]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>[insert]</td>
</tr>
<tr>
<td>Telephone:</td>
<td>[insert]</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>[insert]</td>
</tr>
<tr>
<td>Email:</td>
<td>[insert]</td>
</tr>
</tbody>
</table>

**Electronic Signature**

Both County and Contractor wish to permit this Agreement and future documents relating to this
Agreement to be digitally signed in accordance with California law and County’s Electronic Signature
Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic
signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

17. **Payment of Permits/Licenses**

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for
work/services to be performed under this Agreement at Contractor’s own expense prior to
commencement of said work/services. Failure to do so will result in forfeit of any right to compensation
under this Agreement.

**THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES. NO WORK WILL COMMENCE
UNTIL THIS DOCUMENT HAS BEEN SIGNED BY THE COUNTY PURCHASING AGENT OR
AUTHORIZED DESIGNEE.**

**For Contractor:**

Contractor Signature  Date  Contractor Name (please print)
For County

<table>
<thead>
<tr>
<th>President of the Board of Supervisors</th>
<th>Date</th>
<th>President of the Board of Supervisors</th>
</tr>
</thead>
<tbody>
<tr>
<td>County of San Mateo (Signature)</td>
<td></td>
<td>County of San Mateo (please print)</td>
</tr>
</tbody>
</table>
ATTACHMENT I
Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

☐ a. Employs fewer than 15 persons.

☐ b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

<table>
<thead>
<tr>
<th>Name of 504 Person:</th>
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<table>
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<th>Name of Contractor(s):</th>
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<table>
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<tr>
<th>Street Address or P.O. Box:</th>
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<table>
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I certify that the above information is complete and correct to the best of my knowledge

<table>
<thead>
<tr>
<th>Signature:</th>
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<table>
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<th>Title of Authorized Official:</th>
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*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.*
Attachment H
Health Insurance Portability and Accountability Act (HIPAA)
Business Associate Requirements

DEFINITIONS

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.

b. **Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.


d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.

e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (EPHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

f. **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).

g. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

h. **Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 160.103 and is limited to the information created or received by Business Associate from or on behalf of County.

i. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.

j. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

k. **Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI is presumed to be a breach, unless it can be demonstrated there is a low
probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:
1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
2. Identity of the unauthorized person or to whom impermissible disclosure was made;
3. Whether PHI was actually viewed or only the opportunity to do so existed;
4. The extent to which the risk has been mitigated.


m. **Unsecured PHI.** “Unsecured PHI” is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.

n. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. “Security Incident” includes all incidents that constitute breaches of unsecured protected health information.

**OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE**

a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.

b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.

c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.

d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.

e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.

g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.

j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the County at the request of County or the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County’s compliance with the Privacy Rule.

k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

l. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.

n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.

o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.

p. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.

q. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.
OBLIGATIONS OF COUNTY

a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.

b. County shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

c. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

PERMISSIBLE REQUESTS BY COUNTY

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if so requested by County, unless the Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

DUTIES UPON TERMINATION OF AGREEMENT

a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protection Health Information.

MISCELLANEOUS

a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.

b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.

d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.

e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.
Attachment IP
Intellectual Property Rights

1. The County of San Mateo ("County"), shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively "Vendors") for the County under this Agreement. Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of the County.

2. "Work Products" are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property.

3. Contractor shall not dispute or contest, directly or indirectly, the County’s exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the County, shall assign to the County all titles, rights and interests in all Work Products. Contractor shall cooperate and cause subcontractors to cooperate in perfecting County’s titles, rights or interests in any Work Product, including prompt execution of documents as presented by the County.

4. To the extent any of the Work Products may be protected by U.S. Copyright laws, Parties agree that the County commissions Vendors to create the copyrightable Work Products, which are intended to be work-made-for-hire for the sole benefit of the County and the copyright of which is vested in the County.

5. In the event that the title, rights, and/or interests in any Work Products are deemed not to be "work-made-for-hire" or not owned by the County, Contractor hereby assigns and shall require all persons performing work pursuant to this Agreement, including its subcontractors, to assign to the County all titles, rights, interests, and/or copyrights in such Work Product. Should such assignment and/or transfer become necessary or if at any time the County requests cooperation of Contractor to perfect the County’s titles, rights or interests in any Work Product, Contractor agrees to promptly execute and to obtain execution of any documents (including assignments) required to perfect the titles, rights, and interests of the County in the Work Products with no additional charges to the County beyond that identified in this Agreement or subsequent change orders. The County, however, shall pay all filing fees required for the assignment, transfer, recording, and/or application.

6. Contractor agrees that before commencement of any subcontract work it will incorporate this ATTACHMENT IP to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the County’s titles, rights, and interests in Work Products are preserved and protected as intended herein.