



County of Santa Clara  
Office of the County Executive  
Procurement Department  
2310 N. First Street Suite 201  
San Jose, CA 95131-1040  
Telephone 408-491-7400 • Fax 408-491-7496

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND  
ALLIANCE OCCUPATIONAL MEDICINE FOR  
OCCUPATIONAL MEDICINE SUPPORT SERVICES**

This agreement is entered into by and between the County of Santa Clara (the "County") and Alliance Occupational Medicine ("Contractor") (the "Agreement").

The effective date of the agreement is December 1, 2017. The parties, intended to be bound, mutually agree as follows:

**KEY PROVISIONS**

**AGREEMENT TITLE:** Occupational Medicine Support Services

**AGREEMENT NUMBER:** 5500002930

**INITIAL AWARD DATE:** December 1, 2017

**AGREEMENT TERM:** December 1, 2017 through November 30, 2020, unless terminated earlier or otherwise amended with option by County to renew for two additional one-year periods.

**AUTHORIZED USER:** COUNTYWIDE

**COUNTY DEPARTMENT CONTACT:** Tom Rudolph, Manager  
Occupational Safety and Environmental Compliance (OSEC)  
Office of the County Executive  
2310 North First St., Ste. 204  
San Jose, CA 95131  
[tom.rudolph@ceo.sccgov.org](mailto:tom.rudolph@ceo.sccgov.org)  
(408) 441-4282

**CONTRACTOR:** Alliance Occupational Medicine  
2737 Walsh Avenue  
Santa Clara, CA 95051

**CONTRACTOR CONTACT:** Rena Flovin  
2737 Walsh Avenue  
Santa Clara, CA 95051  
[rflovin@allianceocmed.com](mailto:rflovin@allianceocmed.com)  
(408) 228-0455

**SUPPLIER NUMBER:** 1030883

**PURPOSE:** To establish an Agreement with contractor to provide occupational medicine support services.

**TAX STATUS:** Non-taxable

**PAYMENT TERMS:** 45

**TOTAL AGREEMENT VALUE:** Not to Exceed \$300,000 for the term of the contract.

**COUNTY CONTRACT ADMINISTRATOR:** Michael Pangilinan  
Procurement Department  
2310 North First Street, Suite 201  
San Jose, CA 95131  
[michael.pangilinan@prc.sccgov.org](mailto:michael.pangilinan@prc.sccgov.org)  
(408) 491-7437

**REFERENCE:** The following exhibits are incorporated and constitute a material part of the Agreement:

Exhibit A: County of Santa Clara eStandard Terms and Conditions for Services.

Exhibit B: Price Summary

Exhibit C: Scope of Work

Exhibit D: Insurance Exhibit

By signing below, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity, that he/she has the authority to bind the entity listed below to contractual obligations and that by his/her signature on this Agreement, the entity on behalf of which he/she acted, executed this Agreement.

COUNTY OF SANTA CLARA <sup>DS</sup>  
*MPD*

DocuSigned by:  
*May Garcia* 12/1/2017  
\_\_\_\_\_  
May Garcia 28A69B08E88B4B8... Date  
Procurement Manager

DocuSigned by:  
*Jenti Vandertuig* 12/1/2017  
\_\_\_\_\_  
Jenti Vandertuig B701A9BAFB8A4B8... ie  
Director of Procurement

CONTRACTOR DocuSigned by:  
*Rena Flovin*  
By: \_\_\_\_\_ EC9F80843BC1410...  
Print: Rena Flovin  
Title: Vice President  
Date: 12/1/2017

**COUNTY OF SANTA CLARA eSTANDARD TERMS AND CONDITIONS**  
**FOR AGREEMENT FOR SERVICES**

**1. NON-EXCLUSIVE AGREEMENT**

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

**2. SERVICES**

Contractor agrees to provide the County all services on terms set forth in this Agreement (including Exhibits), as well as all necessary equipment and resources. Authority for performance shall be established by contract release purchase orders placed by the County and sent to Contractor throughout the term of the Agreement. Each and every contract release purchase order shall incorporate all terms of this Agreement and this Agreement shall apply to same.

ANY ADDITIONAL OR DIFFERENT TERMS OR QUALIFICATIONS SENT BY CONTRACTOR, INCLUDING, WITHOUT LIMITATION, ELECTRONICALLY OR IN MAILINGS, ATTACHED TO INVOICES OR WITH ANY GOODS SHIPPED, SHALL NOT BECOME PART OF THE CONTRACT BETWEEN THE PARTIES. COUNTY'S ACCEPTANCE OF CONTRACTOR'S OFFER IS EXPRESSLY MADE CONDITIONAL ON THIS STATEMENT.

Contractor shall timely provide to the County, all documentation and manuals relevant to the services it will deliver, at no additional cost. Such documentation shall be delivered either in advance of the delivery of services or concurrently with the delivery of services.

Employees and agents of Contractor, shall, while on the premises of the County, comply with all rules and regulations of the premises, including, but not limited to, security requirements.

If required, Contractor shall be responsible for installation, training and knowledge transfer activities in connection with delivery of services by Contractor and receipt of services by County.

All applicable equipment shall be delivered to a County site specified in the Statement of Work/Specifications.

Contractor holds itself out as an expert in the subject matter of the Agreement. Contractor represents itself as being possessed of greater knowledge and skill in this area than the average person. Accordingly, Contractor is under a duty to exercise a skill greater than that of an ordinary person, and the manner in which advice is handled or services are rendered will be evaluated in light of the Contractor's superior skill. Contractor shall provide equipment and perform work in a professional manner consistent with manufacturer and industry.

Contractor represents that all prices, warranties, benefits and other terms being provided hereunder are fair, reasonable and commensurate with the terms otherwise being offered by Contractor to its current customers ordering comparable services and goods.

### **3. NECESSARY ACTS AND FURTHER ASSURANCES**

The Contractor shall at its own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

### **4. COUNTING DAYS**

Days are to be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it is to be excluded.

### **5. PRICING**

Unless otherwise stated, prices shall be fixed for the term of the contract, including all extensions. Exhibit B of the Agreement is the basis for pricing and compensation plan throughout the term of the Agreement.

Notwithstanding the above, if at any time during the term of the Agreement the Contractor offers special, promotional or reduced pricing when compared with the price paid by the County, County shall benefit from that pricing, and that pricing shall apply to the County at the same time that is offered to other entities. Contractor is required, on an ongoing basis, to inform the County of any such special, promotional or reduced pricing.

## **6. MODIFICATION**

This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement will be binding on County unless it is in writing and signed by County's Director of the Procurement Department or designee.

## **7. TIME OF THE ESSENCE**

Time is of the essence in the delivery of services by Contractor under this Agreement and under any contract release purchase order. In the event that the Contractor fails to deliver services on time, the Contractor shall be liable for any costs incurred by the County because of Contractor's delay. For instance, County may obtain the services to be provided under this Agreement elsewhere and the Contractor shall be liable for the difference between the price quoted by Contractor and the cost to the County, as well as for any other costs incurred by the County; or County may terminate on grounds of material breach and Contractor shall be liable for County's damages.

The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under any contract with the County.

The rights and remedies of County provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law. The acceptance by County of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the rights or requirements for the complete and timely performance of any obligation remaining to be performed by the Contractor, or of any other claim, right or remedy of the County.

## **8. HAZARDOUS SUBSTANCES**

If any product being offered, delivered or supplied to the County in connection with this Agreement is listed in the Hazardous Substances List of the Regulations of the Director of Industrial Relations with the California Occupational Safety and Health Standards Board, or if the product presents a physical or health hazard as defined in the California Code of Regulations, General Industry Safety Order, Section 5194 (T8CCR), Hazard Communication, the Contractor must include a Material Safety Data Sheet (MSDS) with delivery, or shipment. Each MSDS must reference the contract/purchase order number, and identify the "Ship To Address". All shipments and containers must comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the hazardous substance, name and address of manufacturer, and appropriate hazard warning regarding potential physical safety and health hazard.

## **9. SHIPPING AND RISK OF LOSS**

Any goods shipped shall be packaged, marked and otherwise prepared by Contractor in suitable containers in accordance with sound commercial practices. Contractor 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 Contractor to County will be F.O.B. point of destination. Freight or handling charges are not billable unless such charges are referenced on the order. Transportation receipts, if allowed by order, must accompany invoice. Regardless of F.O.B. point, Contractor agrees to bear all risks of loss, injury, or destruction to goods and materials ordered herein which occur prior to delivery; and such loss, injury or destruction shall not release Contractor from any obligation hereunder.

Any shipments returned to the Contractor shall be delivered as F.O.B. shipping point.

## **10. INSPECTION AND RELATED RIGHTS**

The provision of services is subject to inspection, testing, approval and acceptance by the County. If the services or the method of delivery fail in any respect to conform to the Agreement, the County may, at its option, reject the entire tender, accept the entire tender, or, if the deliverables are commercially divisible, may, at its option, accept any commercial unit or units and reject the rest.

In the event that the Contractor's services are not accepted by County, the Contractor shall be liable for any costs incurred by the County because of such failure by Contractor. For instance, County may purchase or obtain the services elsewhere and the Contractor shall be liable for the difference between the price in the Agreement and the cost to the County, as well as any other costs incurred by the County; or County may terminate on grounds of material breach and Contractor shall be liable for County's damages.

The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under any contract with the County.

The rights and remedies of County provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law. The acceptance by County of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the rights or requirements for the complete and timely performance of any obligation remaining to be performed by the Contractor, or of any other claim, right or remedy of the County.

## **11. ADJUSTMENT BY COUNTY**

The County reserves the right to waive a variation in specification of services required. Contractor may request an equitable adjustment of payments to be made by County if County requires a change in the services to be delivered. Any claim by the Contractor for resulting adjustment of payment must be asserted within 30 days from the date of receipt by the Contractor of the notification of change required by County; provided however, that the Procurement Director, if he/she decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment made for services supplied by Contractor. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Purchasing Director shall have the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse the Contractor from proceeding with any terms with or without adjustment.

## **12. INVOICING**

Contractor shall invoice according to the pricing and/or compensation exhibit of this Agreement. Invoices shall be sent to the County customer or department referenced in the individual contract release purchase order. Invoices for goods or services not specifically listed in the Agreement will not be approved for payment.

Invoices shall include: Contractor's complete name and remit to address; invoice date, invoice number, and payment term; County contract number; pricing per the Agreement; applicable taxes; and total cost.

Contractor and County shall make reasonable efforts to resolve all invoicing disputes within forty-eight (48) hours.

## **13. AVAILABILITY OF FUNDING**

The County's obligation for payment of any contract beyond the current fiscal year end is contingent upon the availability of funding and upon appropriation for payment to the Contractor. No legal liability on the part of the County shall arise for payment beyond June 30 of the calendar year..

## **14. PAYMENT TERM**

The County's standard payment term shall be Net 45, unless otherwise agreed to by the parties. Payment shall be due Net 45 days from the date of receipt and approval of correct and proper invoices.



Notwithstanding the standard payment term set forth above, the parties agree that the Payment Term for this Agreement shall be the term set forth in the Key Provisions section of the Agreement above. If the Payment Term is a prompt payment discount term, then payment shall be made accordingly. For example, if the Payment Term is 2.25% 10 Net 45, payment shall be due 10 days from the date the County receives and approves the correct and proper invoice, but no later than 45 days from that date, and the County would take a discount of 2.25% of the total amount of the invoice if the payment is made in 10 days. The parties also agree that notwithstanding the Payment Term set forth in the Key Provisions section of the Agreement, that at any time during the contract term, either party may initiate an early payment discount on an invoice-by-invoice basis utilizing the Dynamic Discounting functionality of the Ariba Network. Contractor must have a registered account on the Ariba Network to utilize this functionality.

Payment is deemed to have been made on the date the County mails the warrant or initiates the electronic fund transfer.

## **15. OTHER PAYMENT PROVISIONS**

Notwithstanding anything to the contrary, County shall not make payments prior to receipt of service or goods (i.e. the County will not make "advance payments"). Unless specified in writing in an individual purchase order, the County will not accept partial delivery with respect to any purchase order. Any acceptance of partial delivery shall not waive any of County's rights on an ongoing basis.

Sales tax shall be noted separately on every invoice. Items that are not subject to sales tax shall be clearly identified.

Contractor shall be responsible for payment of all state and federal taxes assessed on the compensation received under this Purchase Order and such payment shall be identified under the Contractor's federal and state identification number(s).

The County does not pay Federal Excise Taxes (F.E.T). The County will furnish an exemption certificate in lieu of paying F.E.T. Federal registration for such transactions is: County #94-730482K. Contractor shall not charge County for delivery, drayage,

express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose, unless expressly authorized by the County.



## **16. LATE PAYMENT CHARGES OR FEES**

The Contractor acknowledges and agrees that the County will not pay late payment charges.

## **17. DISALLOWANCE**

In the event the Contractor receives payment, and this payment is later disallowed by the County or state or federal law or regulation, the Contractor 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 Contractor under any contract with the County.

## **18. TERMINATION FOR CONVENIENCE**

The County may terminate this Agreement or any contract release purchase order at any time for the convenience of the County by giving at least thirty (30) days written notice prior to the intended date of termination specifying the effective date and scope of such termination. If County determines that the Contractor's actions contribute to the curtailment of an essential service or pose an immediate threat to life, health or property, County may terminate this Agreement immediately without penalty upon issuing either oral or written notice to the Contractor and without any opportunity to cure.

In no event shall the County be liable for costs incurred by the Contractor as a result of the termination or any loss of profits on the resulting order or portion thereof so terminated.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other materials (collectively referred to as "materials") prepared by Contractor under this Agreement contract release purchase order shall become the property of the County and shall be promptly delivered to the County. Upon receipt of such materials, County shall pay the Contractor as full compensation for performance, the unit or pro rata price for the then-accepted portion of goods and/or services.

## **19. TERMINATION FOR CAUSE**

County may terminate this Agreement, in whole or in part, for cause upon thirty (30) days written notice to Contractor. For purposes of this Agreement, cause includes, but is not limited to, any of the following: (a) material breach of this Agreement or contract release purchase order by Contractor, (b) violation by Contractor of any applicable laws

or regulations, or (c) assignment or delegation by Contractor of the rights or duties under this Agreement or contract release purchase order without the written consent of County or (d) performance by Contractor that is not in strict conformance with terms, conditions, specifications, covenants, representations, warranties or requirements in this Agreement or any contract release purchase order.

In the event of such termination, the Contractor shall be liable for any costs incurred by the County because of Contractor's default. The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under any contract or contract release purchase order with the County.

If, after notice of termination under the provisions of this clause, it is determined for any reason that the Contractor was not in default under this provisions of this clause, the County has the option to make its notice of termination pursuant to the Termination for Convenience clause and the rights and obligations of the parties would be in accordance with that provision.

In lieu of terminating immediately upon contractor's default, County may, at its option, provide written notice specifying the cause for termination and allow Contractor 10 days (or other specified time period by the County) to cure. If, within 10 days (or other specified time) after the County has given the Contractor such notice, Contractor has not cured to the satisfaction of the County, or if the default cannot be reasonably cured within that time period, County may terminate this Agreement at any time thereafter. County shall determine whether Contractor's actions constitute complete or partial cure. In the event of partial cure, County may, at its option, decide whether to (a) give Contractor additional time to cure while retaining the right to immediately terminate at any point thereafter for cause; or (b) terminate immediately for cause.

In the event of any termination under this paragraph by County, in addition to any other rights and remedies that County may have, Contractor shall promptly refund to County any unused portion of any and all fees paid, including, without limitation maintenance and service fees, calculated pro rata on the basis of the number of days remaining in the then-current term.

## **20. TERMINATION FOR BANKRUPTCY**

If Contractor is adjudged to be bankrupt or should have a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of Contractor's insolvency, the County may terminate this Agreement immediately without penalty. For the purpose of this Section, bankruptcy shall mean the filing of a voluntary or involuntary petition of bankruptcy or similar relief from creditors; insolvency; the appointment of a

trustee or receiver, or any similar occurrence reasonably indicating an imminent inability to perform substantially all of the party's duties under this Agreement.

## **21. BUDGETARY CONTINGENCY**

Performance and/or payment by the County pursuant to this Agreement or any contract release purchase order is contingent upon the appropriation of sufficient funds by the County for services covered by this Agreement or any contract release purchase order. If funding is reduced or deleted by the County for services covered by this Agreement or any contract release purchase order, the County may, at its option and without penalty or liability, terminate this Agreement or offer an amendment to this Agreement indicating the reduced amount.

## **22. DISENTANGLEMENT**

Contractor 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. Contractor shall cooperate with County's efforts to ensure that there is no interruption of work required under the Agreement and no adverse impact on the provision of services or County's activities.

For any software programs developed for use under the County's Agreement, Contractor shall provide a nonexclusive, nontransferable, fully-paid, perpetual, irrevocable, royalty-free worldwide license to the County, at no charge to County, to use, copy, and modify, all work or derivatives that would be needed in order to allow County to continue to perform for itself, or obtain from other providers, the services as the same might exist at the time of termination.

Contractor shall return to County all County assets or information in Contractor's possession.

County shall be entitled to purchase at fair market value those Contractor assets used for the provision of services to or for County, other than those assets expressly identified by the parties as not being subject to this provision. Contractor shall promptly remove from County's premises, or the site of the work being performed by Contractor for County, any Contractor assets that County, or its designee, chooses not to purchase under this provision.

Contractor 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 client files, held by Contractor within sixty (60) days of the request, and Contractor shall destroy all copies thereof not turned over to County, all at no charge to County.

## **23. DISPUTES**

Except as otherwise provided in this Agreement, any dispute arising under this contract that is not disposed of by agreement shall be decided by the Director of Procurement or designee, who shall furnish the decision to the Contractor in writing. The decision of the Director of Procurement or designee shall be final and conclusive. The Contractor shall proceed diligently with the performance of the contract pending the Director of Procurement's decision. The Director of Procurement or designee shall not be required to decide issues that are legal or beyond his or her scope of expertise.

## **24. ACCOUNTABILITY**

Contractors will be the primary point of contact for the manufacturer, deliverer or any subcontractors and assume the responsibility of all matters relating to the purchase, including those involving the manufacturer and deliverer or any subcontractor, as well as payment issues. If issues arise, the Contractor must take immediate action to correct or resolve the issues.

## **25. NO ASSIGNMENT, DELEGATION OR SUBCONTRACTING WITHOUT PRIOR WRITTEN CONSENT**

Contractor may not assign any of its rights, delegate any of its duties or subcontract any portion of its work or business under this Agreement without the prior written consent of County. No assignment, delegation or subcontracting will release Contractor from any of its obligations or alter any of its obligations to be performed under the Agreement. Any attempted assignment, delegation or subcontracting in violation of this provision is voidable at the option of the County and constitutes material breach by Contractor.

As used in this provision, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance, or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any

person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

## **26. MERGER AND ACQUISITION**

The terms of this Agreement will survive an acquisition, merger, divestiture or other transfer of rights involving Contractor. In the event of an acquisition, merger, divestiture or other transfer of rights Contractor must ensure that the enquiring entity or the new entity is legally required to:

- A. Honor all the terms negotiated in this Agreement and any pre-acquisition or pre-merger Agreement between Contractor and the County, including but not limited to a) established pricing and fees; b) guaranteed product support until the contract term even if a new product is released; and c) no price escalation during the term of the contract.
- B. If applicable, provide the functionality of the software 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 current licensed product. The County will not be required to pay any additional license or maintenance fee.
- C. Give 30-days written notice to the County following the closing of an acquisition, merger, divestiture or other transfer of right involving Contractor.

## **27. COMPLIANCE WITH ALL LAWS & REGULATIONS**

Contractor shall comply with all laws, codes, regulations, rules and orders (collectively, "Regulations") applicable to the goods and/or services to be provided hereunder. Contractor's violation of this provision shall be deemed a material default by Contractor, giving County a right to terminate the contract. Examples of such Regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code §6300 et. seq. the Fair Packaging and Labeling Act, and the standards and regulations issued there under. Contractor agrees to indemnify and hold harmless the County for any loss, damage, fine, penalty, or any expense whatsoever as a result of Contractor's failure to comply with the act and any standards or regulations issued there under.

## **28. FORCE MAJEURE**

Neither party shall be liable for failure of performance, nor incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes will include Acts of God/Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, riots, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, lockout, blockage, embargo, labor dispute, strike, interruption or failure of electricity or telecommunication service.

Each party, as applicable, shall give the other party notice of its inability to perform and particulars in reasonable detail of the cause of the inability. Each party must use best efforts to remedy the situation and remove, as soon as practicable, the cause of its inability to perform or comply.

The party asserting *Force Majeure* as a cause for non-performance shall have the burden of proving that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

The County shall reserve the right to terminate this Agreement and/or any applicable Statement of Work upon non-performance by Contractor. The County shall reserve the right to extend the agreement and time for performance at its discretion.

## **29. CONFLICT OF INTEREST**

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement.

## **30. INDEPENDENT CONTRACTOR**

Contractor shall perform pursuant to this Agreement as an independent contractor and not as an officer, agent, servant, or employee of County. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the County and Contractor. No person performing any services and/or supplying all goods shall be considered an officer, agent, servant, or employee of County, nor shall any such person be entitled to any benefits available or granted to employees of the County.

Contractor is responsible for payment to sub-contractors and must monitor, evaluate, and account for the sub-contractor(s) services and operations.

## **31. INSURANCE**

Contractor shall maintain insurance coverage pursuant to the requirements set forth in the insurance exhibit, if such exhibit is attached to the Agreement.



### **32. DAMAGE AND REPAIR BY CONTRACTOR**

Any and all damages caused by Contractor's negligence or operations shall be repaired, replaced or reimbursed by Contractor at no charge to the County. Repairs and replacements shall be completed within 72 hours of the incident unless the County requests or agrees to an extension or another time frame. The clean up of all damage related to accidental or intentional release of any/all non-hazardous or hazardous material (e.g. hydraulic fluid, fuel, grease, etc.) from Contractor's vehicles or during performance shall be the responsibility of the Contractor. All materials must be cleaned up in a manner and time acceptable to County (completely and immediately to prevent potential as well as actual environmental damage). Contractor must immediately report each incident to the County's Director of Procurement or designee. Damage observed by Contractor, whether or not resulting from Contractor's operations or negligence shall be promptly reported by Contractor to County. County may, at its option, approve and/or dictate the actions that are in County's best interests.

### **33. LIENS, CLAIMS, AND ENCUMBRANCES and TITLE**

The Contractor warrants and represents that any goods and materials supplied in connection with performance under the Agreement are free and clear of all liens, claims or encumbrances of any kind. Title to the material and supplies purchased shall pass directly from Contractor to County at the F.O.B. point shown, subject to the right of County to reject upon inspection.

### **34. ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS**

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

### **35. INDEMNITY**

County shall not be liable for, and Contractor shall defend, indemnify and hold harmless County and the employees and agents of County (collectively, "County Parties") against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including without limitation attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to and arising either directly or indirectly



from any act, error, omission or negligence of Contractor or its contractors, licensees, agents, servants or employees, excepting only Claims caused by the sole negligence or willfulness of County Parties. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under its agreement with the County.

### **36. INTELLECTUAL PROPERTY INDEMNITY**

Contractor represents and warrants for the benefit of the County and its users that, to its knowledge, it is the exclusive owner of all rights, title and interest in the services and/or goods to be supplied. Contractor shall, at its own expense, indemnify, defend, settle, and hold harmless the County and its agencies against any claim or potential claim that any good, (including software) and/or service, or County's use of any good (including software) and/or service, provided under this Agreement infringes any patent, trademark, copyright or other proprietary rights, including trade secret rights. Contractor shall pay all costs, damages and attorneys' fees that a court awards as a result of any such claim.

### **37. WARRANTY**

Any services furnished under this Agreement shall be covered by the most favorable commercial warranties that Contractor gives to any of its customers for the same or substantially similar services. Any warranties so provided shall supplement, and shall not limit or reduce, any rights afforded to County by any clause in this Agreement, any applicable Uniform Commercial Code warranties, including, without limitation, Implied Warranty of Merchantability and Implied Warranty of Fitness for a Particular Purpose as well as any other express warranty.

Contractor warrants that all services shall strictly conform to the County's requirements and that workmanship and materials are free from defects. If any portion of the work has not been completely described in the Agreement (including Specifications/Scope of Work), it shall comply with nationally recognized codes and established industry standards. In addition to any other right that the County may have, if any work is found not to be in compliance with specifications or if the workmanship and/or materials are found to be defective within one-hundred and eighty (180) days after the conclusion of performance of the work, Contractor shall, at the County's option, refund to County the amount paid for the work or perform the work again to the County's satisfaction. This remedy is non-exclusive of other remedies and rights that may be exercised by the County. Claims for damages may include direct damages, such as cost to repair or replace, as well as incidental and consequential damages.

Contractor may not disclaim any warranty, express or implied, and any such disclaimer shall be void. Additionally, the warranties above shall not be deemed to exclude Contractor's standard warranties or other rights and warranties that the County may have or obtain.

Contractor represents that all prices, warranties, benefits and other terms being provided hereunder are fair and reasonable.

### **38. COOPERATION WITH REVIEW**

Contractor shall cooperate with County's periodic review of Contractor's performance. Contractor shall make itself available onsite to review the progress of the project and Agreement, as requested by the County, upon reasonable advanced notice.

Contractor 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 County, State, and Federal regulations are met, and that adequate internal fiscal controls are maintained.

### **39. AUDIT RIGHTS**

Pursuant to California Government Code Section 8546.7, the parties acknowledge and agree that every contract involving the expenditure of public funds in excess of \$10,000 shall be subject to audit by the State Auditor.

All payments made under this Agreement shall be subject to an audit at County's option, and shall be adjusted in accordance with said audit. Adjustments which are found necessary as a result of auditing may be made from current billings.

The Contractor shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in County audits. The Contractor shall pay to County the full amount of any audit determined to be due as a result of County audit exceptions. This provision is in addition to other inspection and access rights specified in this Agreement.

### **40. ACCESS AND RETENTION OF RECORDS AND PROVISION OF REPORTS**

Contractor shall maintain financial records adequate to show that County funds paid were used for purposes consistent with the terms of the contract between Contractor and County. Records shall be maintained during the

terms of the Agreement and for a period of four (4) years from its termination, or until all claims have been resolved, whichever period is longer, unless a longer period is required under any contract.

All books, records, reports, and accounts maintained pursuant to the Agreement , or related to the Contractor's activities under the Agreement, shall be open to inspection, examination, and audit by County, federal and state regulatory agencies, and to parties whose Agreements with the County require such access. County shall have the right to obtain copies of any and all of the books and records maintained pursuant to the Agreement, upon the payment of reasonable charges for the copying of such records.

Contractor shall provide annual reports that include, at a minimum, (i) the total contract release purchase order value for the County as a whole and individual County departments, and (ii) the number of orders placed, the breakdown (by customer ID/department and County) of the quantity and dollar amount of each product and/or service ordered per year. Annual reports must be made available no later than 30 days of the contract anniversary date unless otherwise requested.

Contractor shall also provide quarterly reports to the County that show a breakdown by contract release purchase order (i) the order date (ii) ship date (iii) estimated arrival date (iv) actual arrival date (v) list of products, services and maintenance items and (vi) the number and details of problem/service calls and department name that each such call pertains to (including unresolved problems). Quarterly reports must be made available to the County in electronic format, two (2) business days after the end of each quarter unless otherwise requested.

#### **41. ACCESS TO BOOKS AND RECORDS PURSUANT TO THE SOCIAL SECURITY ACT**

Access to Books and Records: If and to the extent that, Section 1861 (v) (1) (1) of the Social Security Act (42 U.S.C. Section 1395x (v) (1) (1) is applicable, Contractor shall maintain such records and provide such information to County, to any payor which contracts with County and to applicable state and federal regulatory agencies, and shall permit such entities and agencies, at all reasonable times upon request, to access books, records and other papers relating to the Agreement hereunder, as may be required by applicable federal, state and local laws, regulations and ordinances. Contractor agrees to retain such books, records and information for a period of at least four (4) years from and after the termination of this Agreement. Furthermore, if Contractor carries out any of its duties hereunder, with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, through a subcontract with a related organization, such subcontract shall contain these same requirements. This

provision shall survive the termination of this Agreement regardless of the cause giving rise to the termination.

#### **42. COUNTY NO-SMOKING POLICY**

Contractor and its employees, agents and subcontractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

#### **43. FOOD AND BEVERAGE STANDARDS**

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by Contractor with County funds for County-sponsored meetings or events.

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

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

#### **44. NON-DISCRIMINATION**

Contractor shall comply with all applicable Federal, State, and local laws and regulations, including Santa Clara County's policies, concerning nondiscrimination and equal opportunity in contracting. Such laws include, but are not limited to, the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (§§ 503 and 504); California Fair Employment and Housing Act (Government Code §§ 12900 et seq.); and California Labor Code §§ 1101 and 1102. Contractor shall not discriminate against any employee, subcontractor 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 in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in provision of services provided under this 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.

Contractor's violation of this provision shall be deemed a material default by Contractor giving County a right to terminate the contract for cause.

#### **45. WAGE THEFT PREVENTION**

(1) Compliance with Wage and Hour Laws: Contractor, and any subcontractor it employs to complete work under this Agreement, must comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or Living Wage Ordinance.

(2) Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, a local enforcement agency, or any other government entity tasked with the investigation and enforcement of wage and hour laws.

(3) Prior Judgments against Contractor and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS, OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING—IN THE FIVE YEARS PRIOR TO EXECUTING THIS AGREEMENT—THAT CONTRACTOR OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED

WITH—OR HAS REACHED AGREEMENT WITH THE COUNTY REGARDING THE MANNER IN WHICH IT WILL SATISFY—ANY SUCH JUDGMENTS, DECISIONS, OR ORDERS.

(4) **Judgments During Term of Contract:** If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision, or order finding that Contractor or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed, Contractor must inform the Office of the County Executive-Countywide Contracting, no more than 15 days after the judgment, decision, or order becomes final or of learning of the final judgment, decision or order. Contractor and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the Office of the County Executive-Countywide Contracting with documentary evidence of compliance with the final judgment, decision or order within 5 days of satisfying the final judgment, decision, or order. The County reserves the right to require Contractor to enter into an agreement with the County regarding the manner in which any such final judgment, decision or order will be satisfied.

(5) **County's Right to Withhold Payment:** Where Contractor or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision, or order of a court or government agency, the County reserves the right to withhold payment to Contractor until such judgment, decision, or order has been satisfied in full.

(6) **Material Breach:** Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for termination of this Agreement and/or any other remedies available under this Agreement and/or law.

(7) **Notice to County Related to Wage Theft Prevention:** Notice provided to the Office of the County Executive as required under this Section shall be addressed to: Office of the County Executive—Countywide Contracting; 70 West Hedding Street; East Wing, 11th Floor; San José, CA 95110. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.



## **46. LIVING WAGE**

Unless otherwise exempted or prohibited by law or County policy, Contractors that contract with the County to provide Direct Services, 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, must comply with Division B36 and the Living Wage Policy and compensate their employees in accordance with Division B36 and the Living Wage Policy. Compliance and compensation for purposes of this provision includes, but is not limited to, components relating to fair compensation, earned sick leave, paid jury duty, fair workweek, worker retention, fair chance hiring, targeted hiring, local hiring, protection from retaliation, and labor peace. If Contractor and/or a subcontractor violates this provision, the Board of Supervisors or its designee may, at its sole discretion, take responsive actions including, but not limited to, the following:

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

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

## **47. DEBARMENT**

Contractor guarantees that it, its employees, contractors, subcontractors or agents (collectively “Contractor”) are not suspended, debarred, excluded, or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, if applicable, 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. Contractor must within 30 calendar days advise the County if, during the term of this Agreement, Contractor becomes suspended, debarred, excluded or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, as defined by 42. U.S.C. 1320a-7b(f), 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. Contractor will indemnify, defend and hold the County harmless for any loss or damage resulting from the conviction, debarment, exclusion or ineligibility of the Contractor.

#### **48. CONTRACTING PRINCIPLES**

All entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County's request, provide the County reasonable access, through representatives of the Contractor, 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.

#### **49. CALIFORNIA PUBLIC RECORDS ACT**

The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor's proprietary information is contained in documents or information submitted to County, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor 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 best efforts to provide notice to Contractor prior to such disclosure. If Contractor 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 is required to respond to the CPRA request. If Contractor fails to obtain such remedy within the time the County is required to respond to the CPRA request, County may disclose the requested information.

Contractor further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the Contractor

## 50. POLITICAL REFORM ACT DISCLOSURE REQUIREMENT

Contractor shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Agreement and is grounds for immediate termination of this Agreement by the County.

In accepting this Agreement, Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Agreement. Contractor further covenants that, in the performance of this Agreement, it will not employ any contractor or person having such an interest. Contractor, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

Contractor, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under the Contract, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Act are applicable to any individual providing service under the Contract, Contractor shall, upon execution of the Contract, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Contractor'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 Contractor's service to the County under the Contract. Contractor shall ensure that such individuals file Statements of Economic Interests within 30 days of commencing service under the Contract, annually by April 1, and within 30 days of their termination of service under the Contract.

## **51. SEVERABILITY**

Should any part of the contract between County and the Contractor or any individual purchase order 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 contract or purchase order 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.

## **52. NON-WAIVER**

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by County. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless the writing signed by the County so specifies.

## **53. USE OF COUNTY'S NAME FOR COMMERCIAL PURPOSES**

Contractor may not use the name 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 as provided by the Director of Procurement or designee.

## **54. HEADINGS AND TITLES**

The titles and headings in this Agreement are included principally for convenience and do not by themselves affect the construction or interpretation of any provision in this Agreement, nor affect any of the rights or obligations of the parties to this Agreement.

## **55. HANDWRITTEN OR TYPED WORDS**

Handwritten or typed words have no greater weight than printed words in the interpretation or construction of this Agreement.

## **56. AMBIGUITIES**

Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

## **57. ENTIRE AGREEMENT**

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

## **58. EXECUTION & COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The parties agree that this Agreement, its amendments, and ancillary agreements to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by a method described under the Contract Execution provision herein.

## **59. NOTICES**

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed to the individuals identified in the Key Provisions of the Agreement as the County Contract Administrator and the Supplier Contact. Each party may designate a different person and address by sending written notice to the other party, to be effective no sooner than ten (10) days after the date of the notice.

## **60. ACCOUNT MANAGER**

Contractor must assign an Account Manager to the County upon execution of the Agreement to facilitate the contractual relationship, be fully responsible and accountable for fulfilling the County's requirements. Contractor represents and warrants that such person will ensure that the County receives adequate pre- and post-sales support, problem resolution assistance and required information on a timely basis.

## **61. SURVIVAL**

All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of their Agreement, will survive the termination of this Agreement.

## **62. GOVERNING LAW, JURISDICTION AND VENUE**

This Agreement shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

## **63. CONTRACT EXECUTION**

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.

## **64. THIRD PARTY BENEFICIARIES**

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

## **65. 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, including the entity’s Board of Directors or Executive Director. This Agreement shall not be effective or binding unless it is in writing and approved by the County Director of Procurement, or authorized designee, as evidenced by their signature as set forth in this Agreement.

**Exhibit B**  
**Price Summary**

Effective: Upon Execution

	<b>Test Performed</b>	<b>Price</b>	<b>Notes:</b>
1	Basic Physical	\$85	
2	DOT/DMV Physical Examination	\$85	
3	Hearing Testing (Audiogram)	\$30	
4	Titmus Vision Test	\$30	
5	Pulmonary Function Testing / Spirometry	\$50	
6	Respiratory Exam (Respirator Physicals)	\$135	
7	Quantitative Fit Testing	\$50	
8	TB (or PPD) Skin Testing	\$30	One view Chest X-Ray if test is positive, \$85
9	Quantiferon Gold TB Testing	\$100	
10	TB T-Spot Testing (IGRA)	\$95	
12	Asbestos Physical Examination	\$85	Asbestos exam will often include a spirometry / pulmonary function test \$50
	1 View Chest X-Ray	\$85	
13	2 View Chest X-Ray	\$110	
14	B - Reading	\$100	
15	Hemocult	\$25	
16	EKG-Resting	\$50	
17	Stress Treadmill	\$325	
18	CBC / Chemistry Panel / Micro Urinalysis	\$45	
19	Blood Lead / ZPP	\$65	
20	Heavy Metals Urine	\$85	
21	Urine Arsenic Testing	\$65	<b>Speciation, additional \$150</b>
22	MMR Titer	\$125	
23	Measles, Mumps, Rubella Vaccine	\$90	
24	Measles, Mumps, Rubella, Varicella Titer	\$150	
25	Tetanus Diptheria Pertusis (Whooping Cough) Vaccine	\$65	
26	Influenza Vaccine	\$30	
27	Typhoid Vaccine	\$95	
28	Yellow Fever Vaccine	\$175	
30	Hep A	\$95 per injection	Series of 2 injections
31	Hep B	\$75 per injection	Series of 3 injections
32	Hep B Titer	\$65 per Titer	
33	MRO Services Only	\$60 per review	
34	Fitness for Duty Examinations	\$100 - \$600	Simple: 30 - 60 mins: \$100 Complex: 1 - 2 hours: \$450 Highly Complex: 2+ hours: \$600

**Exhibit B**  
**Price Summary**

35	Ergonomic Evaluation	<b>\$300</b>	
			Includes, as needed: Basic physical exam: \$85 Pulmonary function test: \$50 Audiometric exam: \$30 EKG if over 40 years old: \$50 CBC, Chemistry Panel & Micro urinalysis: \$45 One view chest x-ray: \$85
36	Hazardous Waste Remediation Readiness Examinations	<b>\$345</b>	
37	Cholinesterase Plasma & RBC	<b>\$55</b>	
38	Insect Allergy Medical History Review and Assessment	<b>\$35</b>	
39	Insect Allergen IgE Blood Test	<b>\$80</b>	
40	Optional basic physical exam, if medically indicated	<b>\$85</b>	
41	Miscellaneous laboratory or other charges, as needed	<b>Cost plus 20%</b>	
42	Other pricing available when requested		



## Exhibit C

### Scope of Work

#### I. Background

Contractor shall provide occupational medicine services for all County departments. The contractor will have demonstrated experience in providing services such as pre-employment physicals, hearing and vision testing, respiratory surveillance, tuberculosis testing, and related medical monitoring services.

#### II. Services to be performed.

Services include, but are not limited to, the following activities:

##### A. **Pre-employment Exams (Basic Physical Exam)**

Basic physicals are done to determine if a County employee is physically capable of meeting the requirements of the job. Applicant must complete a medical and occupational history questionnaire, which will be reviewed by the medical provider and will be kept on file as a baseline of the applicant's medical condition when they started to work at County. Contractor will record vitals, height and weight, test vision, test urine for protein, blood, sugar, and perform an overall physical exam. Contractor's medical provider will either fully clear the applicant for the position or specify restrictions based on the medical history and examination. This will allow County to determine if reasonable accommodations can be made in accordance with the Americans with Disabilities Act. All exams must maintain compliance with the Americans with Disabilities Act.

##### B. **Audiometry (Hearing) and Vision Tests**

Contractor will conduct audiology screenings as a baseline for noise exposed County Employees.

Contractor may also conduct annual screenings as part of a hearing conservation program for County employees that are exposed to over 85 decibels per eight-hour time weighted average. Contractor's Medical Director will compare annual audiograms to prior year's testing and calculate age adjusted threshold shifts and changes from year to year. Medical surveillance services identify County workers, at an early stage, whose exposures to certain work place hazards may result in undesirable medical conditions.

##### C. **Pulmonary Function Tests**

The spirometry or pulmonary function test is done in combination with the basic physical exam in order to determine if a County employee is physically capable of wearing a respirator. The County employee will be given a medical history and respirator-usage questionnaire in compliance with Cal-OSHA Title 8-5144. The contractor's physician will complete a Respirator Compliance Letter indicating whether the County employee is medically cleared to wear a respirator.

##### D. **Respiratory Physicals**

This test includes basic physical exam and pulmonary function test above.

##### E. **Respirator Fit Tests**

Quantitative Fit Testing shall include the following:

- Test must be performed by Contractor's trained fit test technicians;
- Test will be completed on the state-of-the-art Porta Count Quantitative Fit Testing machine, thereby taking the subjectivity out of testing;

- County employees being tested must bring a properly sized mask they will be using for fit testing;
- Copy of the individual fit test for each County employee and Summary list of all that were fit tested will be made available;
- Fit testing shall be performed at Contractor's facilities. On site testing may be organized for groups of 10 or more County employees, for an additional fee.

**F. Tuberculosis Screening**

Contractor shall provide tuberculosis (TB), also known as PPD skin tests, for County employees. For the test, a small amount of solution is injected beneath the skin of the forearm. The patient must return to the clinic in 48 to 72 hours to have the staff look at the injection site. A negative test means that the patient has not had an infection with TB. A positive result (induration or swelling greater than 10mm in diameter) means that the patient has been exposed and infected with TB in the past. There are exceptions in some immuno-compromised individuals. Generally, Contractor will perform a one-view chest x-ray on patients with positive TB results to determine if the TB is in the active or infectious state.

QuantiFERON-TB Gold (OFT®) is a simple blood test that aids in the detection of *Mycobacterium tuberculosis*, the bacteria which causes tuberculosis (TB). OFT is an interferon-gamma (IFN-γ) release assay, commonly known as an IGRA, and is a modern alternative to the tuberculin skin test (TST or Mantoux). Unlike the TST, OFT is a controlled laboratory test that requires only one patient visit and is unaffected by previous vaccination with Bacille-Calmette Guerin (BCG).

OFT is highly specific and sensitive: a positive result is strongly predictive of true infection with *M. tuberculosis*. However, like the TST and other IGRAs, OFT cannot distinguish between active tuberculosis disease and latent tuberculosis infection, and is intended for use with risk assessment, radiography, and other medical and diagnostic evaluations. Like any diagnostic aid, QFT cannot replace clinical judgement. Blood draws can only be performed Monday through early Thursday to allow 24 hours of incubation prior to shipment to laboratory for testing.

The T-Spot TB test is a blood test also known as Interferon Gamma Release Assay (IGRA) that detects the immune response of T cells found in a sample of highly purified white blood cells that have been sensitized to *M.tuberculosis* antigens. It is intended for use as an aid in the diagnosis of *Mycobacterium tuberculosis* infection (both latent and active disease). It requires just one patient visit and is unaffected by previous vaccination. Blood tests must be sent to the lab the same day, so must be collected before 2PM daily.

**G. Asbestos Exposure Monitoring and Blood Lead Level Tests**

Asbestos physicals are performed in accordance with Section 3204 of the General industry Safety Orders Title I Section 1529 pertaining to asbestos surveillance. Contractor will ask County employees to complete an asbestos questionnaire which will be reviewed by Contractor's medical provider to keep on file as a baseline of the employee's medical condition. Physical exam includes blood pressure, pulse, height, weight, dipstick urinalysis, vision check, and review of systems. Contractor's medical provider will either fully clear the applicant for the position or specify restrictions based on the medical history and examination.

Asbestos exam will often include the following: SPIROMETRY/PULMONARY FUNCTION TEST

Blood lead/ZPP (Zinc protoporphine) blood work is used to determine a County employee's current and past exposure to lead and any restrictions based on that exposure.

**H. Chemical-specific Medical Monitoring**

Screens liver and kidney function as well as general health including total cholesterol to determine if the County employee has special needs or risks. Monitoring allows Contractor's physician to advise County employer about environmental exposure precautions or restrictions in the event significant liver or kidney dysfunction exists. As is true for any personal medical problems detected during these exams if additional treatment is warranted, Contractor will direct County patients to their own medical providers for further evaluation.

**I. Federal Department of Transportation (DOT) Physicals**

DMV specific exams qualify a County driver's physical ability to perform the job. Contractor's physicians will provide physical exams to County employees in order to meet the Federal Motor Carrier Safety Regulations criteria. These exams will be provided to County manager usually within 48 hours of request. DMV cards can be issued to the County employee directly or mailed to County manager for distribution.

**J. Hazardous Waste Remediation Readiness Examinations**

Contractor can customize the protocol to provide examination components required depending on what hazardous exposures County employees were exposed to or expected potential exposures. Generally, the following components are included for hazardous examinations:

- Basic physical exam
- Pulmonary function test
- Audiometric exam
- EKG if over 40 years old
- CBC, Chemistry Panel & Micro urinalysis
- One view chest x-ray

**K. Ergonomic Evaluations**

Contractor can provide full, 60 minutes with County employee, on-site individual worksite assessment and training for the injured or non-injured County employee. Contractor's therapist talks the employee through daily events, at home and at work, with the focus on motion analysis, customizing the workstation and implementing safe work practices specific to his/her workstation. The County employee is taught preventative exercises. Emphasis is on individual responsibility, behaviors, postures, and techniques.

Contractor will identify specific problem areas involving how the County employee interacts with the workspace, computer, tools and furniture that could potentially result in musculoskeletal disorders. Evaluation will include workstation seating, lighting and glare, VDT operator, screen, keyboard, work surfaces, work practices and VDT accessories.

- Make necessary adjustments to equipment and furniture during the evaluation process whenever possible. Full written report of findings, actions taken, and recommendations for further considerations such as work station redesign and administrative controls such as job rotation, work pacing and work breaks.
- Report includes digital before/after photos to demonstrate problem areas.
- Evaluation and/or recommendation of ergonomic equipment.

**L. Infectious Disease Control Training and Tracking**

Contractor will coordinate with County to provide required services.

**M. Fit-to-Work Assessments**

Contractor's medical staff can provide medical evaluations to determine the ability of a County employee to return to duty or their fitness for duty. Many times County employees' personal physicians may release a patient back to work without understanding the full scope of an employee's job and their potential risk of injury. Contractor understands the work place and request that County forward a job description for the typical daily activities of the County employee to be evaluated, as well as their release from their personal physician. Contractor will then evaluate if the County employee is fully able to do their job or any restrictions that may need to be upheld to protect the employee and employer.

**N. Hepatitis A and B Vaccines**

Hepatitis A immunizations are given in a series of two injections. After the first dose is given, the second dose is given six months after the first dose. Contractor will send County a copy of each vaccination record to assist in tracking which employees are in the midst of the series and which employees have completed the series.

Hepatitis B immunizations are given in a series of three injections. After the first dose is given, the second dose is given one month later, and the third dose is given six months after the first dose. Contractor will send County a copy of each vaccination record to assist in tracking which employees are in the midst of the series and which employees have completed the series.

Once the series is complete an employee may have his/her blood drawn for Hepatitis B Surface antibodies to check for an adequate and protective immune response to the vaccine series. Individuals who have previously been vaccinated could also have a titer drawn to preclude the need for re-immunization.

**O. Immunizations (such as Flu, Hepatitis, Measles, Mumps, Rubella, Tetanus, etc.)**

Influenza is a serious disease caused by a virus that spreads through respiratory droplets from an infected person to the nose or throat of others. By offering County employees flu vaccines, the County can help to reduce the risk of employees becoming infected and spreading the disease to others in the work place. Contractor can offer flu shots either on site at County facilities or in Contractor's medical facility.

**P. Medical Review Officer (confirmation of Drug Test Results)**

Contractor has Certified Medical Review Officers available to review drug screen results. This service is available when County has its own laboratory and collection site, but needs medical review of positive results. Collectors with the County organized site would perform collections in accordance with Federal Drug Collection guidelines and provide Contractor's MRO's copies of chain of custody forms, lab results from Health & Human Services DOT Certified laboratories, and contact information for donors. Paperwork would be coordinated through clinic management staff. Contractor's MRO will review positive results, contact donors to discuss positive results, and report back on results to the designated employer representative with the employer.

**Q. Pesticide Exposure Monitoring**

Organophosphate pesticide poisoning causes a decrease in both plasma and red blood cell (RBC) cholinesterase activity. Therefore cholinesterase activity can be used as a marker for exposure and severity of exposure.

Cholinesterase activity varies greatly between different individuals so the only way to be certain an exposure has or has not occurred is to have a baseline test performed on each individual prior to exposure. This result can be kept in the County employees' confidential records for comparison at a later date in the event of a suspected exposure. The baseline results are not relevant to their general health until they actually have an exposure; these

baseline results are not a predictor of any future or ongoing medical condition. About 3% of the population does have low baseline cholinesterase activity without ill effect, and does not in any way increase their risk of illness in the event of an exposure.

In the event of a suspected exposure to pesticides a new blood specimen would be collected and sent for post-exposure testing for cholinesterase activity which can then be compared to the baseline for that specific employee. This is the only way to accurately diagnose a significant decrease in cholinesterase activity and refute or support the diagnosis of pesticide toxicity.

Some employers test routinely for surveillance purposes, but this is not universally recommended unless frequent or recurring low-level exposure can be anticipated in the line of duty. Under those circumstances surveillance blood testing at the end of the workweek is advised.

**R. X-Rays**

A chest X-Ray is taken at one of Contractor's occupational medical facilities and is sent to a Board Certified Radiologist and certified B-Reader for a full evaluation and report. Contractor shall follow the OSHA Asbestos Standard on Chest X-rays:

- Under age 40 & less than 10 years exposure - perform One View Chest X-ray every 3 years;
- Over age 40 or 10+ years exposure, perform One View Chest X-ray annually and 3 View chest X-ray every 3 years; OR
- When medically indicated.

HEMOCULT should be performed based on asbestos exposure if over 40 years of age or 10+ years exposure.

**S. Other occupational medical needs**

County and Contractor shall communicate and cooperate regarding other occupational medical needs. Prices for other tests/procedures shall reflect current pricing at the time of execution of this contract.

## EXHIBIT D

### INSURANCE REQUIREMENTS FOR PROFESSIONAL SERVICES CONTRACTS (e.g. Medical, Legal, Financial services, etc.)

#### 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 D

C. Notice of Cancellation

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

D. Insurance Required

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

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

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

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



EXHIBIT D

4. Automobile Liability Insurance

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

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

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

5. Workers' Compensation and Employer's Liability Insurance

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

6. Professional Errors and Omissions Liability Insurance

- a. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.
- c. Coverage as required herein shall be maintained for a minimum of two years following termination or completion of this Agreement.

7. Claims Made Coverage

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

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

## EXHIBIT D

### E. Special Provisions

The following provisions shall apply to this Agreement:

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

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

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