



COUNTY OF SANTA CLARA

INVITATION TO BID # 1072

**FOR
FROZEN YOGURT MIX AND READY-TO-EAT YOGURT PRODUCTS
FOR
SANTA CLARA VALLEY HEALTH & HOSPITAL SYSTEM**

JANUARY 27, 2010

**BIDS DUE:
FEBRUARY 11, 2010 at 3:00 PM PACIFIC STANDARD TIME**

**IN THE COUNTY PROCUREMENT DEPARTMENT
2310 N. FIRST STREET SUITE 201
SAN JOSE, CA 95131-1040**

**BUYER: CAROLYN FERRARI, BUYER III
(408) 491-7420
Carolyn.Ferrari@proc.sccgov.org**

County of Santa Clara Procurement Department
Invitation to Bid # 1072
Frozen Yogurt Mix and Ready-to-Eat Yogurt Products

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SECTION I. INVITATION

The County of Santa Clara is requesting bids from qualified suppliers to provide Frozen Yogurt Mix and Ready-to-Eat Yogurt Products to Santa Clara Valley Health and Hospital System (SCVHHS), Nutrition and Food Services (San Jose, CA), to establish a three-year agreement.

SECTION II. INSTRUCTIONS TO BIDDERS

1. TERMINOLOGY:

The following are definitions of terms used in the ITB:

"Bidder" means the entity, supplier, person, firm, or corporation submitting a bid.

"Contractor" means the firm awarded a purchase order as a result of its bid.

"County" means County of Santa Clara.

"ITB" means Invitation to Bid.

"Time" stated as number of days shall mean "calendar" days.

2. PREPARATION OF BID:

- 2.1 Bidder must prepare bid using the bid form provided by the County (see attached Appendix A-1) with any required attachments, exhibits, and any explanatory materials. All attachments and materials must identify the Bidder's name, ITB number, and ITB page and section number on the cover page.
- 2.2 Bids must be completed in ink, typewritten, or printed. No erasures are permitted. Errors may be crossed out and corrections printed in ink or typewritten nearby and must be initialed in ink by person signing bid.
- 2.3 Time of delivery is a part of the bid and must be adhered to. Bidder shall respond to the delivery question on Appendix A-1 of this ITB.
- 2.4 Bids should be printed two-sided on 8-1/2" x 11" paper, wherever practical.
- 2.5 All bids must be signed with the Bidder's name or by a responsible officer or employee with the authority to bind the Bidder to contractual obligations. Obligations assumed by such signature must be fulfilled.

3. COSTS ASSOCIATED WITH ITB:

All costs for the preparation, printing, and submittal of a response to this ITB shall be borne by the Bidder.

4. BID DOCUMENT:

The following are incorporated into the ITB and constitute the bid document and are the instructions and conditions:

- 4.1 Appendix A1 – ITB Response Form
- 4.2 Appendix A2 – Non-Collusion Declaration
- 4.3 Appendix A3 – Declaration of Local Business (as applicable)
- 4.4 Appendix B2 – Insurance Requirements

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5. **ITB PROCESS SCHEDULE:**

The following is an anticipated bid and engagement schedule.

January 27, 2010	ITB posted on www.bidsync.com
February 1, 2010	Last date to Submit Written Questions via Bid Sync.com
February 3, 2010	Addendum (if applicable) via BidSync.com
February 11, 2010	Bids Due (Closing Date)
February 12 – 18, 2010	Evaluation of Bids
February 23, 2010	Contract Award

6. **QUESTIONS AND ADDENDA:**

- 6.1 Bidder shall post any questions on BidSync.com www.bidsync.com. by the deadline specified in Paragraph 5, ITB Process Schedule.
- 6.2 The County Procurement Department will respond to inquiries deemed necessary and relevant to responding to the ITB in a written Addendum posted on BidSync.com. Bidders are responsible for checking BidSync.com for postings.
- 6.3 The ITB and addenda will be posted on BidSync's website. Bidders may view and print the ITB and addenda by registering on BidSync's website at www.bidsync.com.
- 6.4 The County is not liable for verbal responses, interpretations or representations.
- 6.5 The County makes no guarantee that any questions submitted will be answered before the ITB closing date and time.
- 6.6 The County reserves the right to extend any deadlines, including the deadline for questions, by posting an addendum to the ITB on BidSync.com. Bidders are responsible for checking the BidSync.com website for any addenda.

7. **SUBMISSION OF BID:**

- 7.1 Any bid not submitted on the provided County forms may be considered non-responsive.
- 7.2 Bids must be submitted by either sending a hard copy by mail or hand delivered as described further below. Bids submitted in the following forms will not be accepted: Oral, telegraph, telephone, facsimile or electronic.
- 7.3 Bidder must submit the following documents with the bid in a sealed envelope by the ITB closing date and time specified in paragraph 5 of this section.
 - Appendix A1 – ITB Response Form
 - Appendix A2 – Non-Collusion Declaration
 - Appendix A3 – Declaration of Local Business {as applicable}
- 7.4 Apparent successful Bidder must submit the following document(s) within five (5) business days of notification by the County:
 - Appendix B2 – Insurance Requirements
- 7.5 Bids submitted in response to this ITB must be delivered in a sealed envelope to the following address:
ITB # 1072
Attn: Carolyn Ferrari
County of Santa Clara Procurement Department

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2310 N. First Street Suite 201
San Jose, CA 95131-1040

- 7.6 If hand delivered, bid must be submitted in a sealed envelope to the County Procurement Department receptionist located on the 2nd floor of the address listed in Paragraph 7.5 by the time and date specified in Paragraph 5, ITB Process Schedule. The County will reject any bids delivered after this time.
- 7.7 The ITB number must be prominently noted on the envelope/package, regardless of how the bid is delivered to the County Procurement Department.
- 7.8 All information submitted is subject to investigation, as well as to disclosure to third parties under the California Public Records Act.
8. **MULTIPLE BIDS:**
Only one bid will be accepted from any one Bidder.
9. **PUBLIC BID OPENING:**
There will be a public bid opening at 3:00 p.m. PST on the ITB closing date specified in Paragraph 5, ITB Process Schedule.
10. **POINT OF CONTACT:**
10.1 The Point of Contact for this solicitation is **Carolyn Ferrari**, at Santa Clara County Procurement Department at **carolyn.ferrari@proc.sccgov.org**.
10.2 Bidders are not permitted to contact County departments, employees, and agencies in regard to this ITB, other than the Point of Contact at the Procurement Department identified in 10.1 above.
11. **LATE RESPONSES:**
In order to be considered, a bid must be received in the County Procurement Department no later than the ITB closing date and time. Bids that are hand delivered after the ITB closing date and time will not be considered. Bids that are received by U.S. mail or carrier service will be time/date stamped and will not be considered if they are received after the ITB closing date and time. Upon bidder's written request, late bids will be returned unopened to the bidder at bidder's own expense.
12. **ACCEPTANCE OF BID:**
The County may award a contract to a Bidder at any time within 90 days after the ITB closing date and time.
13. **NO WAIVER:**
The County's failure to address errors or omissions in a bid or acceptance of a bid shall not constitute a waiver of any requirement of the ITB by the County.
14. **WITHDRAWAL OR MODIFICATION OF BID:**
14.1 Bidder may withdraw a bid by submitting a written request for bid withdrawal to the County Buyer identified as the Point of Contact in paragraph 10.1 above **prior** to the ITB closing date and time. Bids that are withdrawn prior to the ITB closing date and time will be returned to Bidder, if requested, at Bidder's own expense.

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- 14.2 Bidder may modify a bid by withdrawing its original bid and submitting a replacement bid, provided that the Bidder submits a written request for bid withdrawal to the County. The submittal of the replacement bid must be clearly identified as such and must occur prior to the ITB closing date and time and must be submitted in a form and manner that complies with the requirements set forth in this ITB.
- 14.3 No withdrawal requests or replacement bids will be allowed after the ITB closing date and time.
- 15. **GROUND FOR REJECTION:**
Any false, incomplete or otherwise unresponsive statements in or in connection with a bid or any documentation or other information supplied to the County by a Bidder shall be cause for rejection by the County of the bid or disqualification of the Bidder at the County's sole discretion. Any judgment as to the significance of any falsity, incompleteness or unresponsiveness shall be made at the discretion of the County, and its judgment shall be final.
- 16. **RESERVATION:**
The County reserves the right to do any of the following at any time
 - 16.1 To reject any and all bids;
 - 16.2 Waive or correct any minor or inadvertent defect, irregularity, informality or technical error in any bid or procedure, as part of the ITB;
 - 16.3 Require bidder to submit breakdown of cost or pricing data provided in bid.
 - 16.4 Accept bid for any item or group of items.
 - 16.5 Terminate this ITB or any portion of the ITB process and issue a new ITB any time thereafter;
 - 16.6 Extend any or all deadlines in the ITB, including the deadline for accepting bids;
 - 16.7 Disqualify any Bidder on the basis of any real or apparent conflict of interest or evidence of collusion that is disclosed by the bid or other data available to the County. Such disqualification is at the sole discretion of the County and its decision shall be final;
 - 16.8 Reject the bid of any Bidder that is in breach of or in default under any other agreement with the County;
 - 16.9 Reject any bid deemed by the County to be non-responsive and/or conditional;
 - 16.10 Make such investigations as deemed necessary to determine if a Bidder is capable of meeting contract requirements. The determination of the County as to the Bidder's ability to perform is at the sole discretion of the County and its decision shall be final;
 - 16.11 Determine whether a bid meets, exceeds or does not meet County's specification.
- 17. **ITB EVALUATION CRITERIA:**
If an award is made, it will be made to the lowest responsive and responsible Bidder. Factors for determining the lowest responsive and responsible Bidder may include, but are not limited to, the following:
 - 17.1 Total price, including any discounts;
 - 17.2 Whether the products/services offered meet County specifications;
 - 17.3 Whether the products/services are able to perform in accordance with the County's requirements;
 - 17.4 Whether the bid submitted complied with all ITB requirements; and

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- 17.5 Bidder's ability to meet contractual requirements, which may include, but not be limited to, delivery and stocking requirements, bidder's experience and financial stability, and past performance under previous contracts with the County and others.

18. PRICING:

Prices should be stated in the units specified. If there is a discrepancy between the unit price and total or extended price, the unit price shall prevail. All prices quoted shall be in dollars and "whole cents." No cent fractions shall be used.

19. PROMPT PAYMENT DISCOUNT:

Prompt payment discounts shall not be considered in the evaluation of offers. However, any prompt payment discount offered will form a part of the award and will be taken by the County if payment is made within the discount period specified by the Bidder.

Any prompt payment discount offered must be noted in Appendix A1, ITB Response Form.

20. FOB POINT:

Destination (freight prepaid and allowed).

21. BRAND NAME OR APPROVED EQUAL:

Brand names and model numbers, if specified in the ITB, are for reference and descriptive purposes only. Unless otherwise indicated, bids for equal items will be considered, provided the bid includes a detailed description of specifications of the product being offered, feature by feature. The description must clearly demonstrate how specifications of the product offered match the specifications of the product listed by brand name and/or model number in the ITB. Submission of descriptive literature (including, without limitation, marketing material) alone does not meet this requirement.

Determination of whether an item is equal to the items listed and/or meets the County's specifications is at the sole discretion of the County and its decision shall be final.

22. INTENT OF AWARD:

If an award is made, the County reserves the right to make an award to one or more Bidders.

23. LOCAL PREFERENCE:

In accordance with applicable sections of Board Policy, Section 5.3.13, in the formal solicitation of goods or services, the County of Santa Clara shall give responsive and responsible Local Businesses the preference described below.

"Local Business" means a lawful business with a physical address and meaningful "production capability" located within the boundary of the County of Santa Clara.

The term "production capability" means sales, marketing, manufacturing, servicing, or research and development capability that substantially and directly enhances the firm's or bidder's ability to perform the proposed contract. Post Office box numbers and/or

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residential addresses may not be used as the sole bases for establishing status as a "Local Business."

In the procurement of goods or services in which price is the determining factor for award of the contract, one percent (1%) shall be subtracted from a bid submitted by a responsive and responsible Local Business in determining the lowest responsive responsible bidder. If application of the 1% results in a Local Business bid being lower than the non-local business, the contract award shall be made to the Local Business at the Local Business' original bid price. If after applying the 1% discount, two or more competing vendors have bid the same price, local businesses shall be given preference.

This Local Business preference shall not apply to the following:

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

In order to be considered for Local Preference, Bidder must complete and submit the Declaration of Local Business, which is attached as Appendix A3 with its ITB response.

24. TIE BIDS:

A tie bid exists when two or more responsive and responsible Bidders submit bids with identical prices.

If Local Preference is applicable and a tie bid exists after applying the 1% Local Business preference, the contract shall be awarded to the Local Business. Otherwise, the contract shall be awarded, based upon the flip of a coin in the presence of at least one witness or all bids may be rejected and a new ITB issued.

SECTION III. SPECIFICATIONS AND REQUIREMENTS

1. **SCOPE:**

The County of Santa Clara is requesting bids from suppliers to provide all necessary equipment, delivery, shipment and supplies for Frozen Yogurt Mix and Ready-to-Eat Yogurt Products ordered by Santa Clara Valley Health and Hospital Systems Nutrition and Food Services, per the County of Santa Clara specifications in this Invitation to Bid.

2. **SPECIFICATIONS:**

A. Frozen Yogurt (Machine Mix Items)

1. **Miss Karen's ("Flavor It with KanPak") OR Equal:**

- **Flavor Advantage System** – Flavor Cup; 1-1/2 ounce pre-portioned concentrated flavor cup; 16 cups/tray

Assorted Flavors include: Bavarian Coffee; Bing Cherry; Butter Brickle; Café au Lait; Cappuccino; Caramel Custard; Coconut; English Toffee; French Vanilla; Fresh Peach; Fresh Strawberry; Golden Butterscotch; lemon Chiffon; Milk Chocolate; Nutty Banana; orange Blossom; Southern Praline; Strawberry Cheesecake; Strawberry mango; Sugar Free Peach; Sugar Free Vanilla; Sugar Free White Chocolate Macadamia; Swiss Chocolate Mint; Vanilla Bean; White Chocolate Macadamia

2. **YoCream OR Equal:**

- Frozen Yogurt, Nonfat Plain; Half-Gallon Carton

B. Ready-to-Eat Yogurt - Dannon OR Alternate National Brand

- 6 oz. cup; 12/case

1. **Light:** Blueberry; Cherry Vanilla; Lemon Chiffon; Peach; Raspberry; Strawberry; Strawberry Banana; Vanilla
2. **Lowfat Fruit-on-the Bottom:** Blueberry; Mixed Berry; Peach; Raspberry; Strawberry Banana; Strawberry
3. **Original:** Vanilla

3. **SPECIAL PROVISIONS**

3.1 Product Samples:

- 3.1.1 The County Procurement Department will contact suppliers; as needed, if samples are required for further bid evaluation.
- 3.1.2 If product samples are requested for evaluation prior to award of contract, suppliers must deliver samples to the County Procurement Department **within three (3) working days of request.** Samples shall be sent at the bidder's expense, and will not be returned.

APPENDIX A1

ITB RESPONSE FORM

Please enter bid pricing in the UNIT PRICE column. Pricing provided in this Bid Response must include delivery charges, as specified in the Invitation to Bid. All prices should be rounded to the nearest whole cent (two decimal places).

[illegible]

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FROZEN YOGURT (MACHINE MIX - continued)							
ITEM #	EST. ANNUAL QUANTITY (EACH)	BRAND	DESCRIPTION	UNIT SIZE (EACH)	CURRENT CASE/PACK SIZE	UNIT PRICE (EACH)	EXTENDED DOLLAR AMOUNT
2	498	YoCream OR Equal	Frozen Yogurt, Nonfat Plain	Half Gallon Carton	6/Case	\$	\$
6 OZ READY-TO-EAT YOGURT							
ITEM #	EST. ANNUAL QUANTITY (EACH)	BRAND	DESCRIPTION	UNIT SIZE (EACH)	CURRENT CASE/PACK SIZE	UNIT PRICE (EACH)	EXTENDED DOLLAR AMOUNT
3	1236	Dannon OR Alternate National Brand	Light Blueberry	6 oz cup	12/case	\$	\$
4	1236	Dannon OR Alternate National Brand	Light Cherry Vanilla	6 oz cup	12/case	\$	\$
5	996	Dannon OR Alternate National Brand	Light Lemon Chiffon	6 oz cup	12/case	\$	\$
6	1284	Dannon OR Alternate National Brand	Light Peach	6 oz cup	12/case	\$	\$
7	1188	Dannon OR Alternate National Brand	Light Raspberry	6 oz cup	12/case	\$	\$
8	1224	Dannon OR Alternate National Brand	Light Strawberry	6 oz cup	12/case	\$	\$
9	1224	Dannon OR Alternate National Brand	Light Strawberry Banana	6 oz cup	12/case	\$	\$

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6 OZ READY-TO-EAT YOGURT (continued)							
ITEM #	EST. ANNUAL QUANTITY (EACH)	BRAND	DESCRIPTION	UNIT SIZE (EACH)	CURRENT CASE/PACK SIZE	UNIT PRICE (EACH)	EXTENDED DOLLAR AMOUNT
10	540	Dannon OR Alternate National Brand	Light Vanilla	6 oz cup	12/case	\$	\$
11	1032	Dannon OR Alternate National Brand	Lowfat Blueberry Fruit on the Bottom	6 oz cup	12/case	\$	\$
12	1104	Dannon OR Alternate National Brand	Lowfat Mixed Berry Fruit on the Bottom	6 oz cup	12/case	\$	\$
13	1092	Dannon OR Alternate National Brand	Lowfat Peach Fruit on the Bottom	6 oz cup	12/case	\$	\$
14	996	Dannon OR Alternate National Brand	Lowfat Raspberry Fruit on the Bottom	6 oz cup	12/case	\$	\$
15	1020	Dannon OR Alternate National Brand	Lowfat Strawberry Banana Fruit on the Bottom	6 oz cup	12/case	\$	\$
16	1032	Dannon OR Alternate National Brand	Lowfat Strawberry Fruit on the Bottom	6 oz cup	12/case	\$	\$
17	3048	Dannon OR Alternate National Brand	Original Vanilla	6 oz cup	12/case		
18					SUB-TOTAL		
19					9.25% SALES TAX		
20					TOTAL		

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APPENDIX A1- ITB RESPONSE FORM (continued)

ALTERNATE OFFERED PRODUCT/BRAND: FROZEN YOGURT MACHINE MIX AND READY-TO-EAT YOGURT

YOGURT

If offering an alternate brand or if offer is more than the minimum requirements stated, Bidders must provide complete and detailed information in the appropriate column below.

- Bidder must include **Product Name** as well as **Brand Name**.
- The response in the "Alternate Offered Product Description" column must describe the offered alternate product.

PLEASE DO NOT respond with a "Yes" or "No," "Meets Specifications," "Same or Equal," and/or similar responses.

- The County will be the sole judge of determining equal or alternate products.

FROZEN YOGURT (MACHINE MIX ITEMS)

[illegible]

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APPENDIX A1- ITB RESPONSE FORM (continued)				
ALTERNATE OFFERED PRODUCT/BRAND - FROZEN YOGURT MACHINE MIX AND READY-TO-EAT YOGURT				
FROZEN YOGURT (MACHINE MIX ITEMS - continued)				
ITEM #	DESCRIPTION	CASE/PACK SIZE	Brand Name and Product Name	Alternate Offered Product Description
2	Frozen Yogurt, Nonfat Plain			
6 OZ. READY-TO-EAT YOGURT				
ITEM #	DESCRIPTION	CASE/PACK SIZE	Brand Name and Product Name	Alternate Offered Product Description
3	Light Blueberry			
4	Light Cherry Vanilla			
5	Light Lemon Chiffon			
6	Light Peach			
7	Light Raspberry			
8	Light Strawberry			
9	Light Strawberry Banana			
10	Light Vanilla			
11	Lowfat Blueberry Fruit on the Bottom			
12	Lowfat Mixed Berry Fruit on the Bottom			
13	Lowfat Peach Fruit on the Bottom			
14	Lowfat Raspberry Fruit on the Bottom			
15	Lowfat Strawberry Banana Fruit on the Bottom			
16	Lowfat Strawberry Fruit on the Bottom			
17	Original Vanilla			

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Bidder, please state your prompt payment discount offered (if any):

_____ % Net _____ days

2. ADDENDA:

Bidder, if an Addendum is posted on www.bidsync.com, please acknowledge receipt by stating the Addendum number and date below.

Addendum # _____ Date _____ Addendum # _____ Date _____

Addendum # _____ Date _____ Addendum # _____ Date _____

3. BIDDER'S REPRESENTATIONS:

Bidder understands, agrees, and warrants:

- 3.1 That Bidder has carefully read and fully understands the information that was provided by the County to serve as the basis for submission of this bid;
- 3.2 That Bidder has the capability to successfully undertake and complete the responsibilities and obligations of the bid being submitted;
- 3.3 That the bid constitutes an offer that shall be firm and irrevocable for 90 days from the deadline for submission offers.
- 3.4 That acceptance by County of one or more bids/offers shall create a binding contract obligating offeror(s) whose offer is accepted to perform as well as creating liability for non-performance. Acceptance by County of one or more offers shall not constitute termination or revocation of the remainder of the offers
- 3.5 That all information contained in the bid is true and correct to the best of Bidder's knowledge;
- 3.6 That Bidder signed a non-collusion affidavit herewith attached with the bid;
- 3.7 That Bidder did not receive unauthorized information from any County staff or consultant during the bid period except as provided for in the ITB package, addenda thereto, or the pre-bid conference;
- 3.8 That by submission of this bid, the Bidder acknowledges that the County has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Bidder, and Bidder hereby grants the County permission to make said inquiries, and to provide any and all requested documentation in a timely manner; and
- 3.9 That Bidder offers and agrees to furnish the items specified in the ITB package in accordance with the specifications, instructions, terms, and conditions stated herein. Any additional or different terms or qualifications sent by bidder, including, without limitation, in mailings, attached to invoices or with any items 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.

No Bid shall be accepted which has not been signed in ink in the appropriate space below.

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By signing below, the submission of a bid shall be deemed a representation and certification by the Bidder that they have investigated all aspects of the ITB, that they are aware of the applicable facts pertaining to the ITB process, its procedures and requirements, and that they have read and understand the ITB. No request for modification of the bid shall be considered after its submission on the grounds that the Bidder was not fully informed as to any fact or condition.

Company Name: _____

Address: _____

Telephone Number: _____

Authorized Signature: _____

Print Name: _____

Title: _____

Date: _____

SECTION IV. TERMS AND CONDITIONS

Bidders who take exception to any of the terms and conditions in the bid response will be deemed to have submitted a non-responsive bid; and the bid will be eliminated from consideration.

1. NON-EXCLUSIVE AGREEMENT

The Agreement does not establish an exclusive contract between the County and the Contractor. The County expressly reserves rights to, without limitation, 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. PRODUCTS

Contractor agrees to provide the County all goods on terms set forth in the Agreement, including all Exhibits that are attached to the Agreement and incorporated, as well as all necessary equipment and resources. However, this Agreement does not provide authority to ship goods. That authority 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, 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 provide to the County, all documentation and manuals relevant to the goods to be supplied, at no additional cost. Such documentation and shall be delivered either in advance of the delivery of goods or concurrently with the delivery of goods.

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 relation to the goods being supplied.

All equipment shall be delivered to a County site specified in the contract release purchase order, or if not so specified therein, 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 performance is rendered will be evaluated in light of the Contractor's superior skill. Contractor shall provide equipment and perform work in a professional manner consistent, at minimum, with industry standards.

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 goods and services.

County does not guarantee any minimum orders.

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.

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5. PRICING

Unless otherwise stated, prices shall be fixed for the first twelve (12) months of the contract term. Price increases may be allowed beyond the initial year of the contract. Price increases shall be limited to the actual increase incurred by the Contractor and must be documented reflecting Contractor's cost increase. The County reserves the right to request additional documentation which supports the justification of the price increase. Manufacturer's invoices are acceptable forms of documentation, or such other valid evidence deemed acceptable to the County. If any product listed in this Agreement is discontinued or upgraded prior to delivery, Contractor shall extend the same pricing towards a comparable replacement which is functionally equivalent or an upgraded version.

Exhibit ____ of the Agreement is the basis for pricing and compensation 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 or any contract release purchase order may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement contract release purchase order will be binding on County unless it is in writing and signed by County's Procurement Director.

7. TIME OF THE ESSENCE

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

Goods 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.

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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 required by contract release purchase 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 at County's destination; 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

All goods and services are subject to inspection, testing, approval and acceptance by the County. Inspection shall be made within 60 days or a reasonable time after delivery, whichever period is longer. If the goods, services, or the tender of delivery fail in any respect to conform to the contract, the County may 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.

Contractor shall be responsible to reclaim and remove any rejected goods or items at its own expense. Should Contractor fail to reclaim or remove any rejected goods or items within a reasonable time, County shall, at its option dispose of such goods or items and require reimbursement from Contractor for any costs or expenses incurred.

In the event that the Contractor's goods 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 goods elsewhere and the Contractor shall be liable for the difference between the price in the Agreement and the cost to the County, and any other costs incurred; or County may terminate for cause 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 goods or services supplied by the Contractor. Contractor may request an equitable adjustment of payments to be made by County if County requires a change in the goods or 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 goods and 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 performance by Contractor.

12. INVOICING

Contractor shall invoice according to Exhibit B of the 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 seven (7) days.

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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 unless funds are made available for such performance.

14. PAYMENT

Payment shall be due Net 30 days from the date of acceptance of the goods ordered, or Net 30 days from the date of approval by County of correct and proper invoices, whichever date is later. Payment is deemed to have been made on the date when the County mails the warrant or initiates the electronic fund transfer.

Notwithstanding anything to the contrary, County shall not make payments prior to receipt of goods or services (i.e. the County will not make "advance payments"). Unless specified in writing in a contract release 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.

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 Agreement 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.

15. LATE PAYMENT CHARGES OR FEES

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

16. DISALLOWANCE

In the event the Contractor receives payment for goods or services, which 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.

17. 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.

18. TERMINATION FOR CAUSE

County may terminate this Agreement or any contract release purchase order, 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

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of the following: (a) material breach of this Agreement or any contract release purchase order by Contractor, (b) violation by Contractor of any applicable laws or regulations; (c) assignment or delegation by Contractor of the rights or duties under this Agreement without the written consent of County or (d) less than perfect tender of delivery or 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.

19. 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.

20. BUDGETARY CONTINGENCY

Performance and/or payment by the County pursuant to this Agreement is contingent upon the appropriation of sufficient funds by the County for services covered by this Agreement. If funding is reduced or deleted by the County for services covered by this Agreement, 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.

21. 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 supply of goods, provision of services or the County's activities. Contractor shall return to County all County assets or information in Contractor's possession.

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.

County shall be entitled to purchase at net book 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,

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and after return of same, Contractor shall destroy all copies thereof not turned over to County, all at no charge to County.

22. 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,

23. 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.

24. 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 or any contract release purchase order 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.

25. 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.

26. 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

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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.

27. 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 order or contract release purchase order upon non-performance by Contractor. The County shall reserve the right to extend the agreement and time for performance at its discretion.

28. 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.

29. INDEPENDENT CONTRACTOR

Contractor shall supply all goods and/or perform all services 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.

30. INSURANCE

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

31. 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.

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32. LIENS, CLAIMS, AND ENCUMBRANCES AND TITLE

The Contractor represents and warrants that all the goods and materials ordered and delivered 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, subject to the right of County to reject upon inspection.

33. 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.

34. INTELLECTUAL PROPERTY INDEMNITY

Contractor represents and warrants for the benefit of the County and its users that it is the exclusive owner of all rights, title and interest in the product or services 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.

35. WARRANTY

Any goods and/or 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 goods and/or 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 expressly warrants that all goods supplied shall be new, suitable for the use intended, of the grade and quality specified, free from all defects in design, material and workmanship, in conformance with all samples, drawings, descriptions and specifications furnished by the County, in compliance with all applicable federal, state and local laws and regulations and free of liens, claims and encumbrances. Contractor warrants that all services shall strictly conform to the County's requirements.

Contractor shall immediately replace or repair any good not conforming to any warranty, or provide services to conform to County's requirements. If after notice, Contractor fails to repair or replace goods, or to provide services to conform to County's requirements, Contractor shall promptly refund to County the full purchase price paid by the

County. This remedy is non-exclusive of other remedies and rights that may be exercised by the County. Claims for damages may include direct damages, such as cost to repair, as well as incidental and consequential damages.

During the provision of goods and services, 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.

36. 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.

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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.

37. 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 may 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 that 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 any 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.

38. 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.

39. 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.

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40. 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.

41. BEVERAGE NUTRITIONAL CRITERIA

If Contractor provides beverages through or for County departments, County programs, County-sponsored meetings or events, or at County owned/operated facilities, Contractor shall not use County funds to purchase beverages that do not meet the County's nutritional beverage criteria, if applicable. The six categories of nutritional beverages that meet these criteria are (1) water with no additives; (2) 100% fruit juices with no added sugars, artificial flavors or colors (limited to a maximum of 10 ounces per container); (3) dairy milk, non-fat, 1% and 2% only, no flavored milks; (4) plant derived (i.e., rice, almond, soy, etc.) milks (no flavored milks); (5) artificially-sweetened, calorie-reduced beverages that do not exceed 50 calories per 12-ounce container (teas, electrolyte replacements); and (6) other non-caloric beverages, such as coffee, tea, and diet sodas. These criteria may be waived in the event of an emergency or in light of medical necessity.

42. 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.

43. DEBARMENT

Contractor represents and warrants 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.

44. 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's deadline for responding to the CPRA request. If Contractor fails to obtain such

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remedy within County's deadline for responding 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 attorneys 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.

45 SEVERABILITY

Should any part of the Agreement between County and the Contractor or any individual contract release 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 Agreement or any individual contract release 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.

46. 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.

47. 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.

48. 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.

49. HANDWRITTEN OR TYPED WORDS

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

50. 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.

51. ENTIRE AGREEMENT

This Agreement and its Exhibits constitute 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.

52. 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,

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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 facsimile transmission. Such facsimile signature must be treated in all respects as having the same effect as an original signature. The original signature copy must be sent to the County by United States Postal Service mail, sent by courier or delivered by hand.

53. 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.

54. 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.

55. 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.

56. 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 shall be exclusively vested in 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.

57. 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 approved in writing by the County Director of Procurement, or authorized designee, as evidenced by their signature as set forth in this Agreement.

**APPENDIX A2
NON-COLLUSION DECLARATION**

**NON-COLLUSION DECLARATION TO BE EXECUTED BY BIDDER AND SUBMITTED WITH
BID**

I, _____,
(Name)

am the

_____ of
(Position Title)

(Company)

the party making the foregoing Bid that the Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid; and has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham Bid, or that anyone shall refrain from Proposing; that the Bidder has not in any manner directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the Bid price, or of that of any other Bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the Bid are true; and, further, that the Bidder has not, directly or indirectly, submitted his or her Bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, Bid depository, or to any member or agent thereof to effectuate a collusive or sham Bid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

(Signature)

(Name) Print

(Title) Print

(Date)

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APPENDIX A3
DECLARATION OF LOCAL BUSINESS

Santa Clara County gives local businesses a preference in formal solicitations of goods and services as set forth in the Board Policy, Section 5.3.13. A bidder or proposer has the option of qualifying for the preference by self-declaring its qualification as a "local business." By signing below, the bidder or proposer is certifying its qualification as a "local business" for purposes of application of Santa Clara County's policy and is deemed to be applying for the local preference.

All information submitted is subject to investigation, as well as to disclosure to third parties under the California Public Records Act. Incomplete, unclear, or incomprehensible responses to the following will result in the bid or proposal not being considered for application of Santa Clara County's local preference policy. False or dishonest responses will result in rejection of the bid or proposal and curtail the firm or individual's ability to conduct business with the County in the future. It may also result in legal action.

Provide the complete physical address of your business with meaningful "production capability" located within the boundary of the County of Santa Clara. The term "production capability" means sales, marketing, manufacturing, servicing, or research and development capability that substantially and directly enhances the firm's/bidder's/proposer's ability to perform the proposed contract. Post Office box numbers and/or residential addresses may not be used as the sole bases for establishing status as a "Local Business." If you have more than one physical address in Santa Clara County, please provide an attachment with all of the addresses in the form specified below.

Business Name: _____
Street: _____
City/State: _____ Zip: _____

Please Indicate Business Organization (Check One)

- | | |
|--|--------------------------------------|
| ☐ Individual Proprietorship | ☐ Corporation |
| ☐ Partnership | ☐ Other |

By filling this form, bidder/proposer declares its qualification as a local business as defined in County of Santa Clara Board Policy, Section 5.3.13.

The undersigned declares that he or she is an official/agent of responding firm or individual and is empowered to represent, bind, and execute contracts on behalf of the firm or individual.

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

Signature

Title

Name

Date

Business License Number (if applicable)

Exhibit B-2

INDEMNIFICATION AND INSURANCE REQUIREMENTS

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 is obligated to indemnify, defend and hold harmless the County under this Agreement.

Insurance

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

A. Evidence of Coverage

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

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

B. Qualifying Insurers

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

C. Notice of Cancellation

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

D. Insurance Required

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

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applicable and the contractor shall be notified by the contracting department of these

requirements.

4. Automobile Liability Insurance

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

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

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

5. Workers' Compensation and Employer's Liability Insurance

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

E. Special Provisions

The following provisions shall apply to this Agreement:

- 1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
- 2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

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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.