

COUNTY OF SANTA CLARA, CALIFORNIA



**REQUEST FOR PROPOSAL #1259
FOR
SharePoint Implementation Services**

ISSUED:
December 6th, 2010

PROPOSALS DUE:
January 14th, 2011 **BY 3:00 P.M. PACIFIC TIME**

**PROCUREMENT DEPARTMENT
2310 NORTH FIRST ST., SUITE 201
SAN JOSE, CA 95131-1040**

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Tony Perez / Bob Grewal
(408) 491-7486 / (408) 491-7478
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I. INTRODUCTION

A. INVITATION

The County of Santa Clara (hereafter, "County") is requesting proposals from qualified suppliers to assist with designing and building a new SharePoint site using MOSS 2007 based on industry best practices. As such, this new SharePoint site will provide a single scalable portal for the Procurement Department and other County departments.

This RFP will result in a single source award.

B. BACKGROUND

Santa Clara County, also referred to as the "Silicon Valley", is the fourth largest county in California, following Los Angeles, San Diego and Orange Counties. The County employs a workforce of over 16,000 in facilities located throughout the County. Its population constitutes about one fourth of the Bay Area's total population. There are 15 cities and various unincorporated areas in the county ranging from Palo Alto to the north, to Gilroy in the south. San Jose is the largest city in the County, with a population of nearly 975,000, and is the administrative site of County Government.

The County of Santa Clara, Procurement Department has been using SharePoint, MOSS 2007, since January 2009 as "Procurement Department Collaboration Site". The following features and functions are currently available on this site:

- a. Main site for the entire Procurement Department and multiple sub-sites for each division in the Procurement Department
- b. Document libraries for policies/procedures, templates, contracting and other documents
- c. Repository of forms libraries for business templates e.g. meeting minutes, status reports, presentation template. Administrative templates e.g. vacation request, personnel forms
- d. Custom business lists for Procurement e.g. contract file check-in and check-out
- e. Project sites with document libraries and lists
- f. Calendars for vacation, overtime and other board meetings
- g. Conference Room/Equipment Reservation
- h. Help Desk Request with workflow to send email to the subject matter expert based on the predefined keywords

The Procurement Department has a separate "Procurement Intranet Portal" for the County Departments, which is built by using a third party tool (Vignette)

C. PROJECT SCOPE OF WORK

Design and build a new site using SharePoint, MOSS 2007 for Procurement Department and the County Departments to provide a single portal, replacing current Procurement Department Collaboration Site and Procurement Intranet Portal. Review and migrate data from Procurement Department Collaboration Site as necessary.

Phase I

1. Design and build sites to allow both, anonymous and authenticated user access.
 - a. Review and propose site framework/site map for the project
2. Build collaboration/publishing site(s) providing the following features and functions for Procurement Department users based on the User Authentication from Microsoft Active Directory (AD):
 - a. Branding, colors and logo
 - b. One document center/repository for Procurement policies/procedures, templates, contracting documents, department head memos, Keyboard (Board transmittals) related communication.
 - c. Links to other County portals for governing laws/policies and applicable statutes e.g. antikickback laws, Safe Harbor Acts, HIPAA etc.
 - d. Links to internal and external web-based applications e.g. EOC, BidSync, Ebix, Novation, MD Buyline, ECRI, NIGP, WSCA contracts, Govt. Solutions, CAPPO, IPA, ARHMM, US Communities, Direct links to DIR and various state sites, Consumer Price Index
 - e. Reports dashboard and repository for SAP published reports, PMM reports, Ebix insurance
 - f. Business (meeting minutes, status reports, presentation template, etc.), administrative (vacation request and other) and personnel forms
 - g. Project collaboration sites (shared site with other departments) for project tracking, documentation, announcements etc...
 - h. Calendars vacation, overtime and other board meeting
 - i. Conference Room/Equipment Reservation
 - j. Self-service internal (Procurement department) help desk with email notification (workflow) upon creating new service request
 - k. Self-service internal (Procurement department) training site to allow users to register for training courses and download training material. As for instructors, they should be able to manage/publish courses, materials, class size etc... online
 - l. Surveys for Procurement department

Phase II

Design and build collaboration/publishing sites for anonymous users, which allows any user to view web content and view/print procurement related documents:

- a. Self-service external (Countywide) help desk with email notification (workflow) upon creating new service request
- b. Self-service external (Countywide) training site to allow users to register for training courses and download training material
- c. Ability to conduct external (Countywide) surveys
- d. Allow other County Department users to access specific project sites on an "as needed basis"

D. The project scope includes the delivery of the following integration points:

1. Technical Resource

- a. Design and configure SharePoint (MOSS 2007) sites and templates
- b. Setup publishing sites for anonymous user access and allow users to view and print information
- c. Allow internal (Procurement Department) authorized users to maintain the content
- d. Setup collaboration sites with user authentication and allow internal/external users to collaborate based on their access level
- e. Setup security groups/permissions for Procurement Department and other County department users
- f. Build governance based on the best practices and provide documentation
- g. Build and document taxonomy
- h. Enable indexing and search

2. Content Writer

- a. Meet with Procurement staff, learn about the business, and write new content for the site
- b. Build and document taxonomy
- c. Provide documentation and training to Procurement staff on maintaining/updating the content

E. The project scope does not include the delivery of the following:

- a. Creating SharePoint instances/environments such as Development, Q.A. and Production.
- b. Providing system administration of servers including backups.

F. Implementation Partner Roles and Responsibilities

We anticipate that the selected implementation partner will provide the following services at a minimum:

1. Project management in collaboration with County staff

- a. Development of an overall implementation strategy.
- b. Development of a comprehensive implementation plan, including allocation of needed resources.
- c. Project timeline, staging and scheduling.
- d. Task management and tracking.
- e. Project meetings and documentation.

2. Other Services

- a. Any other Design and implementation support required for the on-time, on-budget, and successful completion of the project.
- b. Performance tuning.
- c. Capacity planning.

- d. Based on County Security Policy only County employees can access the County network. Therefore, implementation partner must be on-site to build/develop this new SharePoint site.
- e. Architectural design and detailed configuration of site(s).
- f. Assist in data integration and interoperability tasks.
- g. Assist with any data migration tasks.

G. Project Team Organization and Staffing

Organization

Project Manager
Project Team (Designer/Developer & Content Writer)

County staff available to provide support in the following areas:

Names	Title	Role
Kristine Au	Program Manager	Project Manager
Maria Melgoza	Sr. Management Analyst	Site Design, Administration, Technical Support
Elva Wilson	Sr. Management Analyst	Content Management

H. Project Completion Criteria

The completion criteria for the project are as follows:

- a. Functional, integration, stress and user acceptance testing satisfactorily completed for all functionality.
- b. Documentation of business processes, end-user procedures and an end-user training plan, production computer environment established and documented.
- c. Workflows completed and tested.
- d. Legacy data migration process completed, tested, auditable and reconcilable.
- e. Technical system management procedures documented and in place.
- f. Documentation of the system roll-out/go-live plan completed.
- g. System go-live achieved.
- h. Transfer of knowledge to allow the County to independently maintain, administer and tune the SharePoint site(s).

I. POINT OF CONTACT:

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

Tony Perez, Procurement Contracts Specialist – RFP #1259
County of Santa Clara Procurement Department
2310 North First Street, Suite 201
San Jose, CA 95131-1040
Telephone: (408) 491-7486
E-mail: Tony.Perez@proc.sccgov.org

Any inquiries or requests regarding this procurement must be submitted to the Procurement Officer in writing. Offerors may contact ONLY the Procurement Officer regarding this RFP.

II. CONDITIONS GOVERNING THE PROCUREMENT

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

A. SEQUENCE OF EVENTS AND CONTACT INFORMATION

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

	Action	Date
1.	Issue of RFP	December 6 th , 2010
2.	Pre-Proposal Conference, Call in	December 10 th , 2010
3.	Deadline To Submit Written Questions	December 15 th , 2010
4.	Response to Written Questions/RFP Addendum	December 23 rd , 2010
5.	Submission of Proposals	January 14 th , 2011
6.	Proposal Evaluation	February 14 th , 2011
7.	Selection of Shortlist, if applicable	February 21 st , 2011
8.	Selection of Finalist for Negotiations	February 23 rd , 2011
9.	Final Negotiations, BAFO, finalize and award contract	March 9 th , 2011
10.	Commencement of Contract	March 15 th , 2011

B. EXPLANATION OF EVENTS

1. ISSUE OF RFP

This RFP is being issued by the County of Santa Clara Procurement Department {enter name of issuing County Department}. Copies of this RFP including supporting documents may be obtained from Bidsync's web site at <http://www.bidsync.com>

2. PRE-PROPOSAL CONFERENCE

The County will hold a Pre-proposal Conference Call-in on Friday, December 10, 2010, at 3:00 PM (Pacific Standard Time). The conference call-in is not mandatory, but prospective proposers are encouraged to participate since the scope of the project will be discussed and also to review the RFP and to respond to questions related to the RFP. The conference call-in number is **1-866-249-5279** and the access code is **559951**. The County is not responsible for any technical difficulty in the participation of this teleconference. Answers to specific questions will be handled through an addendum process.

3. DEADLINE TO SUBMIT WRITTEN QUESTIONS

FOR QUESTIONS DUE ON deadline to submit written questions as specified in paragraph A, Sequence of Events and Contact Information, CONTACT is:
Tony Perez at Tony.perez@proc.sccgov.org or Ph: 408-491-7486

Potential Offerors may submit written questions to this RFP until the deadline as indicated in Section II, Paragraph A. The Procurement Officer will not respond to questions **submitted in any other manner or format.**

Answers to questions received by the deadline will be listed on an addendum to the RFP and posted on the bid management site <http://www.bidsync.com>. Additional written questions must be received by the Procurement Officer no later than two (2) days after the addendum is posted. The County will respond in the same manner. Thereafter, the County does not guarantee that it will respond to questions submitted before the RFP closing date and time.

4. RESPONSE TO WRITTEN QUESTIONS/RFP AMENDMENTS

Written responses to written questions regarding the substance of the RFP, and any material changes to the RFP, will be issued as an addendum, and posted on <http://www.bidsync.com>. The County reserves the right to post addenda until the RFP closing date and time.

5. SUBMISSION OF PROPOSAL

Proposals must be received **no later than the deadline specified in Paragraph, of Section II**. All received proposals will be time stamped.

All deliveries via express carrier should be addressed as follows:

Tony J. Perez, Procurement Contracts Specialist – RFP#1259
County of Santa Clara Procurement Department
2310 North First Street, Suite 201
San Jose, CA 95131-1040
Telephone: (408) 491-7486
E-mail: Tony.Perez@proc.sccgov.org

Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the RFP # and title as referenced on the cover page.

6. PROPOSAL EVALUATION

An Evaluation Committee will review and evaluate the proposals and make a recommendation for an award.

7. SELECTION OF SHORT LIST

Offerors that demonstrate their capacity, ability and capability to meet the County's requirements will be determined to be within the competitive range and selected on the shortlist of Offerors to progress to the next round of evaluation.

8. SELECTION OF FINALIST FOR NEGOTIATIONS

At County's option, one or more Offerors may be selected as a finalists and invited to enter into negotiations with the County and/or proceed to the next round of evaluations.

9. FINAL NEGOTIATIONS, BAFO FINALIZE AND AWARD CONTRACT

At County option, one or more Offerors may be selected to enter into final negotiations with the intent of award. Offerors may be given an opportunity to provide a Best and Final Offer.

10. COMMENCEMENT OF CONTRACT

The target date the contract will become effective.

C. GENERAL

1. INCURRING COST

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

2. CLAIMS AGAINST THE COUNTY OF SANTA CLARA

Neither your organization nor any of your representatives shall have any claims whatsoever against the County or any of its respective officials, agents, or employees arising out of or relating to this RFP or these RFP procedures, except as set forth in the terms of a definitive agreement between the County and your organization.

3. GUARANTEE OF PROPOSAL

Responses to this RFP, including proposal prices, will be considered firm and irrevocable for one-hundred and eighty (180) days after the due date for receipt of proposals and/or one-hundred eighty (180) days after receipt of a best and final offer, if one is submitted.

4. BASIS FOR PROPOSAL

Only information supplied by the County in writing by the Procurement Officer in connection with this RFP should be used as the basis for the preparation of Offeror's proposal.

5. FORM OF PROPOSALS

No oral, telephone, facsimile, or electronic proposals will be accepted.

6. AMENDED PROPOSAL

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the Letter of Transmittal, (Section III, Response Format and Organization). The County personnel will not merge, collate, or assemble proposal materials.

7. WITHDRAWAL OF PROPOSAL

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Director of Procurement and submitted to the Procurement Officer.

8. LATE RESPONSES

In order for a proposal to be considered, the proposal must be received in person or via courier or mail to the place specified above no later than the RFP due date and time. The Procurement Department time and date stamp will be the basis for determining timeliness of proposals.

9. NO PUBLIC PROPOSAL OPENING

There will be no public opening for this RFP.

10. CALIFORNIA PUBLIC RECORDS ACT (CPRA)

All proposals become the property of the County, which is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor proprietary information is contained in documents 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 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 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.

11. CONFIDENTIALITY

All data and information obtained from the County of Santa Clara by the Offeror and its agents in this RFP process, including reports, recommendations, specifications and data, shall be treated by the Offeror and its agents as confidential. The Offeror and its agents shall not disclose or communicate this information to a third party or use it in advertising, publicity, propaganda, or in another job or jobs, unless written consent is obtained from the County. Generally, each proposal and all documentation, including financial information, submitted by an Offeror to the County is confidential until a contract is awarded, when such documents become public record under state and local law, unless exempted under CPRA.

12. ELECTRONIC MAIL ADDRESS

Most of the communication regarding this procurement will be conducted by electronic mail (e-mail). Potential Offerors agree to provide the Procurement Officer with a valid e-mail address to receive this correspondence.

13. USE OF ELECTRONIC VERSIONS OF THE RFP

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the Procurement Department the version maintained by the Procurement Department must govern.

14. COUNTY RIGHTS

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

- a. Reject any or all proposal(s), without indicating any reason for such rejection;
- b. Waive or correct any minor or inadvertent defect, irregularity or technical error in a proposal or the RFP process, or as part of any subsequent contract negotiation;
- c. Request that Offerors supplement or modify all or certain aspects of their proposals or other documents or materials submitted;
- d. Terminate the RFP, and at its option, issue a new RFP;
- e. Procure any equipment or services specified in this RFP by other means;
- f. Modify the selection process, the specifications or requirements for materials or services, or the contents or format of the proposals;
- g. Extend a deadline specified in this RFP, including deadlines for accepting proposals;
- h. Negotiate with any or none of the Offerors;
- i. Modify in the final agreement any terms and/or conditions described in this RFP;
- j. Terminate failed negotiations with an Offeror without liability, and negotiate with other Offerors;
- k. Disqualify any Offeror on the basis of a real or apparent conflict of interest, or evidence of collusion that is disclosed by the proposal or other data available to the County;
- l. Eliminate, reject or disqualify a proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as determined solely by the County; and/or
- m. Accept all or a portion of an Offeror's proposal.

III. RESPONSE FORMAT AND ORGANIZATION

This section contains relevant information Offerors should use for the preparation of their proposals.

A. **NUMBER OF RESPONSES**

Offerors must submit only one proposal.

B. **ORIGINAL AND COPIES**

Offerors must provide one (1) original and 4 identical copies of their proposal to the location specified on or before the closing date and time for receipt of proposals.

The original binder/submittal must be stamped "original" and contain original signatures on the necessary forms. The remaining sets should be copies of the originals.

Offerors must also provide one (1) electronic copy of their proposal in CD-ROM format, readable by Microsoft Office 2003 (Word, Excel and Project) software. The CD shall be included in the original binder.

C. **PROPOSAL FORMAT**

All proposals shall be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Hard copies should utilize both sides of the paper where practical.

1. **LETTER OF TRANSMITTAL**

Each proposal received must include a letter of transmittal. The letter of transmittal should:

- a. Identify the submitting organization;
- b. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the organization to contractually obligate the organization;
- c. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
- d. Identify the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
- e. Be signed by the person authorized to contractually obligate the organization; and
- f. Acknowledge receipt of any and all addenda to this RFP; and identify all sections of the proposal that the Offeror claims contain "proprietary" or "confidential" information.

2. **PROPOSAL ORGANIZATION**

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

Tab 1:	Letter of Transmittal
Tab 2:	Table of Contents
Tab 3:	Executive Summary
Tab 4:	Section V- A: Offeror's Corporate Information, items 1 – 4
Tab 5:	Appendix A: Offeror's SharePoint Implementation Experience Response Form
Tab 6:	Appendix B: Offeror's Proposed Project Staff Response Form
Tab 7:	Appendix C: Offeror's Project Approach Response Form
*Tab 8:	Appendix D: Offeror's Cost Proposal Response Form
Tab 10:	Appendix E: Non-collusion Declaration Form
Tab 11:	Appendix F: Declaration of Local Business, if applicable.
Tab 12:	Appendix G: Offeror's Terms and Conditions
Tab 13:	Offeror's Insurance Certificate
Tab 14:	Magnetic Media (CDs) (in ORIGINAL Binder only)
Tab 15:	Offeror's Supporting Materials, if any.

*** Appendix D - Proposal Cost Response Form: the original form must be submitted in a sealed envelope marked "Original Appendix D." In addition, submit four (4) copies in a separate sealed envelope marked "Copies of Appendix D."**

3. PROPOSAL PREPARATION INSTRUCTIONS

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

4. NON-CONFORMING SUBMISSIONS

A submission may be construed as a non-confirming proposal, ineligible for consideration or incomplete if it does not comply with the requirement of this Request for Proposal.

IV. EVALUATION

A. FACTORS

The **Evaluation Criteria** listed below will be utilized in the evaluation of the Offeror's written proposals and/or demonstration/presentation accordingly. The expectation is that those proposals in the competitive range may be considered for contract award. The proposal should give clear, concise information in sufficient detail to allow an evaluation based on the criteria below. An Offeror must be acceptable in all criteria for a contract to be awarded to that Offeror whose proposal provides the best value to the County.

- a. Corporate strength, experience, financial strength, references and reputation of Offeror;
- b. Ability to meet business, technical and functional requirements;
- c. Methodology for implementation, project management, training; and
- d. Local Preference.

The overall total cost to the County will be considered and the degree of the importance of cost will increase with the degree of equality of the proposals in relation to the other factors on which selection is to be based.

B. LOCAL BUSINESS 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 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 best value is the determining basis for award of the contract, five percent (5%) of the total points awardable will be added to the Local Business score.

When a contract for goods or services, as defined in this policy, is presented to the Board of Supervisors for approval, the accompanying transmittal letter shall include a statement as to whether the proposed vendor is a Local Business, and whether the application of the local preference policy was a decisive factor in the award of the proposed contract.

This Local Business preference shall not apply to the following:

- a. Public works contracts,
- b. Where such a preference is precluded by local, state or federal law or regulation,

EVALUATION

- c. Contracts funded in whole or in part by a donation or gift to the County where the special conditions attached to the donation or gift prohibits or conflicts with this preference policy. The donation or gift must be approved or accepted by the Board of Supervisors in accordance with County policy, or
- e. 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 (Section A34-82).

In order to be considered for Local Preference, proposer must complete and submit Declaration of Local Business with its RFP response.

V. OFFEROR SUBMITTAL

This section contains requirements and relevant information Offerors should use for the preparation of their proposals. Offerors should thoroughly respond to each requirement.

A. OFFEROR'S CORPORATE INFORMATION

1. EXECUTIVE SUMMARY

Include an executive summary which should be a one or two page summary intended to provide the Evaluation Committee with an overview of the significant business features of the proposal.

2. OFFEROR EXPERIENCE/INFORMATION

The Offeror shall include in their proposal a statement of relevant experience. The Offeror should thoroughly describe, in the form of a narrative, its experience and success as well as the experience and success of subcontractors, if applicable in providing and/or supporting the proposed system.

In addition Offerors are required to provide the following information:

- a. Offerors shall provide the company name, business address, including headquarters, all local offices, co-location locations (city/state), and telephone numbers.
- b. Offerors shall provide the length of time they have been providing ASP and/or vendor remote services, whichever is applicable.
- c. Offerors shall indicate any offices or facilities located within the County of Santa Clara that substantially and directly enhances the Offeror's ability to perform the proposed contract.
- d. Offerors shall provide a description of the Offeror's organization, including names of principals, number of employees, client base, areas of specialization and expertise, and any other information that will assist the Evaluation Committee in formulating an opinion about the stability and strength of the organization.
- e. Offerors shall provide the name of the jurisdiction in which the Offeror is organized and the date of such organization.
- f. Offerors shall provide specifics on the number of certified local (stationed in greater Bay Area) technicians.
- g. Offerors shall provide a description of the depth of their experience with installing and supporting the proposed system.
- h. Offerors shall provide a discussion of the type and duration of the business relationship with the manufacturer(s) whose products are included in the proposed systems.
- i. Offeror must identify the physical location of the application and data storage facilities.
- j. Offeror shall describe the method used for change management and advance notification timeframe for application changes.
- k. Offeror shall describe the data security guarantee (data encryption, data mining, and data mismanagement penalties (leakage, etc.).

- l. Provide a complete disclosure if Offeror, its subsidiaries, parent, other corporate affiliates, or subcontractors have defaulted in its performance on a contract during the past five years which has led the other party to terminate the contract. If so, identify the parties involved and the circumstances of the default or termination.
- m. A list of any lawsuits filed against the Offeror, its subsidiaries, parent, other corporate affiliates, or subcontractors in the past five years and the outcome of those lawsuits. Identify the parties involved and circumstances. Also, describe any civil or criminal litigation or investigation pending.

3. FINANCIAL STABILITY/OFFEROR FINANCIAL INFORMATION

Offeror shall submit copies of the most recent years independently audited financial statements, as well as those for the preceding three years, if they exist. The submission shall include the audit opinion, balance sheet, income statement, retained earnings, cash flows, and notes to the financial statements. If independently audited financial statements do not exist for the Offeror, the Offeror shall state the reason and, instead, submit sufficient information such as the latest Dun and Bradstreet report to enable the Evaluation Committee to determine the financial stability of the Offeror. The Procurement Officer may request and the Offeror shall supply any additional financial information requested in a timely manner.

4. PAST PERFORMANCE (REFERENCES)

The Offeror's proposal shall include three different external references from clients who have completed their projects in the last three years, who are willing to validate the Offeror's past performance on similar projects of size and scope. The minimum information that shall be provided for each client reference follows:

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

5. INDEMNITY AND INSURANCE REQUIREMENTS

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

B. OFFEROR'S SHAREPOINT SITE DESIGN & IMPLEMENTATION EXPERIENCE (APPENDIX A)

Provide a detailed description of the Offeror's prior experience in working on projects similar in size, scope, and function to the proposed contract and in designing and implementing SharePoint site(s). This information should include which personnel were utilized in these roles, including those personnel which are not being provided/recommended for this proposal.

Offerors must provide at least two customer references for work performed related to the types of services proposed in this RFP upon request.

The Offeror must provide this information in the format defined in APPENDIX A.

C. OFFEROR'S PROPOSED PROJECT STAFF (APPENDIX B)

The Offeror should provide detailed information about the experience and qualifications of the Offeror's assigned personnel considered key to the success of the project. The experience and qualifications should be directly related to the personnel's role on this project.

This information should include education, training, technical experience, functional experience, specific dates and names of employers, relevant and related experience, past and present projects with dates and responsibilities and any applicable certifications. This should also specifically include the role and responsibilities of each person on this project, their planned level of effort, their anticipated duration of involvement, and their on-site availability.

Customer references (name, title, company name, address and telephone number) should be provided for the cited projects in the individual resumes. This information is a key component in evaluation of the responses.

The Offeror should provide this information in the format defined in APPENDIX B.

D. OFFEROR'S PROJECT APPROACH (APPENDIX C)

This section should describe:

- a. Offeror's understanding of the nature of the project and how their proposal will best meet the needs of the County.
- b. Offeror's plan for utilizing the software outlined in this RFP without consideration for other software purchases.
- c. Offeror's strategy for project team organization and task assignments to transfer application knowledge, to position the County to be self-sufficient after implementation.
- d. Offeror's general list of tasks and associated assignments to accomplish the entire project.
- e. Offeror's approach for identifying and documenting application needs.
- f. Offeror's method for identifying areas of project risk and procedures to mitigate these risks.

The Offeror should provide this information in the format defined in APPENDIX C.

E. OFFEROR'S COST PROPOSAL (APPENDIX D)

The Offeror must provide a detailed cost estimate proposal highlighting each task/milestone/deliverable, which reflects the structure or work proposed in their response. The Offeror should indicate key and lead personnel in each task by name, the role or responsibility each person will assume during the task, billing rate, and number of hours estimated to complete the task. The total cost for the task should also be provided.

The cost proposal must include any and all costs required to be included in the contractual arrangement with the County in order to ensure that the project completion criteria are met. The Offeror shall take travel expenses, labor, per diem, overhead, and any other costs related to this service into account.

The terms of any contract resulting from this RFP will be payments based on the achievement and approval of deliverables at an hourly rate.

Offerors shall complete all pages of the Proposal Cost Response Form and submit it in a sealed envelope with their proposal.

F. OTHER SUBMITTALS

1. NON-COLLUSION DECLARATION (APPENDIX E)

Offerors shall complete and submit Non-collusion Declaration form with their proposal.

2. DECLARATION OF LOCAL BUSINESS (APPENDIX F)

Offerors shall complete and submit Declaration of Local Business form with their proposal, if applicable.

4. OFFEROR'S TERMS AND CONDITIONS (APPENDIX G)

Should Offerors object to any of the County's terms and conditions listed in Attachment A, Offerors must propose specific alternative language and indicate the reason for their objection. The County may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the County. Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

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

APPENDIX A

OFFEROR SHAREPOINT SITE DESIGN & IMPLEMENTATION EXPERIENCE FORMAT

COMPANY DESCRIPTION

Provide a brief description of the company including history, corporate structure and organization and the number of years in business of designing and implementing SharePoint Site/s. Provide a breakdown of current company personnel (number of employees, roles each employee has performed, specialty areas, etc. This personnel should be only staff employees, not contract personnel, but do not have to be personnel to be utilized on this project.

RELEVANT EXPERIENCE

For each project referenced – provide the information in the following format:

Project 1

- A. Application type(s)
- B. Application software (*SharePoint - MOSS 2007, K2 - Workflow*)
- C. Customer type
Specify city, county, state, university, federal, corporation, etc.
- D. Project Size
Specify the number and size of source systems; number and size of target data marts/ data warehouse; number of end-users.
- E. Project Dates
Indicate the start and end date of the project. If the project is not completed, indicate the expected end date. If you provided post implementation support services for a time period not included in the project end date, please indicate this in the On-Going Support section below.
- F. Work performed
Explain the project and the work performed by your company.
- G. Relevance
Briefly define the relevance of the project being referenced to this project Similar in size, scope, complexity, significant design challenges and/or implementation effort, etc.
- H. Technical Environment
- I. Reference
Provide the name, title, address and telephone number of the person that can be contacted for references.
- J. On-Going Support
This section will be used for informational purposes only and will not be evaluated. Indicate the number of months support was provided. Briefly describe the services provided. Indicate if the support was provided by a member(s) of your staff remaining on site, off-site support only or a combination of off-site and on-site.
- K. Personnel assigned to this project
Provide personnel utilized on the project, their role, and whether they are/were staff employees or subcontract personnel. Include all personnel, not just those provided for this proposal response.

APPENDIX B

PROPOSED PROJECT STAFF FORMAT

Proposed Project Staff:

Name and Title:

Company employee or Subcontractor? (if subcontractor, give company also):

Role on this project: (*Design/Developer, Technical Content Writer, Project Manager*)

Availability: (*Hours per week or hours per month and specify on-site or off-site hours*)

Duration of Involvement: (*indicate the estimated dates that the person will be on-site*)

Customer references: (*Name, Title, Company Name, Address & Telephone #*)

Prior Experience:

Education, Training, Certifications:

Other Project/s

APPENDIX C

PROJECT APPROACH FORMAT

1. **NATURE OF PROJECT**

Describe your understanding of this project.

2. **PROJECT MANAGEMENT**

Describe your approach to project management.

3. **FUNCTIONAL APPROACH**

Define the functional approach and design methodology including requirements gathering methods.

Please include any system resources (i.e. vendor provided sandbox for initial prototyping, etc.) that can be provided.

Testing and User Acceptance:

Define your strategy and process for testing and user acceptance.

4. **TRAINING and DOCUMENTATION**

Define the approach for training the project team; define the approach for system documentation. Please describe all functional and technical training that you can provide. For each training topic, please indicate if it applies to functional or technical team members, if it is must be or should be attended by County team members, when the training should be conducted & completed by within the scope and timeframe of the proposed project, the number of hours of training (for each topic) and the hourly rate to be used if separate from the overall project cost.

Please specify any 3rd party training classes that you recommend for County staff to attend, to supplement your training. For the technical training, please assume no prior experience.

5. **TEAM ORGANIZATION**

Define your approach for team organization and task assignments.

6. **KNOWLEDGE TRANSFER**

Define the strategy for transfer of application knowledge to position the County to be self-sufficient in support of the system.

7. **SECURITY**

Define the approach to security.

8. **PROJECT RISKS**

Identify potential areas of risk associated with the project along with mitigation strategies.

9. **LEVEL of EFFORT ESTIMATE**

Based on Offeror's past experience and the information provided in the request for proposal provide an estimate for the level of effort (in total contractor hours) required for successful completion of the project.

The level of effort should be broken down by project phase such as Project Planning, Design, Development, Testing, etc. Assuming a project start date of April 4, 2011, an estimated end date must be provided.

10. **OTHER**

Provide any other information which you feel is relevant that was not specifically required.

Please describe any additional professional services that you as the implementation partner should provide that have not been specifically addressed in this request for proposal.

APPENDIX D

PROPOSAL COST RESPONSE FORM

The Offeror must identify the anticipated deliverables required for this project, provide an hourly rate to each of the project roles, the personnel to be used in that role, and an estimate of the number of hours required by each role contained in the matrix.

The total cost allocated in this matrix will be Offeror's estimate of the level of effort required for successful completion of this project based upon the Offeror's past experience and the information provided in this request for proposal.

DESCRIPTION	Proposed Cost
1. Implementation (Project Planning, Design and Development)	
2. Project Management (Strategy for team organization & task assignments to transfer application knowledge to County)	
3. Testing (Approach to installation verification and migration of application to production)	
4. Training (including all materials)	
5. Travel Expenses (Total from Section II below)	
Total One Time Costs =	

Section II – TRAVEL EXPENSES

Please itemize Travel Expenses, in Row 5 of the above table, if any.

Description	Costs
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
Total =	\$ _____

- The total cost will be used in the financial evaluation of each proposal.
- The Offeror may modify the matrix to add additional rows so that all anticipated deliverables, roles, and/or personnel are included in the final cost proposal submission.

A. Travel time is non-billable.

B. All travel expenses must conform to the County's travel policy:

- a. **Transportation:** coach class airfare to local airport (San Jose – the nearest) at the lowest available rate, taking consideration any special rates, promotions, etc. which would reduce the rate. If requiring ground transportation (rental car), the most economical and appropriate form of available transportation.
- b. **Lodging:** single person occupancy taking into consideration any special rates, promotions, etc. which would reduce the rate. Reimbursement will be based on actual expenses up to federal per diem rate. Receipts must be provided for lodging reimbursement.
- c. **Meal reimbursement:** is based on federal per diem rates. Go to <http://www.gsa.gov/>, under home page; click "Per Diem Rates."
- d. **Other costs:** miscellaneous expenses must be itemized, and receipts must be provided for each single item of expense in excess of \$10.00

Non-reimbursement expenses include, but not limited to, the following:

- a. parking/traffic violations;
- b. flight insurance and car rental insurance;
- c. tips exceeding guidelines;
- d. airline club membership or credit card fees;
- e. refreshments, snacks, alcoholic beverages;
- f. personal travel expenses;
- g. medicinal remedies, health supplies/cosmetics;
- h. personal entertainment, i.e., in room movies; and any other non-reimbursable expense in contractor's

APPENDIX E

NON-COLLUSION DECLARATION

I, _____, am the

(Print Name)

_____ of _____,

(Position/Title)

(Name of Company)

the party making the foregoing proposal that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the Offeror has not directly or indirectly induced or solicited any other Offeror to put in a false or sham bid; and has not directly or indirectly colluded, conspired, connived, or agreed with any Offeror or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the Offeror has not in any manner directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Offeror or any other Offeror, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Offeror, 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 Offeror 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:

COMPANY NAME: _____

AUTHORIZED SIGNATURE _____

PRINT NAME: _____

DATE: _____

APPENDIX F

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 Code: _____

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) _____

APPENDIX G

PROPOSER'S TERMS AND CONDITIONS

Should an Offeror object to any of the County's terms and conditions in Attachment A, Offeror must propose specific alternative language and indicate the reason for the objection. The County may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the County. Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

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

ATTACHMENT A

COUNTY OF SANTA CLARA SAMPLE AGREEMENT TERMS AND CONDITIONS

1. TERM OF AGREEMENT

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.

The initial term of this Agreement shall be effective _____ through _____, with the option by County to renew for two additional one-year periods.

Furthermore, at any time during the term of the Agreement, the Agreement is subject to Termination in accordance with this Agreement. The County may contract with Contractor for recurring services beyond the contract term.

2. 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.

3. 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 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.

4. STATEMENT OF WORK

A Statement of Work (SOW) is required for all project management, implementation work, and final acceptance test. The SOW shall include all phases, tasks to be performed, the roles and responsibilities of the two parties, deliverables, timelines, completion criteria of each task, and final acceptance criteria. Each task shall include, but not be limited to, site preparation, implementation, installation, training, final acceptance testing and on-going services and support. Exhibit B is the Statement of Work for this Agreement.

The SOW may be revised only by mutual written consent of both parties, which consent shall not be unreasonably withheld. The parties shall undertake best efforts to perform the tasks described in the SOW by the time periods referenced therein. Any changes to the SOW will be done by means of a Change Notice.

Contractor and County shall report to each other at meetings, either in person or by telephone conference, held at regular intervals specified by the County, as to the progress being made by each of them in respect to the SOW, any delays being encountered and the action being taken to recover from such delays.

5. KEY PERSONNEL AND ESCALATION PROCESS

Exhibit ____ of this Agreement lists the key personnel and escalation process, including the project managers, engaged by County and Contractor to perform the work under this Agreement. Additional personnel may be added, if necessary, to complete the project upon mutual agreement by both parties.

Contractor shall make every attempt to ensure that key personnel are not diverted from this project without prior notice to County. Key personnel are those individuals who are determined by County to be central to the management of the project and the implementation of the proposed system, as designated in Exhibit _____. In the event the designated project manager is re-assigned by Contractor to a different project or is otherwise unavailable, the County will be notified and a replacement project manager with equivalent competence shall be appointed, subject to the approval of the County.

If the number of Contractor's personnel are reduced because of death, permanent termination of employment, or extended illness, Contractor shall, within ten (10) working days of the reduction, replace the same or greater number of personnel with equal ability, experience, and qualification subject to County approval. County, in its sole discretion, may approve additional time beyond the ten (10) working days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the project. The Contractor shall also make interim arrangements to assure that the project progress is not affected by the loss of personnel.

The County reserves the right to require a change in Contractor representatives if the assigned representatives are not, in the opinion of the County, meeting its needs adequately.

6. PERFORMANCE, TEST, MONITOR, AND EVALUATION

A. Performance:

- i. 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.
- ii. Contractor shall provide all products, support and services required within the timelines listed in this Agreement.

B. Test:

- i. County will use the criteria established in Exhibit B to determine the acceptance of each task and to test the system.
- ii. If the County, in its sole discretion, determines that the system has failed to meet a specific task, specification or requirements of the SOW or this Agreement, or that features or functions said to be present in the Contractor's proposal are absent or do not function properly, County may execute any or all of the following:
- iii. Have the Contractor modify the system to eliminate the deficiency to County's satisfaction;

- iv. Have the Contractor install new hardware as required;
 - v. Extend the acceptance testing period for a reasonable time period to allow time for Contractor to remedy the problems; or
 - vi. Cancel this Agreement and its obligations to Contractor. Any pre-payments made to the Contractor shall be prorated to the termination date and the remainder refunded to the County.
- C. Right to Monitor: 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.
- D. Corrective Action:
- i. Contractor shall comply with all applicable State, Federal and County laws and regulations relating to its performance under this Agreement in all material respects.
 - ii. If County discovers any practice, procedure, or policy of Contractor which materially deviates from the terms or requirements of this Agreement, which violates federal or state statutes or regulations, the County, in addition to its rights under Termination, may notify Contractor that corrective action is required.
 - iii. Contractor shall correct any and all discrepancies, violations, or deficiencies to the satisfaction of the County within fourteen (14) calendar days, unless the corrective action requires additional time, in which case Contractor shall have a period of time to make corrections, but not longer than thirty (30) calendar days.

7. HIPAA

Contractor shall comply with the Business Associate Agreement Pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996 pursuant to the exhibit setting forth HIPAA requirements.

8. 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.

9. 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.

10. PRICING

Unless otherwise stated, prices shall be fixed for the term of the Agreement, including all extensions. 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 B 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.

11. 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.

12. 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.

13. 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.

14. 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.

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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. LATE PAYMENT CHARGES OR FEES

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

21. 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.

22. 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.

23. 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 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.

24. 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.

25. TERMINATION FOR LACK OF APPROPRIATION

The term of the agreement between Contractor and County, and the purchase of goods and/or services hereunder, are contingent on the appropriation of funds by the County. Should sufficient funds not be appropriated, this Agreement may be terminated by County at any time by providing Contractor with thirty (30) days written notice. In the event of such Termination for Lack of Appropriation, County shall be responsible only for any undisputed, unpaid balances for goods and/or services provided by Contractor and accepted by County prior to the effective date of termination.

26. EARLY TERMINATION

Notwithstanding any other provision of this Agreement, County may terminate this Agreement by delivering to Contractor notice of the intent to terminate at least sixty (60) days prior to the intended date of termination. By such termination, neither County nor the Contractor may nullify obligations, if any, already incurred for performance or failure to perform prior to the date of termination. Termination under this paragraph may be made with or without cause.

27. BUDGETARY CONTINGENCY

Performance and/or payment by the County pursuant to this Agreement are 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.

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

29. 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,

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. CONFIDENTIALITY

Any information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of County, except as may otherwise be required by law.

36. 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.

37. 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.

38. INSURANCE

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

39. 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 cleanup 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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.

48. 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.

50. 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.

51. 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.

52. 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 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.

53. 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.

54. 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.

55. 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.

56. 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.

57. HANDWRITTEN OR TYPED WORDS

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

58. 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.

59. 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.

60. 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 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.

61. 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.

62. 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.

63. 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.

64. 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.

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

ATTACHMENT B

INSURANCE REQUIREMENTS

FOR PROFESSIONAL SERVICES CONTRACTS

PAGE 1 OF 3

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 coverage 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

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

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence - \$1,000,000
- b. General aggregate - \$2,000,000
- c. Personal Injury - \$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Personal Injury liability
- c. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

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

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

4. Automobile Liability Insurance

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

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

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

5. Workers' Compensation and Employer's Liability Insurance

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

6. Professional Errors and Omissions Liability Insurance

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

7. Claims Made Coverage

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

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

E. Special Provisions

The following provisions shall apply to this Agreement:

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

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

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