



# REQUEST FOR PROPOSALS

NO. 2021- 001

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## On-Call Special Inspection and Material Testing Services

<b>Solicitation Number</b>	2021-001
<b>Number of contracts expected to be awarded</b>	Up to 3
<b>Estimated Value or Range per contract</b>	\$300,000.00
<b>Funding Sources</b>	<input type="checkbox"/> Federal <input type="checkbox"/> State <input checked="" type="checkbox"/> County <input type="checkbox"/> Other
<b>Expected Contract Duration</b>	36 months
<b>Options to Renew</b>	TBD Pending Board Approval
<b>Hard &amp; Electronic copy proposals required</b>	Hard Copy (1); Electronic (1)
<b>County Mailing Address</b> <i>(for hard-copy communication &amp; proposal submissions)</i>	County of San Mateo Department of Public Works 555 County Center, 5th Floor Redwood City, CA 94063
<b>Authorized Contact Person</b>	Gregory Johnson
<b>Authorized Contact Person E-mail</b> <i>(for electronic-copy communication &amp; proposal submissions)</i>	<a href="mailto:gjohnson@smcgov.org">gjohnson@smcgov.org</a>
<b>E-mail Address for Protests</b>	<a href="mailto:tnewman@smcgov.org">tnewman@smcgov.org</a>
<b>RFP Released</b>	May 25, 2021
<b>Deadline for Questions, Comments and Exceptions</b>	June 9, 2021 2:00pm PST
<b>Respond to Questions</b>	June 16, 2021
<b>Proposal Due Date and Time</b>	June 23, 2021 2:00pm PST
<b>Submission to County Board for approval</b>	July 2021
<b>Anticipated Contract Award Date</b>	August 2021

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## **SECTION I - GENERAL INFORMATION**

### **1.1 STATEMENT OF INTENT**

This Request for Proposals (RFP) seeks submittals for professional on-call special inspection and material testing services. These services include special inspection and material testing needs as necessary for a variety of projects in County facilities. Refer to Section II for full Scope of Work description. The County is considering entering into multiple “on-call” independent consultant agreements, each with an aggregate fiscal obligation not to exceed **\$300,000.00** during a maximum individual term of three (3) years. Separate projects/assignments under each agreement will be issued as “Work Authorization(s) – Notice(s) to Proceed” as warranted. The target commencement date for the proposed services is **August 2021**.

### **1.2 BACKGROUND**

The Department of Public Works (“DPW” or the “Department”) plans, designs, constructs, operates, manages and maintains all County-owned facilities to ensure they are safe and accessible to residents and clients of County agencies, the general public, and County employees. DPW has a budget of approximately \$200 million and is staffed with over 300 employees in five divisions: Administrative Services and Airports, Engineering and Resource Protection, Facility Services, Road Services and Parks, supporting the 46 special districts governed by the Board of Supervisors and administered by the Department.

### **1.3 DEFINITIONS**

**Business Day:** Monday through Friday except for holidays as observed per the California Government Code.

**Confidential Information:** Information in any form that is not generally known and treated as confidential by a party, including business, financial, statistical, and non-public personal information, trade secrets, know-how, applications, documentation, schematics, procedures, Personally Identifiable Information, information covered by legal privilege, and other proprietary information that may be disclosed or incorporated in materials provided to one party by the other, whether or not designated as confidential, whether or not intentionally or unintentionally disclosed, and whether or not subject to legal protections or restrictions.

**Consultant:** Contractor

**Contract Materials:** finished or unfinished documents, data, studies, maps, photographs, reports, specifications, lists, manuals, software, and other written or recorded materials produced or acquired by the Contractor pursuant to the Contract for or on behalf of the County, whether or not copyrighted.

**Contract:** The agreement between San Mateo County and Contractor awarded pursuant to this solicitation.

**Contractor:** The person or other entity awarded a Contract in conformance with the terms of this solicitation and any subsequently-agreed upon terms.

**County Data:** All information, data, and other content, including Confidential Information and other information whether or not made available by San Mateo County or San Mateo County’s agents, representatives or users, to a Contractor or potential Contractor or their employees, agents, representatives or Subcontractors, and any information, data and content directly derived from the foregoing, including data reflecting user access or use.

**County Systems:** The information technology infrastructure of San Mateo County or any of its designees, including computers, software, databases, networks, and related electronic systems.

**County:** San Mateo County

**Deliverables:** Goods or services required to be provided to San Mateo County under the Contract.

Hosting: Storage, maintenance, and management of hardware, software, and San Mateo County Data by a party other than San Mateo County, on machines and at locations other than those operated by San Mateo County, where a party other than San Mateo County has regular responsibility for back-up, disaster recovery, security, upgrades, replacement, and overall responsibility for ensuring that all hardware and software continues to function as intended.

Key Employee: Employees of the Contractor jointly identified by San Mateo County and the Contractor as possessing unique skill and experience that was a material consideration in San Mateo County's decision to award a contract.

Major Change: A change to the specified performance, maintainability, operation, power requirements, compatibility, measurement, user interface, reliability, quantity, scale, quality, terms, delivery method, or requirement of any product or service that affects the obligations of the parties or reflects a substantial alteration in circumstances surrounding the agreement, or is of such a nature that knowledge of the change would affect a person's decision-making process.

Project Manager: The individual identified by San Mateo County as San Mateo County's primary contact for the receipt and management of the goods and services required under the Contract.

Subcontractor: Firms engaged by the Contractor to perform work or provide goods pursuant to the Contract, including vendors and suppliers

Task Order or Purchase Order: A written request from San Mateo County to a vendor to provide goods or services, indicating types, quantities, prices and delivery criteria.

## **SECTION II - SCOPE OF WORK AND SPECIAL PROVISIONS**

### **2.1 SUMMARY**

The County of San Mateo Department of Public Works (DPW) seeks proposals from qualified companies for special inspection and material testing services. The selected company or companies will perform as needed geotechnical inspection and material testing services and other types of special inspections, and construction support for various DPW projects. In addition, the selected company will have a responsive and dedicated account management team that is adaptive in addressing the evolving needs of DPW. Companies with experience in servicing government agencies are encouraged to submit proposals.

### **2.2 ANTICIPATED SERVICES**

The proposed Agreement(s) anticipated by this RFP comprehensively covers services that can be defined as special inspection and material testing services. The services may include, but are not limited to, some or all of the following services:

1. As needed major Geotechnical Inspection and material testing services.
  - a. Perform a laboratory material acceptance standard test, which includes a gradation test, compaction curve, R-Value test, sand equivalent test, and durability index test.
  - b. Perform field observation/field density compaction testing services (nuclear gauge) and material testing services as requested, and on an intermittent basis in compliance with the project plans and specifications.
  - c. Document test data and observations through daily and end-of-job summary reports. Daily reports shall be submitted to the County on a daily basis. Daily reports should describe the activities performed at the time of field services, and the locations and results of the nuclear

field density tests and other material testing performed. All report writing and office supervision expenses will also be included in the hourly rate.

**2. As needed other Special Inspection and material testing services.**

- a. Perform other as needed special inspection and material testing services such as asphalt concrete pavement inspection, steel and Portland cement concrete inspection, welding inspection, pile driving inspections (Caltrans), Caltrans-certified testers/samplers and other as needed type of special inspection and material testing services.
- b. Perform sampling of cast concrete cylindrical specimens and test for concrete compressive strength; and shotcrete production core sampling and testing per ASTM Standards.
- c. Welding inspections of a Certified Welding Inspector (CWI), Non-Destructive Testing (NDT), Ultrasound Testing and Magnetic Particle Testing (UT-MT) Inspector certified by the American Welding Society (AWS).
- d. Structural Steel Bolting per American Institute of Steel Construction (AISC) Standards.
- e. Document test data and observations through daily and end-of-job summary reports. Daily reports shall be submitted to the County on a daily basis. Daily reports should describe the activities performed at the time of field services. All report writing and office supervision expenses will also be included in the hourly rate.

**3. The work shall be performed by qualified personnel with valid professional licenses and certifications. Copies of licenses and certifications shall be provided to County for verification.**

**Length of Agreement:** The anticipated duration of the agreement will be three years, maximum.

**Additional Requirements/Considerations:** Within the County's property portfolio, there are secured facilities which will require security background checks for facility access.

**2.3 FINGERPRINTING AND BACKGROUND CHECKS**

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

**2.4 PREVAILING RATES**

The services contemplated under this procurement include "public works". For all such work funded by this Agreement, the Contractor is required to comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720 and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for any "public works" as that term is defined in the statutes, including all applicable flow down provisions. For purposes of complying with prevailing wage laws, the Contractor must comply with the provisions applicable to an awarding body.

<https://www.dir.ca.gov/Public-Works/Prevailing-Wage.html>

## **SECTION III - INSTRUCTIONS FOR PROPOSERS**

### **3.1 PRE-SUBMITTAL ACTIVITIES**

#### **A. Questions, Comments, Exceptions**

Submit questions, comments, and exceptions, including notifications of apparent errors, to [gjohnson@smcgov.org](mailto:gjohnson@smcgov.org) site by the Deadline for Questions, Comments and Exceptions. Questions and comments received after the deadline may not be acknowledged.

##### **(1) Request for changes**

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

#### **B. Revisions to the Solicitation**

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

#### **C. Contact with County Employees**

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

- (1)** As of the issuance date of this RFP and continuing until it is canceled or an award is made, no proposer or person acting on behalf of a prospective proposer may discuss any matter relating to the RFP with any officer, agent, or employee of the County, other than through Public Purchase, to the Authorized Contact Person, or as outlined in the evaluation or protest procedures.
- (2)** Proposers may not agree to pay any consideration to any company or person to influence the award of a contract by the County, nor engage in behavior that may be reasonably construed by the public as having the effect or intent of influencing the award of a contract.

#### **D. Pre-proposal conference and site visits**

If a pre-proposal conference or site visit is scheduled, answers to questions raised prior to and at the events will be posted on the County's website.

### **3.2 PROPOSAL CONTENT REQUIREMENTS**

#### **A. Proposal Format**

Number all pages of the proposal. Label and order each section as follows:

- (1)** Cover letter - no longer than one page, signed by an individual authorized to execute legal documents for the proposer, identifying the materials submitted.
- (2)** Authorized contacts - identify the name and title the person to contact regarding the proposal, as well as all other individuals authorized to represent the organization in contract negotiations.
- (3)** Table of Contents, listing all major topics and their respective page numbers.
- (4)** Exceptions to the solicitation, or to the final revised solicitation, if any.
- (5)** Technical Proposal
- (6)** Supplementary Documents, as requested
- (7)** Price Proposal

B. Proposal Contents

- (1) Explain responses so as to be understood by people unfamiliar with industry jargon. Use drawings, diagrams, schematics and illustrations as needed, but do not simply refer readers to an exhibit or other section of the proposal in lieu of a complete response.
- (2) Addressing each requirement outlined in this solicitation in the order presented, describe how the requested goods and services will be provided.
- (3) Specify any needs for physical space or equipment that the County must provide during the engagement.
- (4) Explain how work, equipment, and knowledge will be transferred to the County or a new vendor at the end of the contract period.

C. Supplementary Documents

If additional documents and materials are appropriate, or have been requested by the County, provide in the following order as applicable:

- (1) Minimum Qualifications, using County forms if provided.
- (2) Organizational Capacity and Experience, describing work of a similar nature undertaken for a similar entity.
- (3) Financial Documents. (may be requested post proposal submission)
- (4) Samples, drawings, illustrations and related items.
- (5) Attachments, certifications, and forms, executed as applicable.

D. Price Proposal

- (1) Place all cost and pricing data in a separate sealed envelope clearly marked "PRICE PROPOSAL".
- (2) If forms and templates are provided for the Price Proposal, use them without modification. Failure to use the forms or templates provided, or modification of them, may result in rejection of the entire proposal.
- (3) Alternative Price Proposals may be submitted, but only in addition to, not in lieu of, the requested Price Proposal. If submitting an alternative Price Proposal, clearly identify it as an alternative.
- (4) Include prices for the base period of service and if applicable, for each additional year including option years.
- (5) Unless otherwise indicated, when applicable, in the price of an item, include all licenses required for operation, as well as upgrades and revisions to software over the term.

**3.3 PROPOSAL SUBMISSION**

A. Submit proposals as directed below.

(1) Electronic Submissions

Include the proposer name and the RFP title and number in each filename. Submit proposals via email to [gjohnson@smcgov.org](mailto:gjohnson@smcgov.org).

(2) Hard copy submissions

- (a) Submit proposal with all required documents in a sealed package to the designated County Mailing Address. Within the package, submit the Proposal and the Price Proposal in separate envelopes. Clearly mark the following information on the outside of the package:



- Proposer Name
- Return address
- Solicitation title
- Solicitation number

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

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

**B. Errors in Proposals**

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

**3.4 PROPOSER CERTIFICATIONS**

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

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

**3.5 WITHDRAWAL OF PROPOSALS**

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

**3.6 NO COMMITMENT**

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

**3.7 ESTIMATED QUANTITIES**

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

**3.8 PROPOSER SELECTION**

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

- A. Determination of Responsiveness
- B. A responsive proposal conforms to the instructions set forth in this solicitation and any modifications to it.

**Non-responsive proposals will be rejected. The County, in its sole discretion, may waive non-consequential deviations if the deviations cannot have provided an advantage over other proposers.**

C. Proposal Evaluation

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

D. Determination of Responsibility

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

**3.9 CONTRACT AWARD**

A. Notice of Intent to Award

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

B. Award Procedure

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

C. Commencement of Performance

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

**3.10 PROTESTS**

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

A. Protest Eligibility, Format, and Address

- (1) Protests or objections may be filed regarding the procurement process, the content of the solicitation or any addenda, or contract award.
- (2) The County will only review protests submitted by an interested party, defined as an actual or prospective proposer whose direct economic interest could be affected by the County's conduct of the solicitation. Subcontractors do not qualify as interested parties.
- (3) Submit protests to Supervising Construction Project Manager by e-mail to [tnewman@smcgov.org](mailto:tnewman@smcgov.org) or via hard copy to: Tory Newman, Supervising Construction Project Manager, 555 County Center, 5<sup>th</sup> Fl, Redwood City, CA 94063

B. Protest Deadlines

Submit protests with any supplemental materials by 2 p.m. PST, as appropriate, on the deadlines set forth below. The date of filing is the date the County receives the protest, unless received after 2 p.m. PST, or on other than a Business Day, in which case the date of filing will be the next Business Day. Failure to file by the relevant deadline constitutes a waiver of any protest on those grounds. Supplemental materials filed after the relevant deadline may be rejected by the County.

- (1) If relating to the content of the solicitation or to an addendum, file within five Business Days after the date the County releases the solicitation or addendum.
- (2) If relating to any notice of non-responsiveness or non-responsibility, file within five Business Days after the County issues such notice.
- (3) If relating to intent to award, file within five Business Days after the County issues notice of Intent to Award. No protests will be accepted once actual award has been made.

C. Protest Contents

- (1) The letter of protest must include all of the following elements:
  - (a) Detailed grounds for the protest, fully supported with technical data, test results, documentary evidence, names of witnesses, and other pertinent information related to the subject being protested; and
  - (b) The law, rule, regulation, ordinance, provision or policy upon which the protest is based, with an explanation of the violation.
- (2) Protests that simply disagree with decisions of the Evaluation Committee will be rejected.

D. Reply to Protest

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

E. No Stay of Procurement Action during Protest

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

### **3.11 PUBLIC RECORDS**

A. General

- (1) All proposals, protests, and information submitted in response to this solicitation will become the property of the County and will be considered public records. As such, they may be subject to public review.
- (2) Any contract arising from this RFP will be a public record.
- (3) Submission of any materials in response to this RFP constitutes:
  - (a) Consent to the County's release of such materials under the Public Records Act without notice to the person or entity submitting the materials; and
  - (b) Waiver of all claims against the County and/or its officers, agents, or employees that the County has violated a proposer's right to privacy, disclosed trade secrets, or caused any damage by allowing the proposal or materials to be inspected; and
  - (c) Agreement to indemnify and hold harmless the County for release of such information under the Public Records Act; and
  - (d) Acknowledgement that the County will not assert any privileges that may exist on behalf of the person or entity submitting the materials.

B. Confidential Information

- (1) The County is not seeking proprietary information and will not assert any privileges that may exist on behalf of the proposer. Proposers are responsible for asserting any applicable privileges or reasons why a document should not be produced in response to a public record request.
- (2) If submitting information protected from disclosure as a trade secret or any other basis, identify each page of such material subject to protection as "CONFIDENTIAL". If requested material has been designated as confidential, the County will attempt to inform the proposer of the public records request in a timely manner to permit assertion of any applicable privileges.
- (3) Failure to seek a court order protecting information from disclosure within ten days of the County's notice of a request to the proposer will be deemed agreement to disclosure of the information and the proposer agrees to indemnify and hold the County harmless for release of such information.
- (4) Requests to treat an entire proposal as confidential will be rejected and deemed agreement to County disclosure of the entire proposal and the proposer agrees to indemnify and hold the County harmless for release of any information requested.
- (5) Trade secrets will only be considered confidential if claimed to be a trade secret when submitted to the County, marked as confidential, and compliant with Government Code Section 6254.7.

## ***SECTION IV - QUALIFICATIONS, EXPERIENCE, AND EVALUATION CRITERIA***

### **4.1 MINIMUM QUALIFICATIONS**

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

- Firm has demonstrated experience as well as in-house resources necessary to effectively provide the required services
- The firm's personnel assigned to projects shall have significant experience in special inspection and material testing services within the last five years in the State of California, and proposal shall indicate their names along with resumes
- Firms shall have extensive knowledge of available project delivery systems allowed under California Public Contract Code, and make such recommendations as to their applicability as appropriate
- Firms shall be capable of meeting the schedule set by County of San Mateo Department of Public Works
- The proposer is legally authorized to do business in the State of California.

### **4.2 ORGANIZATIONAL CAPACITY AND EXPERIENCE**

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

A. Organizational Capacity:

- (1) Titles and names of staff members who will be on the team responsible for the project, as well as the expected availability of the various individuals. If requested, include the resume of a dedicated, full-time project manager.
- (2) All applicable licenses and license numbers relevant to the project, the names of the holders of those licenses, and the names of the agencies issuing the licenses.
- (3) If portions of work will be performed by subcontractors, names of proposed subcontractors other than suppliers and descriptions of their respective responsibilities.

B. Experience

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

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

#### 4.3 REFERENCES

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

#### 4.4 EVALUATION CRITERIA

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

- 45% - Method and approach
  - Apparent understanding of the scope of services to be provided
  - Appropriateness of the proposed solution/services
- 30% - Experience and organizational capacity
  - Qualifications and experience of both the proposer and key personnel
  - Experience with other public agencies
  - Organizational resources and staff, apparent ability to meet any required timelines or other requirements
- 25% - Price

***The Price Proposal is the Rate Sheet. Use the example below:***

<u>Staff Location</u>	<u>On-site Rate</u>	<u>Year 2 Increase %</u>	<u>Year 3 Increase %</u>
Project Manager			
Inspector			
Admin Assistant			
Other			

**SECTION V - INSURANCE**

Provide evidence of insurance for each of the checked categories

<input checked="" type="checkbox"/>	<b>General Liability</b> (Including operations, products and completed operations, as applicable.)	<b>\$1,000,000</b> - per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit either must apply separately to this project or must be twice the required occurrence limit.
<input checked="" type="checkbox"/>	<b>Automobile Liability</b>	<b>\$1,000,000</b> - per accident for bodily injury and property damage.
<input checked="" type="checkbox"/>	<b>Workers' Compensation</b>	<b>As required by the State of California</b>
<input checked="" type="checkbox"/>	<b>Employers' Liability</b>	<b>\$1,000,000</b> - each accident, <b>\$1,000,000</b> policy limit bodily injury by disease, <b>\$1,000,000</b> each employee bodily injury by disease.
<input checked="" type="checkbox"/>	<b>Professional Liability</b> (Errors and Omissions)	<b>\$1,000,000</b> - per occurrence.
<input type="checkbox"/>	<b>Cyber Liability</b>	<b>\$5,000,000</b> per occurrence for Privacy and Network Security, <b>\$1,000,000</b> per occurrence for Technology Errors and Omissions To be carried at all times during the term of the Contract and for three years thereafter.
<input type="checkbox"/>	<b>Pollution Liability</b>	\$ - Per Occurrence
<input type="checkbox"/>	<b>Pollution Liability (Aggregate)</b>	\$

**5.1 SPECIAL INSURANCE REQUIREMENTS - CYBER LIABILITY**

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

(1) Privacy and Network Security

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

(2) Technology Errors and Omissions

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

**SECTION VI - STANDARD TERMS AND CONDITIONS**

These are attached for information only. Do not complete this form. The final agreement between the County and any successful proposer will be based on this template.

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND [Contractor name]**

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

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

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

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

**Exhibits and Attachments**

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

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

**1. Services to be performed by Contractor**

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

**2. Payments**

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

**3. Term**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from [Month and day], 20[last 2 digits of start year], through [Month and day], 20[last 2 digits of end year].

**4. Termination**

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

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

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

**5. Contract Materials**

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

**6. Relationship of Parties**

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

**7. Hold Harmless**

**a. General Hold Harmless**

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

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

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

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

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

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



**b. Intellectual Property Indemnification**

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

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

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

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

**8. Assignability and Subcontracting**

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

**9. Insurance**

**a. General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage

to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

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

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

**c. Liability Insurance**

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

- |  |             |
|--|-------------|
| i. Comprehensive General Liability...    | \$1,000,000 |
| ii. Motor Vehicle Liability Insurance... | \$1,000,000 |
| iii. Professional Liability.....         | \$1,000,000 |

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

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

**10. Compliance With Laws**

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

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

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

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

### **a. General Non-discrimination**

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

### **b. Equal Employment Opportunity**

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

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

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

### **d. Compliance with County's Equal Benefits Ordinance**

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

### **e. Discrimination Against Individuals with Disabilities**

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

### **f. History of Discrimination**

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to

execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

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

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

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

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

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

**12. Compliance with County Employee Jury Service Ordinance**

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

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

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

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

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

**14. Merger Clause: Amendments**

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

**15. Controlling Law: Venue**

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

**16. Notices**

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

In the case of County, to:

Name/Title: [insert]  
Address: [insert]  
Telephone: [insert]  
Facsimile: [insert]  
Email: [insert]

In the case of Contractor, to:

Name/Title: [insert]  
Address: [insert]  
Telephone: [insert]  
Facsimile: [insert]  
Email: [insert]

**17. Electronic Signature**

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

**18. Payment of Permits/Licenses**

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

\* \* \*

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

**For Contractor:**

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Name (please print)



**For County**

\_\_\_\_\_  
President of the Board of Supervisors  
County of San Mateo

\_\_\_\_\_  
Date

\_\_\_\_\_  
(please print)

\_\_\_\_\_  
President of the Board of Supervisors

\_\_\_\_\_  
County of San Mateo