
THE COUNTY OF SANTA CLARA
REQUEST FOR STATEMENT OF QUALIFICATIONS (RFSOQ)
FOR DEVELOPER - PARTNER
FOR REVENUE-GENERATING AND COST-SAVING RENEWABLE
ENERGY PROJECTS (RFSOQ # RR - 2013)



RFSOQ RESPONSES DUE

October 4, 2013

RFSOQ RETURN ADDRESS:

Lin Ortega
Facilities and Fleet Department
2310 N. First Street, 2nd Floor, Suite 200
San Jose, CA 95131

CONTACT:

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Facilities and Fleet Department
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I. BACKGROUND

In recent years the County of Santa Clara (County) has established itself as a leader in the areas of energy efficiency and renewable energy. In 2010, the County led a group of eight local, public agencies in the procurement of 12 megawatts (MW) of solar photovoltaic (PV) systems. The County completed the construction and installation of 5.8 MWs of solar PV on its own facilities, which resulted from the aforementioned joint procurement, in early 2012. The County has also been active in exploring biogas procurement, investigating solar hot water system feasibility, developing fuel cell projects and energy efficiency projects including lighting controls, LED lighting, HVAC retrocommissioning and an effort to convert its 400,000 square foot civic center to a zero net energy facility. The County has developed and funded projects using different financing and contractual arrangements including Qualified Energy Conservation Bonds (QECBs) and power purchase agreements (PPAs).

To date the County has focused its renewable energy and energy efficiency efforts on its largest facilities, including correctional facilities, health clinics and its largest commercial office buildings. Based on a referral by Supervisor Cortese, the County's Board of Supervisors has given direction for the County Facilities and Fleet Department (FAF) to take a broad vision and investigate renewable energy opportunities that might exist at any and all County properties, including "non-traditional" sites such as park land and roads. The goal of these projects would be to find creative ways to use renewable energy technologies to create value for both a private developer and the County. The actual benefit to the County could depend on a particular agreement and could include lease payments, revenue sharing, utility cost reductions at County sites and/or allocation of renewable energy credits (RECs). For Developer reference the County has included a map as part of this RFSOQ (Attachment A) showing all County properties available for potential renewable energy development.

The purpose of this Request for Statement of Qualifications (RFSOQ) is to qualify one or more renewable energy developers (Developer) to partner with the County to develop renewable energy projects. The Developer's role would be to work with the County in reviewing the portfolio of County properties, identifying properties where installing renewable energy would yield economic benefits, designing, constructing, owning and operating the renewable energy system and entering in an agreement with the County to share in the applicable project's economic benefits. Under this RFSOQ the County will consider Developers with various clean, renewable energy specializations including, but not limited to, solar thermal, solar photovoltaic, concentrated solar, wind, biogas, renewable fuel cells, geothermal and waste-to-energy

technologies. The County may choose to work with more than one Developer to determine the most appropriate technology for a particular site. During the project development phase, the Developer(s) will be responsible for all development-related costs.

Note that the projects being contemplated under this procurement do not include public works projects, projects where the County would be required to fund any part of development, design, construction, operation and maintenance or any arrangements where the County would be the owner of the resulting renewable energy system. The County would solicit a separate selection process for such projects and the Developer(s) selected to work with the County for this RFSOQ process would be required to compete separately.

Developer must pay prevailing wage for any work done under this project and comply with all requirements of Section 1771 et seq. of the California Labor Code.

II. SCOPE OF SERVICES

The County is seeking to partner with one or more Developers to evaluate and develop County properties with renewable energy technologies for mutual economic benefit. The Developer(s) will specifically provide the following services:

1. Work with County in evaluating and identifying County properties suitable for renewable energy installations, taking into account site characteristics, proximity and details of utility provider infrastructure, permitting, legal issues and any other issues related to project development. Unique requirements relating to County parkland will call for Developer to work with the Parks and Recreation Department for such sites.
2. Determine potential economic benefits from renewable energy installations at selected County properties and propose to County how these benefits would be shared between the Developer and the County. The Developer should be able to identify how the installations take advantage of incentives, programs, and laws, including Govt. Code 4217 *et seq.*
3. Negotiate relevant contract documents with the County e.g. property leases, revenue-sharing arrangements, allocation of RECs, PPAs, etc.
4. Design, construct, own, operate and maintain applicable renewable energy systems.
5. Enter into any required agreement with local utility providers e.g. Feed-In Tariff agreement, PPAs, etc.
6. Obtain project financing to fund renewable energy projects.

III. MINIMUM QUALIFICATIONS

The Developer must have, at a minimum, the following qualifications to be considered under this RFSOQ. The County will evaluate whether the developer meets the minimum qualifications based on the proposal submitted:

1. Have demonstrated knowledge of applicable local, state, and federal codes and laws applicable to this project.
2. Possess appropriate and valid State of California-issued license, certifications or registration to practice in the areas of discipline.
3. Have demonstrated knowledge and capability to produce project documents in electronic format compatible with the County's system.
4. Must have completed at least one (1) commercial-scale project similar to that being contemplated under this RFSOQ.
5. Must be able to meet all County insurance requirements for the various phases of the project, examples of which can be found in the Attachment B to this RFSOQ.
6. Over the last five (5) years Developer must have closed the financing of renewable energy projects that have a total value of at least \$5 million.

IV. SUBMITTAL CONTENT

In the response to this RFSOQ, Developers should focus on describing their knowledge, involvement, and experience in projects similar to those being contemplated under this RFSOQ. Responses must include all of the following, in the following order:

1. Date of proposal.
2. Information on your firm, including number of employees in County of Santa Clara, year established and evidence showing your firm meets the minimum qualification requirements set forth in qualifications 1 – 3 of section **III. MINIMUM QUALIFICATIONS** (15 page limit).
3. Legal name, address, and telephone and fax numbers of the principal office (national headquarters) and local offices in the County of Santa Clara, if any. If services will be provided from additional locations, provide information for these sites also.
4. Name, title, address, telephone number, fax numbers and email address of (1) the person to who correspondence related to this RFSOQ should be directed (2) the person

who is authorized to contractually obligate your firm and (3) the person authorized to negotiate any contract on behalf of your firm.

5. Description of the depth of the Developer's organization for use on County projects (5 page limit).
6. Names of lead and key staff that will be responsible for the projects, their professional qualifications, and resumes showing experience with related work (no more than eight (8) resumes, two (2) page limit per resume).
7. Description of any litigation involving the Developer that is pending or was settled in the past five (5) years.
8. Description of how your firm would approach the type of project contemplated under this RFSOQ and initial vision for types of projects that would be possible. For example, will your firm be focusing on one type of renewable technology or many, what factors will first be evaluated at potential sites, do any of the sites provided in the County map (Attachment A) hold potential as project sites, what utility programs would your firm plan to access to sell energy to a local utility, what staff and technology resources does your firm have in place to analyze site information it receives, how would your firm interact with the County to develop projects, how would your firm deal with regulatory and legal issues that could impact the project, what is your firm's plan to finance any project contemplated. References and discussion of specific properties found on the map of County properties attached to the RFSOQ are acceptable (20 page limit).
9. Description of any rebates, incentives, project revenues, financing and/or local utility programs that your firm has accessed in past projects and would potentially be able to access to develop the projects contemplated under this RFSOQ e.g. Feed-In Tariff Program, Investment Tax Credits, Production Tax Credit, Modified Accelerated Cost-Recovery System, Virtual Net Energy Metering, sale of carbon offsets, federal and/or state grants and incentives, Renewable Auction Mechanism (RAM) Program, California Solar Initiative incentives, Self-Generation Incentive Program, Govt. Code 4217 et seq., etc. In this section Developer should also provide details / specify which renewable energy projects and associated project financing Developer is using to qualify under section III.6 of this RFSOQ.
10. Description of current or past projects your firm has been involved in similar in nature to the type of project being contemplated under this RFSOQ and how economic benefits

were shared between partners (limit up to 8 case studies, 2-3 pages each, in narrative format).

- a. List reference contacts, including phone numbers and email addresses, for all case studies listed.
- 11.** Certificate(s) of insurance or insurance declaration page(s) with its responses showing Developer's ability to meet County insurance requirements (see Attachment B). Developers must provide a letter from an insurance agent or other appropriate insuring authority documenting their willingness and ability to endorse County and its staff as additional insured.
- 12.** Non-Collusion Declaration. Developers shall complete and submit with their response the Non-Collusion Declaration. (See Attachment C).
- 13.** Developer must acknowledge receipt of any and all addenda to this RFSOQ and identify all sections of the proposal that the Developer claims contain "proprietary" or "confidential" information.
- 14.** Signed Certification Form (Attachment D).
- 15.** Local Preference. Developers satisfying the requirements of local preference will receive local preference points. 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. In order to be considered for local preference, bidder must complete Attachment E – Declaration of Local Business and include under this Tab.

Notwithstanding any claim of confidentiality or assertion that information is proprietary in a Developer's submission, any Developer submitting a response pursuant to this RFSOQ acknowledges that the County is subject to the disclosure requirements of the California Public Records Act (Government Code Section 6251, et seq) ("CPRA") and that any documents provided by the Developer (with exception of any material designated and marked by the Developer to be "Proprietary") to the County will ultimately be considered public records, as defined in Government Code Section 6252 subject to disclosure under the CPRA. In order to maintain confidentiality of proprietary information following Developer notifications regarding selection or shortlist results, Developers must provide an electronic copy of their proposal with proprietary information redacted at the time of response to this RFSOQ. The County will not accept an assertion that an entire proposal (or all of its major component parts) is confidential,

and in such an instance will instead make the entire, unredacted proposal public after notifications of selection or shortlist results. Developers are cautioned to redact only truly confidential, proprietary and/or trade secret information on a line-by-line basis.

Without regard to the foregoing, it is the County's policy that RFSOQ responses will not be made public, or made available to competing Developers, until such time as Developer notifications of selection or shortlist results have been issued.

The County will review submissions to determine responsiveness. The County may refuse to consider any RFSOQ submission that is incomplete or late.

If a RFSOQ submittal received on time is found to have minor irregularities and/or omissions, the County may opt to contact the Developer for clarification. The Developer must provide necessary information within five (5) days of being request to do so to make its submission complete. The County may extend the deadline for additional information at its sole discretion. If such information is not received by the applicable deadline, the County may reject the submittal as nonresponsive at its sole option.

V. SUBMITTAL INSTRUCTIONS

Developers should submit their proposals in the following manner:

1. One hardcopy of the proposal to the address shown below; and
2. One CD (not DVD), that accompanies the hardcopy submission, with a copy of the proposal in PDF format.
3. RFSOQ responses should be in the same order, and numbered in the same manner, as in section IV of this RFSOQ.
4. PDF copy should contain all responses in one document (do not submit separate PDFs for each question).
5. Total response to this RFSOQ should be no more than 90 pages in length.

Responses with primary focus on technical substance with least emphasis on general promotional material are expected to receive greater attention in this selection process. Developers are advised to include in specificity the expertise, direct involvement, and experience of the anticipated lead and key staff to be allocated for completing the work related to this solicitation.

All responses must be fully signed by the authorized representative of the Developer. All originals must be stamped "originals" and contain original signatures on the necessary forms.

All responses should be received no later than 5:00 PM (PST) October 4, 2013 in the Facilities and Fleet Utility Program's Office located at 2310 North First Street, 2nd Floor, Suite 200, San Jose, CA 95131. Responses received after the submittal deadline will not be considered in the selection process. Each Developer shall bear all costs associated with its response.

Submittals should be addressed to:

**Lin Ortega
Utilities Engineer Program Manager
The County of Santa Clara
Facilities and Fleet Department
2310 North First St., 2nd Floor, Suite 200
San Jose, CA 95131-1011**

VI. POINT OF CONTACT

Any general or initial inquiries regarding this procurement should be submitted to the Point of Contact shown below, in email form, with the "RR RFSOQ 2013" in the subject line. Any substantive questions regarding this RFSOQ should be asked in written form through the bidsync website.

Lin Ortega
Facilities and Fleet Department
County of Santa Clara
2310 N. 1st Street, Suite 200
San Jose, CA 95131
Phone: 408 993 4643
Fax: (408) 993 4747
Email: Lin.Ortega@faf.sccgov.org

VII. DEVELOPER SELECTION PROCEDURE AND CRITERIA

A Selection Review Board (Panel) will be appointed by the Director of FAF to evaluate the RFSOQ responses based on the evaluation criteria in the table below. The identity of the Panel will not be revealed at any time of this selection process.

Evaluation Criteria	Points Possible
Approach to project and initial project vision (see section IV, question 8).	25

Developer's experience with renewable energy projects similar in nature to type of project being contemplated in this RFSOQ (see section IV, question 10).	30
Demonstrated ability to access rebates, incentives, revenues, grants, financing and other economic benefits / inputs to support renewable energy projects (see section IV, question 9).	30
Experience, qualifications and abilities of the Developer's staff, who will be assigned to this effort, to develop renewable energy projects similar to the type of project being contemplated in this RFSOQ (see section IV, questions 5 and 6).	10
Local Preference Points	5
Total	100

The Panel will evaluate and score the RFSOQ responses using a consensus scoring methodology. At any time during the solicitation process, the County may ask the Developer for clarifying information regarding Developer's response. The Developer must not initiate any communication with the County during the evaluation phase of the procurement but may respond to communication during the evaluation.

The County intends (but cannot guarantee) that the outcome of the evaluation will be one of the following: (1) one or more of the top-scoring Developers are selected to partner with the County or (2) the County shortlists top-scoring Developers. If the County shortlists several Developers, the County may elect to conduct interviews with shortlisted Developers and / or request clarifying information from shortlisted Developers. Based on the information the shortlisted Developers provided in their initial RFSOQ response and during the shortlist period, the County may select any of the shortlisted Developers to partner with regardless of those Developers' scores at the conclusion of the initial evaluation. Selection of any Developer(s) does not guarantee a contract with the same will be executed. A contract will only be executed under the direction of the Board of Supervisors.

The County will send out electronic notifications to Developers, on the date(s) specified in the schedule included as part of this RFSOQ, indicating whether or not they were selected or whether or not they were shortlisted, if applicable.

Following selections by the Panel and the expiration of the protest period(s), the County will negotiate with the Developer(s) any necessary agreements that define the partnership

relationship between the Developer and the County. If the negotiations with the selected Developers cannot be finalized in a reasonable time, the County will terminate the negotiations and initiate negotiations with other Developers that have responded to the RFSOQ. The County has included its standard contract provisions in Attachment F for the Developer's reference.

Developers must meet the County insurance requirements to execute any agreement with the County. Failure to meet County's insurance requirements will disqualify the Developer.

Developers are urged to review the evaluation criteria table to tailor their response in order to provide clarity to the Panel.

VIII. PROTEST PROCESS

Developers whose responses were not selected, or shortlisted as the case may be, may file a written protest ("Protesters") no later than five (5) business days after the Developer notifications of selection or shortlist results have been sent. Failure to present a protest within this time constitutes a waiver of any and all rights to challenge the decision of the County, whether by administrative, judicial or any other legal process or proceeding.

1. Filing a Protest

The protest of a selection or shortlist result must be in writing and sent by email to Lin.Ortega@faf.sccgov.org, with cc to Brad.Vance@faf.sccgov.org.

2. Contents of Protest

The written protest must contain the following information: (1) the name, street address, electronic mail address, telephone and facsimile number of the Protester; (2) signature of an authorized representative of Developer; (3) grounds for the protest; (4) copies of any relevant documents; and (5) the form of relief requested. The written protest must clearly state the grounds for the protest. Protests should be concise and logically arranged. Protests may not be more than three pages in length.

3. Grounds for Protest

Protests shall be based only on one or more of the following grounds:

- a.** The Protester believes, and establishes by clear and convincing evidence, that the County failed to follow the RFSOQ's procedures and adhere to requirements set forth in the RFSOQ or any addendum thereto.

- b. The Protester believes, and establishes by clear and convincing evidence, that there was misconduct or impropriety by County officials or evaluation team members.
 - c. The Protester believes, and establishes by clear and convincing evidence, that there was abuse of process or abuse of discretion by County officials or evaluation team members.
- 4. Following the County's receipt of a timely protest, the Director of Facilities and Fleet Department or designee will attempt to informally resolve the protest. The Director or designee may request, use or seek any information or documents from any sources to attempt a resolution. The protest may be released to the other proposing Developers. The Director or designee's decision to uphold, partially uphold or deny a protest shall be communicated by any means at the sole discretion of the Director or designee.
- 5. If the Protester disputes the outcome of the attempted informal resolution by the Director or designee, it shall have five (5) business days after notification by the Director or designee to file the protest with an official from another department who has been designated as the Independent Reviewing Officer (IRO) for the RFSOQ. FAF may also forward any additional documents, briefs or comments to the IRO.

The IRO will conduct an independent review of the protest to determine whether the protest has merit. The IRO has the authority to request or seek any additional information or documents to assist with the review of the protest.

The IRO will issue a written decision on a timely-submitted protest, and will send it by e-mail (if provided by the appellant) or by mail. If the appellant failed to specify in its written protest the method by which the appellant would like to receive the IRO's written protest decision, the IRO will send her written decision to the appellant by mail. THE DECISION OF THE IRO SHALL BE FINAL.

6. Remedies

If the Director or the IRO sustains a protest in whole or in part, they shall determine the remedial actions in the best interests of the County.

IX. CONDITIONS OF THE SOLICITATION

1. County may partner with more than one firm using this solicitation.
2. The contract may be in the form of a Professional Services Agreement (PSA).

3. The County has right to terminate or modify the selection process at any time for convenience.
4. County may issue separate future solicitations for similar services for project specific professional services outside this process.
5. Other agencies/departments within the County may issue separate solicitations for similar services outside this process.
6. The County does not guarantee the execution of any contract(s) from this solicitation.
7. The County reserves the right to reject any and all responses submitted.
8. The County is under no obligation to award and/or enter into any contract.
9. The County, at the discretion of the Board of Supervisors, may negotiate additional compensation for services after selection of Developer.

X. TENTATIVE SCHEDULE OF EVENTS (all times are in PST)

Below is a tentative schedule for this RFSOQ. Actual dates may vary depending on particular circumstances and the schedule is subject to change at the County’s sole discretion. Any changes to the schedule will be posted on the bidsync website or communicated to the specific affected party, as the case may be.

Event No.	Action	Tentative Scheduled Date
1.	Issue RFSOQ Copies of this RFSOQ and supporting documents may be obtained from www.bidsync.com .	August 2, 2013
2.	Pre-Proposal Conference An optional Pre-Proposal Conference will be held at the County’s Charcot facility, located at 2310 North First Street, San Jose, CA 95131. Additional information regarding the time and conference room that will be used for the Pre-Proposal Conference will be posted on the bidsync website. If any interested parties cannot attend in person, we will also have a conference call option available: 866 249 5325, access code: 385012. Please RSVP Lin.Ortega@faf.sccgov.org if you plan to attend or call in.	August 29, 2013

3.	<p>Deadline To Submit Written Questions</p> <p>Developers may submit questions as to the intent or clarity of this RFSOQ to the bidsync website until 11:59 PM PST on this deadline date.</p>	September 30, 2013
4.	<p>Deadline to Submit RFSOQ Responses</p> <p>See SUBMITTAL INSTRUCTIONS section for submission requirements.</p>	October 4, 2013
5.	<p>Evaluation Panel Scores Proposals</p> <p>Once RFSOQ responses are evaluated and scored, the County will either (1) select Developers or (2) create shortlist, then select Developers (see alternative schedules below depending on option used by County).</p>	October 28, 2013

Schedule for Selection (No Shortlist) Scenario		
6.a.	Select Final Developer(s)	October 29, 2013
7.a.	Notify Developers of Selection Results	October 29, 2013
8.a.	Deadline to File of any Protest	See Section VIII.
9.a.	Informal Hearing Conducted	See Section VIII.
10.a.	Decision Following Informal Hearing	See Section VIII.
11.a.	Deadline to Protest Decision Following Informal Hearing	See Section VIII.
12.a.	Resolution by Review Officer	See Section VIII.
13.a.	Selection(s) Finalized	End of Protest Period + 1 business day
14.a.	Report on RFSOQ Results to Board / Committee	Next Board Meeting

Schedule for Shortlist Then Selection Scenario		
6.b.	Create Developer Shortlist	October 29, 2013
7.b.	Notify Developers of Shortlist Results	October 29, 2013
8.b.	Deadline to File of any Protest	See Section VIII.
9.b.	Informal Hearing Conducted	See Section VIII.
10.b.	Decision Following Informal Hearing	See Section VIII.
11.b.	Deadline to Protest Decision Following Informal Hearing	See Section VIII.
12.b.	Resolution by Review Officer	See Section VIII.

13.b.	Interviews + Clarifying Questions to Shortlisted Developers	End of Shortlist Protest Period + 2 weeks (tentative – will depend on how quickly County is able to obtain clarifying information needed)
14.b.	Select Final Developer(s)	End of 13.b. + 1 business day
15.b.	Notify Developers of Selection Results	End of 13.b. + 1 business day
16.b.	Deadline to File of any Protest	See Section VIII.
17.b.	Informal Hearing Conducted	See Section VIII.
18.b.	Decision Following Informal Hearing	See Section VIII.
19.b.	Deadline to Protest Decision Following Informal Hearing	See Section VIII.
20.b.	Resolution by Review Officer	See Section VIII.
21.b.	Selection(s) Finalized	End of Protest Period + 1 business day
22.b.	Report on RFSOQ Results to Board / Committee	Next Board Meeting

ATTACHMENT A – MAP OF COUNTY PROPERTIES

Developers can access an interactive map displaying County properties at the following link:

<http://sccgov.maps.arcgis.com/apps/OnePane/basicviewer/index.html?appid=455f318234324c8bb71e6b36661190aa>

ATTACHMENT B – INSURANCE REQUIREMENTS

ATTACHMENT B INSURANCE REQUIREMENTS

B-3A – DESIGN PHASE INSURANCE REQUIREMENTS

Indemnity

To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782.8), Consultant 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 (collectively, "Litigation") arising out of, or in connection with, performance of this Agreement due to the negligence, recklessness, or willful misconduct of Consultant and/or its agents, employees or sub-consultants, excepting only to the extent such loss, injury or damage is caused by the negligence, recklessness or willful misconduct of personnel employed by the County. The Consultant shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any Litigation in which the Consultant is obligated to indemnify, defend and hold harmless the County under this Agreement.

Insurance

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

A. Evidence of Coverage

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

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

B. Qualifying Insurers

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

C. Notice of Cancellation

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 all owned, non-owned and hired vehicles.

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 two million dollars (\$2,000,000) 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.

ATTACHMENT B INSURANCE REQUIREMENTS

B- 1 – CONSTRUCTION PHASE INSURANCE REQUIREMENTS

Indemnity

To the fullest extent allowed by law, 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 or active negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

Insurance

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

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier must 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

1. 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.
2. When surety bonds are required, they shall be issued by companies that meet the following minimum requirements:
 - a. For projects in excess of \$250,000:
 1. A California admitted surety with either a current A.M. Best rating of A IV or a current Standard and Poors (S&P) rating of A.

OR

2. An admitted surety insurer which complies with the provisions of the Code of Civil Procedure, Section 995.660*.

OR

3. In lieu of 1 & 2, a company of equal financial size and stability that is approved by the County's Insurance Manager.
- b. For projects under \$250,000:
1. A California admitted surety with either a current A.M. Best rating of B or a current Standard and Poors (S&P) rating of BB.

OR

2. An admitted surety insurer which complies with the provisions of the Code of Civil Procedure, Section 995.660*.

OR

3. In lieu of 1 & 2, a company of equal financial size and stability that is approved by the County's Insurance Manager.

* California Code of Civil Procedure Section 995.660 in summary, states that an admitted surety must provide: 1) the original, or a certified copy of instrument authorizing the person who executed the bond to do so, within 10 calendar days of receipt of a request to submit the instrument; 2) a certified copy of the Certificate of Authority issued by the Insurance Commissioner, within 10 calendar days of receipt of a request to submit the copy; 3) a certificate from County Clerk of Santa Clara County that Certificate of Authority has not been surrendered, revoked, canceled, annulled or suspended, within 10 calendar days of receipt of the certificate; 4) copies of the surety's most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10, within 10 calendar days of receipt of a request to submit the statements.

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 - \$2,000,000
 - b. General aggregate - \$4,000,000
 - c. Products/Completed Operations aggregate ** - \$2,000,000
 - d. Personal Injury - \$2,000,000

A minimum of 50% of each of the aggregate limits must remain available at all times unless coverage is project specific.

2. General liability coverage shall include:

- a. Premises and Operations
- b. **Products/Completed Operations with limits of four million dollars (\$4,000,000) per aggregate to be maintained for three (3) years following acceptance of the work by the County.
- c. Contractual Liability expressly including liability assumed under this Agreement. If the Contractor is working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, underpass or crossway shall be deleted, or a railroad protective policy provided.
- d. Personal Injury liability
- e. Owners' and Contractors' Protective liability
- f. Severability of interest
- g. Explosion, Collapse, and Underground Hazards (X, C and U)
- h. Broad Form Property Damage liability

3. General liability coverage shall include the following endorsements, copies of which shall be provided to the County:

a. **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.

b. **Contractual Liability Endorsement:**

Insurance afforded by this policy shall apply to liability assumed by the insured under written contract with the County of Santa Clara.

c. **X C & U (Explosion, Collapse and Underground) Endorsement:**

Insurance afforded by this policy shall provide X, C and U Hazards coverage.

4. Claims Made Coverage

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

- a. Policy retroactive date coincides with or precedes the Contractor's start of work (including subsequent policies purchased as renewals or replacements).
- b. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following project completion, including the requirement of adding all additional insureds.
- c. If insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least two years to report claims arising from work performed in connection with this Agreement or Permit.
- d. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

5. Automobile Liability Insurance

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

6. 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.

7. Contractors' Equipment Insurance

On an "all risk" basis covering equipment owned, leased, or used by the Contractor. If the total value of equipment is less than \$100,000 Contractor may self-insure this exposure. If total equipment value is \$100,000 or more, insurance is required. Such insurance shall include an insurer's waiver of subrogation in favor of the County. Contractor shall hold harmless the County for any loss or damage to the Contractor's equipment. This coverage may be waived by the Insurance Manager, but the Contractor hereby releases and holds harmless the County for any loss or damages to its equipment.

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. Bond Requirements

1. Contract Bonds - Prior to execution of the Contract, Contractor shall file with the County on the approved forms, the two surety bonds in the amounts and for the purposes noted below, duly executed by a reputable surety company satisfactory to County, and Contractor shall pay all premiums and costs thereof and incidental thereto.

Each bond shall be signed by both Contractor and the sureties.

- a) The "payment bond for public works" shall be in an amount of one hundred percent (100%) of the Contract price, as determined from the prices in the bid form, and shall insure to the benefit of persons performing labor or furnishing materials in connection with the work of the proposed Contract. This bond shall be maintained in full force and effect until all work under the Contract is completed and accepted by the County, and until all claims for materials and labor have been paid.
- b) The "performance bond" shall be in an amount of one hundred percent (100%) of the Contract price as determined from the prices in the bid form, and shall insure the faithful performance by Contractor of all work under the Contract. It shall also insure the replacing of, or making acceptable, any defective materials or faulty workmanship.

Should any surety or sureties be deemed unsatisfactory at any time by the County notice will be given Contractor to that effect and Contractor shall forthwith substitute a new surety or sureties satisfactory to the County. No further payment shall be deemed due or will be made under the Contract until the new sureties qualify and are accepted by the County.

All alterations, time extensions, extra and additional work, and other changes authorized by the Specifications, or any part of the Contract, may be made without securing consent of the surety or sureties on the contract bonds.

2. 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.

ATTACHMENT B
INSURANCE REQUIREMENTS

B- 5 - INSURANCE REQUIREMENTS FOR LEASE / OPERATION ON COUNTY PROPERTY

Indemnification

To the fullest extent allowed by law, Tenant/Lessee will indemnify, reimburse, hold harmless and defend County including, without limitation, County's employees, agents, contractors, subcontractors and representatives (collectively, "County"), from any and all liability, damages, loss, costs, and obligations, including, but not limited to, court costs and reasonable attorney's fees, arising out of any claim, suit, judgment, loss or expense occasioned by, but not limited to, injury or death of any person or loss or damage to any property, that is suffered or sustained by Tenant/Lessee including, without limitation, its employees, agents, contractors, subcontractors and representatives, or any person using, occupying or visiting the Premises, or by any person in, on or about the Premises, from any cause whatsoever during the Term of the Lease, excepting only claims arising from the gross negligence or willful misconduct of County. Tenant/Lessee's obligation under this Indemnification section will survive the termination or expiration of this Lease with respect to any claims or liabilities arising out of an injury to person or damage to property that occurred during the Term of the Lease and any holdover period. County shall have the right to approve legal counsel providing County's defense and such approval shall not be unreasonably withheld.

Insurance

Without limiting the Tenant/Lessee's indemnification of the County, Tenant/Lessee, shall at its own expense, provide and maintain the following insurance coverage in full force and effect throughout the term of this Lease:

A. Evidence of Coverage

Prior to commencement of this Lease, Tenant/Lessee shall provide a Certificate of Insurance certifying that coverage as required 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 Tenant/Lessee upon request.

A periodic review/change of insurance requirements may be made every five years to ensure appropriate coverage by County standards is in place.

B. Qualifying Insurers

All policies 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, unless otherwise approved by 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 - \$2,000,000
 - b. General aggregate - \$4,000,000
 - c. Personal Injury - \$2,000,000
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.

4. Automobile Liability Insurance

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

Tenant/Lessee shall maintain not less than fifty thousand dollars (\$50,000) Fire Legal Liability on all real property being leased, including improvements and betterments owned by County, and shall name County as a loss payee. Tenant/Lessee shall also provide fire insurance on all personal property contained within or on the leased premises. The policy shall be written on a standard "all risk" contract, excluding earthquake and flood. The contract shall insure for not less than ninety (90) percent of the actual cash value of the personal property, and Tenant/Lessee shall name County as an additional insured.

E. Waiver of Subrogation

Except as may be specifically provided for elsewhere in this lease, County and the Tenant/Lessee hereby each mutually waive any and all rights of recovery from the other in event of damage to the premises or property of either caused by acts of God, perils of fire, lightning, and all other all-risk perils as defined in insurance policies and forms approved for use in the state of California. Each party shall obtain any special endorsements, if required by their insurer, to evidence compliance with the aforementioned waiver.

F. Special Provisions

The following provisions shall apply to this Lease:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Tenant/Lessee 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 Tenant/Lessee pursuant to this Lease, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Lease may be fulfilled by self-insurance on the part of the Tenant/Lessee. However, this shall not in any way limit liabilities assumed by the Tenant/Lessee under this Lease. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Tenant/Lessee'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 Lease be sublet, the Tenant/Lessee shall require each of its subcontractors of any tier to carry the aforementioned coverages as set forth in this Exhibit B - Insurance Requirements for Lease / Operation on County Property.

ATTACHMENT C – NON-COLLUSION DECLARATION

In accordance with County requirements, _____
(Representative's full name)

being first duly sworn, deposes and says that he or she is _____
(Representative's title)

of _____,
(Developer company name)

the party submitting the foregoing response, and that the response is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the response is genuine and not collusive or sham; that the Developer has not directly or indirectly induced or solicited any other Developer to put in a false or sham response, and has not directly or indirectly colluded, conspired, connived, or agreed with any Developer or anyone else to put in a sham response, or that anyone shall refrain from bidding; that the Developer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the response of the Developer or any other Developer, or to fix any overhead, profit, or cost element of the response, or of that of any other Developer, 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 response are true; and further, that the Developer has not, directly or indirectly, submitted his or her response 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 response.

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

SIGNATURE BLOCK (<i>Signature Block must be completed in ink & changes must be initialed.</i>)	
Developer 's Signature: _____	Date: _____
Developer 's Name & Title (Print): _____	

ATTACHMENT D - CERTIFICATION FORM

RFSOQ for Developer-Partner for
Revenue-Generating and Cost-Saving Renewable Energy Projects

I (the Developer), the undersigned, certify and declare that I have read all the foregoing answers to this RFSOQ and know their contents. The matters stated in the answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California, that the foregoing is correct.

(Date)

(Name)

(Signature)

ATTACHMENT E – DECLARATION OF LOCAL BUSINESS

Developers claiming local preference must declare so in a certified letter on company letterhead and submit with their RFSOQ response. For purposes of this RFSOQ, local business is as defined in County of Santa Clara Board Policy Manual, Section 5.6.5.2

ATTACHMENT F – STANDARD CONTRACT PROVISIONS

SECTION VI: STANDARD PROVISIONS

Changes to the terms and conditions in this section require approval of County Counsel

A. ENTIRE AGREEMENT

This document represents the entire Agreement between the parties. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of the agreement are merged into this Agreement.

B. AMENDMENTS

This agreement may only be amended by a written instrument signed by the Parties.

C. CONFLICTS OF INTEREST

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

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

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall, upon execution of this Agreement, provide the County with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Contractor's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," (2 CCR 18701(a)(2)), as part of Contractor's service to the County under this Agreement. Contractor shall immediately notify the County of the names and email addresses of any additional individuals later assigned to provide such service to the County under this Agreement in such a capacity. Contractor shall immediately notify the County of the names of individuals working in such a capacity who, during the course of the Agreement, end their service to the County.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Agreement, Contractor shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Agreement, annually by April 1, and within 30 days of their termination of service pursuant to this Agreement.

D. GOVERNING LAW, VENUE

This Agreement has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this Agreement shall be in the County of Santa Clara.

E. ASSIGNMENT

No assignment of this Agreement or of the rights and obligations hereunder shall be valid without the prior written consent of the other party.

F. ASSIGNMENT OF CLAYTON ACT, CARTWRIGHT ACT CLAIMS

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

G. WAIVER

No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly stated.

COUNTY OF SANTA CLARA – SERVICE AGREEMENT

H. NON-DISCRIMINATION

Standard Non-Discrimination Language

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 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Contractor shall not discriminate against any subcontractor, employee, 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.

– OR –

Alternate Non-Discrimination Language Attached As Exhibit _____, incorporated by this reference.
(Requires County Counsel Approval)

I. TERMINATION

Standard Termination Language

The County may, by written notice to Contractor, terminate all or part of this Agreement at any time for the convenience of the County. The notice shall specify the effective date and the scope of the termination. In the event of termination, Contractor shall deliver to County all documents prepared pursuant to the Agreement, whether complete or incomplete. Contractor may retain a copy for its records. Upon receipt of the documents, Contractor shall be compensated based on the completion of services provided, as solely and reasonably determined by County.

– OR –

Alternate Termination Language Attached As Exhibit _____, incorporated by this reference.
(Requires County Counsel Approval).

J. BUDGET CONTINGENCY

This Agreement is contingent upon the appropriation of sufficient funding by the County for the services covered by this Agreement. If funding is reduced or deleted by the County for the services covered by this Agreement, the County has the option to either terminate this Agreement with no liability occurring to the County or to offer an amendment to this Agreement indicating the reduced amount.

K. 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.

COUNTY OF SANTA CLARA – SERVICE AGREEMENT

L. FOOD AND BEVERAGE STANDARDS

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

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

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

M. CONTRACTING PRINCIPLES

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

N. 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 submitted to County, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor shall 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 use its 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

O. THIRD PARTY BENEFICIARIES

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

P. INTELLECTUAL PROPERTY RIGHTS:

Ownership: County shall own all right, title and interest in and to the Deliverables. For purposes of this Agreement, the term “Deliverables” shall mean any documentation and deliverables created by Contractor during the performance of services that are identified in this Agreement. Contractor hereby assigns to the County all rights, title and interest in and to any and all intellectual property whether or not patentable or registrable under patent, copyright, trademark or similar statutes, made or conceived or reduced to practice or learned by Contractor, either alone or jointly with others, during the period of Contractor’s agreement with the County or result from the use of premises leased, owned or contracted for by the County. Contractor acknowledges that all original works of authorship which are made by Contractor (either solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are “works made for hire,” as that term is defined in the United States Copyright Act (17 U.S.C. Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or delivered by Contractor, either solely or jointly with others, in connection with any agreement with the County.

COUNTY OF SANTA CLARA – SERVICE AGREEMENT

Q. INTELLECTUAL PROPERTY INDEMNITY

Contractor represents and warrants for the benefit of the County and its users that, to its knowledge, as of the effective date of this Agreement, Contractor is the exclusive owner of all rights, title and interest in the Deliverables and/or services provided pursuant to this Agreement. Contractor shall defend, indemnify and hold the County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney's fees) by a third party alleging the Deliverables and/or services provided pursuant to this Agreement infringe upon any intellectual property rights of third parties. This indemnity and duty to defend is in addition to and does not supersede the requirements stated in VII of this agreement.

R. OWNERSHIP RIGHTS TO MATERIALS / RESTRICTIONS ON USE

All materials obtained, developed or prepared by Contractor in the course of performing services hereunder, including but not limited to videotapes, audio recordings, still photographs, ads or brochures, and the derivative works, patent, copyright, trademark, trade secret or other proprietary rights associated therewith (collectively "Deliverables"), shall be the sole and exclusive property of the County. To the extent Contractor owns or claims ownership rights to said Deliverables, Contractor hereby expressly assigns all said rights, title, and interest in and to the Deliverables to the County pursuant to the terms and conditions of this Agreement and at no additional cost. The County has the exclusive royalty-free irrevocable right to duplicate, publish or otherwise use for any purpose, all materials prepared under this Agreement. If Contractor wishes to use the materials prepared hereunder for any purpose including but not limited to promotional, educational or commercial purposes, the Contractor shall obtain prior written authorization from the County, which consent may be withheld by the County in its sole discretion. Contractor acknowledges that all original works of authorship which are made by Contractor (solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C., Section 101), and shall belong solely to County. Contractor agrees that the County will be the copyright owner in all copyrightable works of every kind and description created or developed by Contractor, solely or jointly with others, in connection with any agreement with the County. If requested to, and at no further expense to the County, Contractor will execute in writing any acknowledgments or assignments of copyright ownership of such copyrightable works as may be appropriate for preservation of the worldwide ownership in the County and its nominees of such copyrights. This section shall apply to the extent not otherwise provided under this agreement.

S. COUNTY DATA

"County Data" shall mean data and information received by Contractor from County. As between Contractor and County, all County Data shall remain the property of the County. Contractor shall not acquire any ownership interest in the County Data. Contractor shall not, without County's written permission consent, use or disclose the County Data other than in the performance of its obligations under this Agreement. Contractor shall be responsible for establishing and maintaining an information security program that is designed to ensure the security and confidentiality of County Data, protect against any anticipated threats or hazards to the security or integrity of County Data, protect against unauthorized access to or use of County Data that could result in substantial harm or inconvenience to County or any end users; and ensure the proper disposal of County data upon termination of this Agreement. Contractor shall take appropriate action to address any incident of unauthorized access to County Data, including addressing and/or remedying the issue that resulted in such unauthorized access, notifying County as soon as possible of any incident of unauthorized access to County Data, or any other breach in Contractor's security that materially affects County or end users; and be responsible for ensuring compliance by its officers, employees, agents, and subcontractors with the confidentiality provisions hereof. Should confidential and/or legally protected County Data be divulged to unauthorized third parties, Contractor shall comply with all applicable federal and state laws and regulations, including but not limited to California Civil Code Sections 1798.29 and 1798.82 at Contractor's sole expense (if applicable). Contractor shall not charge the County for any expenses associated with Contractor's compliance with the obligations set forth in this section.