

SOUTH SAN FRANCISCO SERVICES AGREEMENT

This Services Agreement (this “**Agreement**”) is made and entered into between the City of South San Francisco, a municipal corporation (“**City**”) and _____, (“**Consultant**”) effective as of _____, (the “**Effective Date**”). City and Consultant are hereinafter collectively referred to as (the “**Parties**”). In consideration of their mutual covenants, the Parties hereby agree as follows:

1. Scope of Services. Consultant shall provide the following services and/or materials (“the Work”): _____, as more specifically described in the Scope of Services, attached hereto as Exhibit A. The Work shall commence on _____, and shall be completed to the satisfaction of the City by _____, unless such date is extended or otherwise modified by the City in writing. In the event of a conflict or inconsistency between the text of the main body of this Agreement and Exhibit A, the text of the main body of this Agreement shall prevail.

A. Security Breach Notification and Reporting. Consultant shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the City upon request. In the event of any actual security breach or reasonable belief of an actual security breach the Consultant either suffers or learns of that either compromises or could compromise the City’s data (a “Security Breach”), Consultant shall notify the City within 48 hours of its discovery.

Consultant shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Consultant shall report to the City:

- (i) the nature of the Security Breach;
- (ii) the City data used or disclosed;
- (iii) who made the unauthorized use or received the unauthorized disclosure;
- (iv) what the Consultant has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
- (v) what corrective action the Consultant has taken or shall take to prevent future similar unauthorized use or disclosure. Consultant shall provide such other information, including a written report, as reasonably requested by the City. Consultant shall analyze and document the incident and provide all notices required by applicable law.

2. Payment. City shall pay Consultant an amount not to exceed _____ (\$ _____) for the full and satisfactory completion of the Work in accordance with the terms and conditions of this Agreement. The calculation of payment for the Work shall be set forth as follows: _____. The amount stated above is the entire compensation payable to Consultant for the Work performed hereunder, including all labor, materials, tools and equipment furnished by Consultant.

City shall make payments, based on invoices received, for Work satisfactorily performed. City shall have thirty (30) days from the receipt of an invoice to pay Consultant.

3. Independent Contractor. It is understood and agreed that this Agreement is not a contract of employment and does not create an employer-employee relationship between the City and Consultant. At all times Consultant shall be an independent contractor and City shall not control the manner of Consultant accomplishing the Work. Consultant is not authorized to bind the City to any contracts or other obligations without the express written consent of the City.

4. Indemnification. To the fullest extent permitted by law, Consultant shall indemnify, defend (with counsel acceptable to the City), and hold harmless the City and its elected and appointed officers, officials, employees, agents, contractors and consultants (collectively, the “City Indemnitees”) from and against any and all liability, loss, damage, claims, expenses and costs (including, without limitation, attorneys’ fees and costs of litigation) (collectively, “Liability”) of every nature arising out of or in connection with Consultant’s performance of the Work or Consultant’s failure to comply with this Agreement, except such Liability caused by the gross negligence or willful misconduct of the City Indemnitees.

5. Insurance. Prior to beginning the Work and continuing throughout the term of this Agreement, Consultant (and any subcontractors) shall, at Consultant’s (or subcontractor’s) sole cost and expense, furnish the City with certificates of insurance evidencing that Consultant has obtained and maintains insurance in the following amounts:

A. Workers’ Compensation that satisfies the minimum statutory limits.

B. Commercial General Liability and Property Damage Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, TWO MILLION DOLLARS (\$2,000,000) annual aggregate, for bodily injury, property damage, products, completed operations and contractual liability coverage. The policy shall also include coverage for liability arising out of the use and operation of any City-owned or City-furnished equipment used or operated by the Consultant, its personnel, agents or subcontractors.

C. Comprehensive automobile insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury and property damage including coverage for owned and non-owned vehicles.

D. Professional Liability Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals’ errors and omissions.

E. Cybersecurity/Liability Insurance coverage in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence / aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering technology services, as follows:

- i. Violation or infringement of any right of privacy, including breach of security and breach of security/privacy laws, rules or regulations globally, now or hereinafter constituted or amended;
- ii. Data theft, damage, unauthorized disclosure, destructions, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential City information in whatever form, transmission of a computer virus or other type of malicious code; and participation in a denial of service attack on third party computer systems;
- iii. Loss or denial of service; and
- iv. The policy shall not contain a cyber terrorism exclusion.

The cybersecurity/liability insurance coverage required in this subsection (E) must include technology/professional liability including breach of contract, privacy and security liability, privacy regulatory defense and payment of civil fines, payment of credit card provider penalties, and breach response costs, including without limitation, notification costs, forensics, credit protection services, call center services, identity theft protection services, and crisis management/public relations services.

All insurance policies shall be written on an occurrence basis and shall name the City Indemnitees as additional insureds with any City insurance shall be secondary and in excess to Consultant's insurance. If the Consultant's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible. The certificates shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or non-renewal. The City's Risk Manager may waive or modify any of the insurance requirements of this section.

6. Compliance with all Applicable Laws; Nondiscrimination. Consultant shall comply with all applicable local, state and federal laws, regulations and ordinances in the performance of this Agreement. Consultant shall not discriminate in the provision of service or in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, religion, gender, marital status, sexual orientation, age, physical or mental disability in violation of any applicable local, state or federal laws or regulations.

7. Termination. City may terminate or suspend this Agreement at any time and without cause upon written notification to Consultant. Upon receipt of notice of termination or suspension, Consultant shall immediately stop all work in progress under this Agreement. The City's right of termination shall be in addition to all other remedies available under law to the City.

8. Prevailing Wage. Where applicable, the wages to be paid for a day's work to all classes of laborers, workmen, or mechanics on the work contemplated by this Purchase Agreement, shall be not less than the prevailing rate for a day's work in the same trade or occupation in the locality within the state where the work hereby contemplates to be performed as determined by the Director of Industrial Relations pursuant to the Director's authority under Labor Code Section 1770, *et seq.* Each laborer, worker or mechanic employed by Consultant or by any subcontractor shall receive the wages herein provided for. The Consultant shall pay two hundred dollars (\$200), or whatever amount may be set by Labor Code Section 1775, as may be amended, per day penalty for each worker paid less than prevailing rate of per diem wages. The difference between the prevailing rate of per diem wages and the wage paid to each worker shall be paid by the Consultant to each worker.

An error on the part of an awarding body does not relieve the Consultant from responsibility for payment of the prevailing rate of per diem wages and penalties pursuant to Labor Code Sections 1770-1775. The City will not recognize any claim for additional compensation because of the payment by the Consultant for any wage rate in excess of prevailing wage rate set forth. The possibility of wage increases is one of the elements to be considered by the Consultant.

(A) Posting of Schedule of Prevailing Wage Rates and Deductions. If the schedule of prevailing wage rates is not attached hereto pursuant to Labor Code Section 1773.2, the Consultant shall post at appropriate conspicuous points at the site of the project a schedule showing all determined prevailing wage rates for the various classes of laborers and mechanics to be engaged in work on the project under this contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

(B) Payroll Records. Each Consultant and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Consultant in connection with the public work. Such records shall be certified and submitted weekly as required by Labor Code Section 1776.

9. Payment of Taxes; Tax Withholding. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. To be exempt from tax withholding, Consultant must provide City with a valid California Franchise Tax Board form 590 ("Form 590"), as may be amended and such Form 590 shall be attached hereto and incorporated herein as Exhibit B. Unless Consultant provides City with a valid Form 590 or other valid, written evidence of an exemption or waiver from withholding, City may withhold California taxes from payments to Consultant as required by law. Consultant shall obtain, and maintain on file for three (3) years after the termination of this Agreement, Form 590s (or other written evidence of exemptions or waivers) from all subcontractors. Consultant accepts sole responsibility for withholding taxes from any non-California resident subcontractor and shall submit written documentation of compliance with Consultant's withholding duty to City upon request.

10. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

11. Entire Agreement. This Agreement represents the entire and integrated agreement between the Parties. This Agreement may be modified or amended only by a subsequent written agreement signed by both Parties.

12. Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of City shall be personally liable to Consultant in the event of any default or breach by City or for any amount which may become due to Consultant pursuant to this Agreement.

13. Prevailing Party. In the event that either party to this Agreement commences any legal action or proceeding (including but not limited to arbitration) to interpret the terms of this Agreement, the prevailing party in such a proceeding shall be entitled to recover its reasonable attorney's fees associated with that legal action or proceeding.

14. Notice. All notices and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given (i) when received if personally delivered; (ii) when received if transmitted by telecopy, if received during normal business hours on a business day (or if not, the next business day after delivery) provided that such facsimile is legible and that at the time such facsimile is sent the sending Party receives written confirmation of receipt; (iii) if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and (iv) upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to the respective Parties as follows:

Consultant:

City:

City Clerk
City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080

15. Execution in Counterpart. This Agreement may be executed in counterparts and/or by facsimile or other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

16. Assignment, Governing Law. The Consultant may not assign any of Consultant's obligations under this Agreement without the City's prior written approval. This Agreement is governed by California law. The jurisdiction for any litigation arising from this Agreement shall be in the state of California, and shall be venued in the County of San Mateo.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written above.

CITY:

CONSULTANT:

By: _____

By: _____

Attest:

Print Name: _____

Title: _____

City Clerk

Company: _____

APPROVED AS TO FORM:

Date: _____

City Attorney

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