

**CITY OF PALO ALTO CONTRACT NO. C23187298A**

**AGREEMENT FOR PROFESSIONAL SERVICES**

**BETWEEN THE CITY OF PALO ALTO AND  
MUNISERVICES, LLC**

This Agreement for Professional Services (this “Agreement”) is entered into as of the 19th day of June 2023 (the “Effective Date”), by and between the CITY OF PALO ALTO, a California chartered municipal corporation (“CITY”), and MUNISERVICES, LLC, a Delaware limited liability company, located at 5860 Trinity Parkway, Suite 120, Centreville, VA 20120 (“CONSULTANT”).

The following recitals are a substantive portion of this Agreement and are fully incorporated herein by this reference:

**RECITALS**

A. CITY seeks Tax Analysis, Reporting, and Collection services for various City taxes (the “Project”) and desires to engage a consultant such services in connection with the Project (the “Services”, as detailed more fully in Exhibit A).

B. CONSULTANT represents that it, its employees and subconsultants, if any, possess the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY, in reliance on these representations, desires to engage CONSULTANT to provide the Services as more fully described in Exhibit A, entitled “SCOPE OF SERVICES”.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, in this Agreement, the parties agree as follows:

**SECTION 1. SCOPE OF SERVICES.** CONSULTANT shall perform the Services described in Exhibit A in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

**SECTION 2. TERM.**

The term of this Agreement shall be from the date of its full execution through March 31, 2028 unless terminated earlier pursuant to Section 19 (Termination) of this Agreement.

**SECTION 3. SCHEDULE OF PERFORMANCE.** Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit B, entitled “SCHEDULE OF PERFORMANCE”. Any Services for which times for performance are not specified in this

Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

**SECTION 4. NOT TO EXCEED COMPENSATION.** The compensation to be paid to CONSULTANT for performance of the Services shall be based on the compensation structure detailed in Exhibit C, entitled "COMPENSATION," including any reimbursable expenses specified therein, and the maximum total compensation shall not exceed **One Million One Hundred Eleven Thousand Five Hundred Fifty Dollars (\$1,111,550.00)**. The hourly schedule of rates, if applicable, is set out in Exhibit C-1, entitled "SCHEDULE OF RATES." Any work performed or expenses incurred for which payment would result in a total exceeding the maximum compensation set forth in this Section 4 shall be at no cost to the CITY.

☒ Optional Additional Services Provision (This provision applies only if checked and a not-to-exceed compensation amount for Additional Services is allocated below under this Section 4.)

In addition to the not-to-exceed compensation specified above, CITY has set aside the not-to-exceed compensation amount of **Fifty Thousand Dollars (\$50,000.00)** for the performance of Additional Services (as defined below). The total compensation for performance of the Services, Additional Services and any reimbursable expenses specified in Exhibit C, shall not exceed **One Million One Hundred Sixty-One Thousand Five Hundred Fifty Dollars (\$1,161,550.00)**, as detailed in Exhibit C.

"Additional Services" means any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described at Exhibit A. CITY may elect to, but is not required to, authorize Additional Services up to the maximum amount of compensation set forth for Additional Services in this Section 4. CONSULTANT shall provide Additional Services only by advanced, written authorization from CITY as detailed in this Section. Additional Services, if any, shall be authorized by CITY with a Task Order assigned and authorized by CITY's Project Manager, as identified in Section 13 (Project Management). Each Task Order shall be in substantially the same form as Exhibit A-1, entitled "PROFESSIONAL SERVICES TASK ORDER". Each Task Order shall contain a specific scope of services, schedule of performance and maximum compensation amount, in accordance with the provisions of this Agreement. Compensation for Additional Services shall be specified by CITY in the Task Order, based on whichever is lowest: the compensation structure set forth in Exhibit C, the hourly rates set forth in Exhibit C-1, or a negotiated lump sum.

To accept a Task Order, CONSULTANT shall sign the Task Order and return it to CITY's Project Manager within the time specified by the Project Manager, and upon authorization by CITY (defined as counter-signature by the CITY Project Manager), the fully executed Task Order shall become part of this Agreement. The cumulative total compensation to CONSULTANT for all Task Orders authorized under this Agreement shall not exceed the

amount of compensation set forth for Additional Services in this Section 4. CONSULTANT shall only be compensated for Additional Services performed under an authorized Task Order and only up to the maximum amount of compensation set forth for Additional Services in this Section 4. Performance of and payment for any Additional Services are subject to all requirements and restrictions in this Agreement.

**SECTION 5. INVOICES.** In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the Services performed and the applicable charges (including, if applicable, an identification of personnel who performed the Services, hours worked, hourly rates, and reimbursable expenses), based upon Exhibit C or, as applicable, CONSULTANT's schedule of rates set forth in Exhibit C-1. If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT's invoices shall be subject to verification by CITY. CONSULTANT shall send all invoices to CITY's Project Manager at the address specified in Section 13 (Project Management) below. CITY will generally process and pay invoices within thirty (30) days of receipt of an acceptable invoice.

**SECTION 6. QUALIFICATIONS/STANDARD OF CARE.** All Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it, its employees and subcontractors, if any, possess the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subcontractors, if any, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services. All Services to be furnished by CONSULTANT under this Agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

**SECTION 7. COMPLIANCE WITH LAWS.** CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement, as amended from time to time. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

**SECTION 8. ERRORS/OMISSIONS.** CONSULTANT is solely responsible for costs, including, but not limited to, increases in the cost of Services, arising from or caused by CONSULTANT's errors and omissions, including, but not limited to, the costs of corrections such errors and omissions, any change order markup costs, or costs arising from delay caused by the errors and omissions or unreasonable delay in correcting the errors and omissions.

**SECTION 9. COST ESTIMATES.** If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds the CITY's stated construction budget by ten percent (10%) or more, CONSULTANT shall make

recommendations to CITY for aligning the Project design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

**SECTION 10. INDEPENDENT CONTRACTOR.** CONSULTANT acknowledges and agrees that CONSULTANT and any agent or employee of CONSULTANT will act as and shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which CONSULTANT performs the Services requested by CITY under this Agreement. CONSULTANT and any agent or employee of CONSULTANT will not have employee status with CITY, nor be entitled to participate in any plans, arrangements, or distributions by CITY pertaining to or in connection with any retirement, health or other benefits that CITY may offer its employees. CONSULTANT will be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, workers' compensation, unemployment compensation, insurance, and other similar responsibilities related to CONSULTANT's performance of the Services, or any agent or employee of CONSULTANT providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between CITY and CONSULTANT or any agent or employee of CONSULTANT. Any terms in this Agreement referring to direction from CITY shall be construed as providing for direction as to policy and the result of CONSULTANT's provision of the Services only, and not as to the means by which such a result is obtained.

**SECTION 11. ASSIGNMENT.** The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written approval of the City Manager. Any purported assignment made without the prior written approval of the City Manager will be void and without effect. Subject to the foregoing, the covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators and assignees of the parties.

**SECTION 12. SUBCONTRACTING.**

☒ **Option A: No Subcontractor:** CONSULTANT shall not subcontract any portion of the Services to be performed under this Agreement without the prior written authorization of the City Manager or designee. In the event CONSULTANT does subcontract any portion of the work to be performed under this Agreement, CONSULTANT shall be fully responsible for all acts and omissions of subcontractors.

☐ **Option B: Subcontracts Authorized:** Notwithstanding Section 11 (Assignment) above, CITY agrees that subcontractors may be used to complete the Services. The subcontractors authorized by CITY to perform work on this Project are:

CONSULTANT shall be responsible for directing the work of any subcontractors and for any compensation due to subcontractors. CITY assumes no responsibility whatsoever concerning

compensation of subcontractors. CONSULTANT shall be fully responsible to CITY for all acts and omissions of subcontractors. CONSULTANT shall change or add subcontractors only with the prior written approval of the City Manager or designee.

**SECTION 13. PROJECT MANAGEMENT.** CONSULTANT will assign Tanmin Rima, Client Success Manager, email [tanmin.rima@avenuinsights.com](mailto:tanmin.rima@avenuinsights.com) as the CONSULTANT's Project Manager to have supervisory responsibility for the performance, progress, and execution of the Services and represent CONSULTANT during the day-to-day performance of the Services. If circumstances cause the substitution of the CONSULTANT's Project Manager or any other of CONSULTANT's key personnel for any reason, the appointment of a substitute Project Manager and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's Project Manager. CONSULTANT, at CITY's request, shall promptly remove CONSULTANT personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Services or a threat to the safety of persons or property.

CITY's Project Manager is Josie Stokes, Administrative Services Department, Revenue Collections Division, 250 Hamilton Avenue, Palo Alto, CA 94301, Telephone: 650-329-2291. Email: [josie.stokes@cityofpaloalto.org](mailto:josie.stokes@cityofpaloalto.org). CITY's Project Manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. CITY may designate an alternate Project Manager from time to time.

**SECTION 14. OWNERSHIP OF MATERIALS.** All work product, including without limitation, all writings, drawings, studies, sketches, photographs, plans, reports, specifications, computations, models, recordings, data, documents, and other materials and copyright interests developed under this Agreement, in any form or media, shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work product pursuant to this Agreement are vested in CITY, and CONSULTANT hereby waives and relinquishes all claims to copyright or other intellectual property rights in favor of CITY. Neither CONSULTANT nor its subcontractors, if any, shall make any of such work product available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the Scope of Services.

**SECTION 15. AUDITS.** CONSULTANT agrees to permit CITY and its authorized representatives to audit, at any reasonable time during the term of this Agreement and for four (4) years from the date of final payment, CONSULTANT's records pertaining to matters covered by this Agreement, including without limitation records demonstrating compliance with the requirements of Section 10 (Independent Contractor). CONSULTANT further agrees to maintain and retain accurate books and records in accordance with generally accepted accounting principles for at least four (4) years after the expiration or earlier termination of this Agreement or the completion of any audit hereunder, whichever is later.

**SECTION 16. INDEMNITY.**

☐[Option A applies to the following design professionals pursuant to Civil Code Section 2782.8: architects; landscape architects; registered professional engineers and licensed professional land surveyors.] 16.1. To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all third party demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorney's fees, experts fees, court costs and disbursements ("Claims") to the extent that such Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party. CITY will reimburse CONSULTANT for the proportionate percentage of defense costs exceeding CONSULTANT's proportionate percentage of fault as determined by the final judgment of a court of competent jurisdiction.

☒[Option B applies to any consultant who does not qualify as a design professional as defined in Civil Code Section 2782.8.] 16.1. To the fullest extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorney's fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from a Claim arising from the active negligence or willful misconduct of an Indemnified Party that is not contributed to by any act of, or by any omission to perform a duty imposed by law or agreement by, CONSULTANT, its officers, employees, agents or contractors under this Agreement.

16.3. The acceptance of CONSULTANT's Services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

**SECTION 17. WAIVERS.** No waiver of a condition or nonperformance of an obligation under this Agreement is effective unless it is in writing in accordance with Section 29.4 of this Agreement. 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 shall apply solely to the specific instance expressly stated. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

**SECTION 18. INSURANCE.**

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit D, entitled "INSURANCE REQUIREMENTS". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification. If the insurer cancels or modifies the insurance and provides less than thirty (30) days' notice to CONSULTANT, CONSULTANT shall provide the Purchasing Manager written notice of the cancellation or modification within two (2) business days of the CONSULTANT's receipt of such notice. CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Chief Procurement Officer during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

**SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.**

19.1. The City Manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. If CONSULTANT fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided under this Agreement or at law, the City Manager may terminate this Agreement sooner upon written notice of termination. Upon receipt of any notice of suspension or termination, CONSULTANT will discontinue its performance of the Services on the effective date in the notice of suspension or termination.

19.2. In event of suspension or termination, CONSULTANT will deliver to the City Manager on or before the effective date in the notice of suspension or termination, any and all work product, as detailed in Section 14 (Ownership of Materials), whether or not completed, prepared by CONSULTANT or its contractors, if any, in the performance of this Agreement. Such work product is the property of CITY, as detailed in Section 14 (Ownership of Materials).

19.3. In event of suspension or termination, CONSULTANT will be paid for the Services rendered and work products delivered to CITY in accordance with the Scope of Services up to the effective date in the notice of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's Services provided in material conformity with this Agreement as such determination is made by the City Manager acting in the reasonable exercise of his/her discretion. The following Sections will survive any expiration or termination of this Agreement: 14, 15, 16, 17, 19.2, 19.3, 19.4, 20, 25, 27, 28, 29 and 30.

19.4. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement, unless made in accordance with Section 17 (Waivers).

## **SECTION 20. NOTICES.**

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY:                      Office of the City Clerk  
                                     City of Palo Alto  
                                     Post Office Box 10250  
                                     Palo Alto, CA 94303

With a copy to the Purchasing Manager

To CONSULTANT: Attention of the Project Manager at the address of  
CONSULTANT recited on the first page of this Agreement.

CONSULTANT shall provide written notice to CITY of any change of address.

## **SECTION 21. CONFLICT OF INTEREST.**

21.1. In executing this Agreement, CONSULTANT 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 the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subcontractors or other persons or parties having such an interest.



CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California, as amended from time to time. CONSULTANT agrees to notify CITY if any conflict arises.

21.3. If the CONSULTANT meets the definition of a “Consultant” as defined by the Regulations of the Fair Political Practices Commission, CONSULTANT will file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act of 1974, as amended from time to time.

## **SECTION 22. NONDISCRIMINATION; COMPLIANCE WITH ADA.**

22.1. As set forth in Palo Alto Municipal Code Section 2.30.510, as amended from time to time, CONSULTANT certifies that in the performance of this Agreement, it shall not discriminate in the employment of any person due to that person’s race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment.

22.2. CONSULTANT understands and agrees that pursuant to the Americans Disabilities Act (“ADA”), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor or subcontractor, are required to be accessible to the disabled public. CONSULTANT will provide the Services specified in this Agreement in a manner that complies with the ADA and any other applicable federal, state and local disability rights laws and regulations, as amended from time to time. CONSULTANT will not discriminate against persons with disabilities in the provision of services, benefits or activities provided under this Agreement.

## **SECTION 23. ENVIRONMENTALLY PREFERRED PURCHASING AND ZERO WASTE REQUIREMENTS.**

CONSULTANT shall comply with the CITY’s Environmentally Preferred Purchasing policies which are available at CITY’s Purchasing Department, hereby incorporated by reference and as amended from time to time. CONSULTANT shall comply with waste reduction, reuse, recycling and disposal requirements of CITY’s Zero Waste Program. Zero Waste best practices include, first, minimizing and reducing waste; second, reusing waste; and, third, recycling or composting waste. In particular, CONSULTANT shall comply with the following Zero Waste requirements:

(a) All printed materials provided by CONSULTANT to CITY generated from a personal computer and printer including but not limited to, proposals, quotes, invoices, reports, and public education materials, shall be double-sided and printed on a minimum of 30% or greater post-consumer content paper, unless otherwise approved by CITY’s Project Manager. Any submitted materials printed by a professional printing company shall be a minimum of 30% or

greater post-consumer material and printed with vegetable-based inks.

(b) Goods purchased by CONSULTANT on behalf of CITY shall be purchased in accordance with CITY's Environmental Purchasing Policy including but not limited to Extended Producer Responsibility requirements for products and packaging. A copy of this policy is on file at the Purchasing Department's office.

(c) Reusable/returnable pallets shall be taken back by CONSULTANT, at no additional cost to CITY, for reuse or recycling. CONSULTANT shall provide documentation from the facility accepting the pallets to verify that pallets are not being disposed.

#### **SECTION 24. COMPLIANCE WITH PALO ALTO MINIMUM WAGE ORDINANCE.**

CONSULTANT shall comply with all requirements of the Palo Alto Municipal Code Chapter 4.62 (Citywide Minimum Wage), as amended from time to time. In particular, for any employee otherwise entitled to the State minimum wage, who performs at least two (2) hours of work in a calendar week within the geographic boundaries of the City, CONSULTANT shall pay such employees no less than the minimum wage set forth in Palo Alto Municipal Code Section 4.62.030 for each hour worked within the geographic boundaries of the City of Palo Alto. In addition, CONSULTANT shall post notices regarding the Palo Alto Minimum Wage Ordinance in accordance with Palo Alto Municipal Code Section 4.62.060.

**SECTION 25. NON-APPROPRIATION.** This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code, as amended from time to time. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

#### **SECTION 26. PREVAILING WAGES AND DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS.**

☒ 26.1. **This Project is not subject to prevailing wages and related requirements.** CONSULTANT is not required to pay prevailing wages and meet related requirements under the California Labor Code and California Code of Regulations in the performance and implementation of the Project if the contract:

- (1) is not a public works contract;
- (2) is for a public works construction project of \$25,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j); or
- (3) is for a public works alteration, demolition, repair, or maintenance project of \$15,000 or less, per California Labor Code Sections 1782(d)(1), 1725.5(f) and 1773.3(j).

**OR**

☐ 26.1. **This Project is subject to prevailing wages and related requirements as a "public works" under California Labor Code Sections 1720 et seq. and related regulations.**

**CONSULTANT is required to pay general prevailing wages** as defined in California Labor Code Section 1773.1 and Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq., as amended from time to time. Pursuant to Labor Code Section 1773, the CITY has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of worker needed to execute the contract for this Project from the State of California Department of Industrial Relations (“DIR”). Copies of these rates may be obtained at the CITY’s Purchasing Department office. The general prevailing wage rates are also available at the DIR, Division of Labor Statistics and Research, web site (see e.g. <http://www.dir.ca.gov/DLSR/PWD/index.htm>) as amended from time to time. CONSULTANT shall post a copy of the general prevailing wage rates at all Project job sites and shall pay the adopted prevailing wage rates as a minimum. CONSULTANT shall comply with all applicable provisions of Division 2, Part 7, Chapter 1 of the California Labor Code (Labor Code Section 1720 et seq.), including but not limited to Sections 1725.5, 1771, 1771.1, 1771.4, 1773.2, 1774, 1775, 1776, 1777.5, 1782, 1810, 1813 and 1815, and all applicable implementing regulations, including but not limited to Subchapter 3, Title 8 of the California Code of Regulations Section 16000 et seq. (8 CCR Section 16000 et seq.), as amended from time to time. CONSULTANT shall comply with the requirements of Exhibit E, entitled “DIR REGISTRATION FOR PUBLIC WORKS CONTRACTS”, for any contract for public works construction, alteration, demolition, repair or maintenance, including but not limited to the obligations to register with, and furnish certified payroll records directly to, DIR.

**SECTION 27. CLAIMS PROCEDURE FOR “9204 PUBLIC WORKS PROJECTS”.** For purposes of this Section 27, a “9204 Public Works Project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. (Cal. Pub. Cont. Code § 9204.) Per California Public Contract Code Section 9204, for Public Works Projects, certain claims procedures shall apply, as set forth in Exhibit F, entitled “Claims for Public Contract Code Section 9204 Public Works Projects”.

☐ **This Project is a 9204 Public Works Project** and is required to comply with the claims procedures set forth in Exhibit F, entitled “Claims for Public Contract Code Section 9204 Public Works Projects”.

**OR**

☒ **This Project is not a 9204 Public Works Project.**

**SECTION 28. CONFIDENTIAL INFORMATION.**

28.1. In the performance of this Agreement, CONSULTANT may have access to CITY’s Confidential Information (defined below). CONSULTANT will hold Confidential Information in strict confidence, not disclose it to any third party, and will use it only for the performance of its obligations to CITY under this Agreement and for no other purpose. CONSULTANT will maintain reasonable and appropriate administrative, technical and physical safeguards to ensure the security, confidentiality and integrity of the Confidential Information. Notwithstanding the foregoing, CONSULTANT may disclose Confidential Information to its

employees, agents and subcontractors, if any, to the extent they have a need to know in order to perform CONSULTANT's obligations to CITY under this Agreement and for no other purpose, provided that the CONSULTANT informs them of, and requires them to follow, the confidentiality and security obligations of this Agreement.

28.2. "Confidential Information" means all data, information (including without limitation "Personal Information" about a California resident as defined in Civil Code Section 1798 et seq., as amended from time to time) and materials, in any form or media, tangible or intangible, provided or otherwise made available to CONSULTANT by CITY, directly or indirectly, pursuant to this Agreement. Confidential Information excludes information that CONSULTANT can show by appropriate documentation: (i) was publicly known at the time it was provided or has subsequently become publicly known other than by a breach of this Agreement; (ii) was rightfully in CONSULTANT's possession free of any obligation of confidence prior to receipt of Confidential Information; (iii) is rightfully obtained by CONSULTANT from a third party without breach of any confidentiality obligation; (iv) is independently developed by employees of CONSULTANT without any use of or access to the Confidential Information; or (v) CONSULTANT has written consent to disclose signed by an authorized representative of CITY.

28.3. Notwithstanding the foregoing, CONSULTANT may disclose Confidential Information to the extent required by order of a court of competent jurisdiction or governmental body, provided that CONSULTANT will notify CITY in writing of such order immediately upon receipt and prior to any such disclosure (unless CONSULTANT is prohibited by law from doing so), to give CITY an opportunity to oppose or otherwise respond to such order.

28.4. CONSULTANT will notify City promptly upon learning of any breach in the security of its systems or unauthorized disclosure of, or access to, Confidential Information in its possession or control, and if such Confidential Information consists of Personal Information, CONSULTANT will provide information to CITY sufficient to meet the notice requirements of Civil Code Section 1798 et seq., as applicable, as amended from time to time.

28.5. Prior to or upon termination or expiration of this Agreement, CONSULTANT will honor any request from the CITY to return or securely destroy all copies of Confidential Information. All Confidential Information is and will remain the property of the CITY and nothing contained in this Agreement grants or confers any rights to such Confidential Information on CONSULTANT.

28.6. If selected in Section 30 (Exhibits), this Agreement is also subject to the terms and conditions of the Information Privacy Policy and Cybersecurity Terms and Conditions.

## **SECTION 29. MISCELLANEOUS PROVISIONS.**

29.1. This Agreement will be governed by California law, without regard to its conflict of law provisions.

29.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

29.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

29.4. This Agreement, including all exhibits, constitutes the entire and integrated agreement between the parties with respect to the subject matter of this Agreement, and supersedes all prior agreements, negotiations, representations, statements and undertakings, either oral or written. This Agreement may be amended only by a written instrument, which is signed by the authorized representatives of the parties and approved as required under Palo Alto Municipal Code, as amended from time to time.

29.5. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the unaffected provisions of this Agreement will remain in full force and effect.

29.6. In the event of a conflict between the terms of this Agreement and the exhibits hereto (per Section 30) or CONSULTANT's proposal (if any), the Agreement shall control. In the event of a conflict between the exhibits hereto and CONSULTANT's proposal (if any), the exhibits shall control.

29.7. The provisions of all checked boxes in this Agreement shall apply to this Agreement; the provisions of any unchecked boxes shall not apply to this Agreement.

29.8. All section headings contained in this Agreement are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.

29.9. This Agreement may be signed in multiple counterparts, which, when executed by the authorized representatives of the parties, shall together constitute a single binding agreement.

**SECTION 30. EXHIBITS.** Each of the following exhibits, if the check box for such exhibit is selected below, is hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

- ☒ EXHIBIT A: SCOPE OF SERVICES
- ☒ EXHIBIT A-1 PROFESSIONAL SERVICES TASK ORDER
- ☒ EXHIBIT B: SCHEDULE OF PERFORMANCE
- ☒ EXHIBIT C: COMPENSATION
- ☒ EXHIBIT C-1: SCHEDULE OF RATES
- ☒ EXHIBIT D: INSURANCE REQUIREMENTS
- ☒ EXHIBIT E: INFORMATION PRIVACY POLICY
- ☒ EXHIBIT F: CYBERSECURITY TERMS AND CONDITIONS

***THIS AGREEMENT IS NOT COMPLETE UNLESS ALL SELECTED EXHIBITS ARE ATTACHED.***

**CONTRACT No. C23187298A SIGNATURE PAGE**

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement as of the date first above written.

**CITY OF PALO ALTO**

**MUNISERVICES, LLC**

**Officer 1**

\_\_\_\_\_  
City Manager

By: \_\_\_\_\_

DocuSigned by:

*Paul Colangelo, Chief Executive Officer*

3AC89EF841BB498...

Name: \_\_\_\_\_

Paul Colangelo, Chief Executive Officer

Title: \_\_\_\_\_

CEO

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney or Designee

**Officer 2**

By: \_\_\_\_\_

DocuSigned by:

*Carl Kumpf, Chief Financial Officer*

90F15BC79B9346E...

Name: \_\_\_\_\_

Carl Kumpf, Chief Financial Officer

Title: \_\_\_\_\_

CFO

## EXHIBIT A SCOPE OF SERVICES

CONSULTANT shall provide the Services detailed in this Exhibit A, entitled “SCOPE OF SERVICES”.

### **Task 1: Business Fee and Collection Services**

CONSULTANT will provide fee collection services for the Business Tax, Business Registry Certificate and Business Improvement District programs. CONSULTANT will conduct research and ensure the City’s database of businesses is accurate and reliable. In addition, the CONSULTANT will communicate directly with business on behalf of the City and provide the City additional support, program customization and consulting services if requested to do so by the City.

### **Requirements**

- 1) Database verification and management
  - a) Review the CITY’s existing database of businesses processes and update using external sources such as, but not limited to, CONSULTANT’s proprietary database sources, the State of California Sales Tax data, Santa Clara County Real Property data, Dun & Bradstreet, and InfoUSA.
  - b) CITY will provide CONSULTANT the database in various formats and CONSULTANT will standardize the data for use for in administration and collections of fees.
  - c) Cross reference data and check for duplicates possibly due name used, DBA and or address. CITY may require data to include Federal Employer Identification Number (FEIN) and NAICS code to be collected.
  - d) Ensure all application data fields completed correctly prior to data transfer to the CITY in an acceptable data format.
- 2) Administration & Collections
  - a) Have experience and capabilities to process new business payments, renewals, delinquent payments and ongoing monitoring and administration of CITY’s fees as described in the CITY’s municipal code, ordinances, policies and program procedure manuals.
  - b) Provide businesses with ability to pay online or by mail.
  - c) Draft correspondences for mailings and maintain website portal for payments.
    - i) Collections for the Business Tax are quarterly
    - ii) Business Registry Certificate fees will occur annually and begin by March 1
  - d) Hold funds, make monthly ACH transfer to the CITY and provide transfer logs with details of payment by business.
- 3) Customer Service
  - a) Develop an outreach plan for the business community that outlines tax characteristics, provides instructions for payment, and provide ongoing customer support to businesses.



- b) Lead communication with businesses through phone and email and manage all account communications including general questions, account inquiries, application questions and issue resolutions.
  - c) Be available through a toll-free telephone line Monday through Friday, 8:00AM to 5:00PM Pacific Time.
  - d) Respond to business correspondence via return phone call or written correspondence within 24 hours.
  - e) Standard correspondence templates will be drafted by the CONSULTANT and must be approved by the CITY.
  - f) Maintain communications with CITY staff to communicate project activity and any issues.
  - g) Promptly respond to CITY staff regarding any questions or issues within 24 hours.
- 4) Data Analytics
- a) Maintain and update an online portal with lookup tools so that CITY staff can review business information and revenue data.
  - b) Database shall have capabilities to generate reports for analysis and ability for CONSULTANT and/or CITY to create custom reports as described by the CITY and provide within three business days.

#### Business Tax, Business Registry Certificate, and Business Improvement District Discovery Services

- 1) Preparation. CONSULTANT'S initial steps are to understand City's processes and requirements, obtain data from both City and external sources, and standardize the data for use in CONSULTANT'S proprietary database. The standardization process shall be completed by trained professionals who merge City provided and external source data. The data shall be cross referenced and checked for possible duplicates due name used, DBA and or address. CONSULTANT shall also integrate the data, generate correspondence and forms, and modify CONSULTANT's online-hosted SaaS Compliance Administration system to calculate delinquent fees. The result shall be an inventory of the compliant and non-compliant entities operating in City. The City shall provide CONSULTANT with the following information to begin Discovery:
  - a) City's BRC and BID account data in electronic format along with the payment history of all registered businesses
  - b) Database files such as commercial utility billing records and a copy of City-preferred vendors
  - c) The business fee and business and occupation application forms
  - d) Other documentation required as a prerequisite to the issuing of a certificate
- 2) Testing. To test CONSULTANT'S processes developed during preparation, CONSULTANT shall begin with mailing a sample of business accounts to ensure addresses, recipients and other data points are accurate prior to bulk notifications. CONSULTANT will submit sample account statements, so City can validate fee calculations and classifications prior to sending

out invoices. CONSULTANT shall also validate the payment posting and application processing procedures.

- 3) Execution. CONSULTANT shall notify and register non-compliant businesses through bulk mailings, and CONSULTANT shall modify the timing as new milestones are added.

#### Business Tax and Fee Administration

CONSULTANT shall provide City with a full-service turnkey Business Tax, Business Registry Certificate and Business Improvement District Fee program related to the City's business payment processing, renewals, collections, and ongoing monitoring and administration of City's fees and follow City's municipal code, ordinances, policies and program procedure manuals. The service will be performed utilizing CONSULTANT'S internal programs and processes.

At a minimum, the service will include the following which are described more fully in the sections below:

- New application processing – including review and verification of applications and application data, establishing processes for established departmental prerequisites to licensure;
- Annual renewal application processing – including mailing of renewal applications and processing of completed renewal applications; and generating BRC certificates;
- Business Improvement District fee processing – as City's direction is to now collect this fee at the same time of the Business Registration fee, CONSULTANT will include the fee processing in with those registrants who need to complete both payments;
- Business account follow-up – for businesses that do not return their annual renewal application, CONSULTANT will send two additional notices and make one follow up phone call. To the extent these efforts do not result in compliance, the account will be handled under CONSULTANT'S Discovery Service.

#### *New Account Processing*

The new application processing will include a review and verification of applications and application data, establishing processes for established departmental prerequisites for a certificate to be issued. Included in the administration project setup will be review of City's current new application process for mutually agreed upon liaisons and modification if necessary.

#### *Renewal Processing*

CONSULTANT shall provide a service customization to assist with new business and renewal "walk-ins".

The annual renewal application processing will include mailing of renewal applications and processing of completed renewal applications; and generating BRC.

As a follow up for accounts that do not return their annual renewal application, CONSULTANT shall send two additional notices and make one follow up phone call. Any accounts who do not remit payment by this point will be referred to CONSULTANT'S Discovery Services to ensure they are indeed still in business and follow up with additional notices if applicable. If collection attempts are still not successful at this point, the remaining list will be turned over to City for final enforcement authority by City determined processes.

#### *Collecting, Posting and Processing Payments*

- Collection of BT/BRC/BID fees: For both new and renewals with timely remittance or deposit on behalf of City;
- Monthly detail reporting of payments received: Including monthly reconciliation of payments received to payments remitted or deposited on behalf of City. Credit Card payment processing will be accepted pursuant to City approval. CONSULTANT and City will work together to determine the best method for processing credit card payments;
- Business compliance: For businesses who do not remit payment with their application or whose check is not honored by the bank (NSF check), CONSULTANT will send additional notices and follow up phone calls.

#### Business Community and City Staff Communications

##### *Communications with Business Accounts*

CONSULTANT will handle all account communications including general questions, account inquiries, BT/BRC/BID application questions and issue resolution. CONSULTANT'S National Call Center will be available through a toll-free telephone line Monday through Friday, 7:00AM to 5:00PM Pacific Time. CONSULTANT will respond to business correspondence via return phone call or written correspondence. All standard correspondence templates will be subject to CITY approval.

##### *Client Communications*

CONSULTANT will maintain regular and close communications with City staff to communicate project activity and any issues. CONSULTANT will provide prompt responses to City staff regarding any questions or issues.

City will have the right, at City's option, to elect not to proceed with recovery of any identified deficiencies. Deficiencies which are uncollectible due to insolvency or dissolution of the entity liable, or for deficiencies which are otherwise incapable of collection (e.g. statute of limitations expiration or other legal defense) will not be considered an "election" by City for the purposes of the Agreement. For deficiencies otherwise collectable but for which City elects not to collect, City will notify CONSULTANT of its election not to pursue ("waive") collection of said deficiencies. CONSULTANT will be entitled to one-half (½) of the fee CONSULTANT would have been entitled to for the waived portion of the deficiency.

### Online-hosted SaaS Filing and Payment Processing

CONSULTANT has successfully implemented and continues to support CONSULTANT'S online file-and-pay option for over 135 of CONSULTANT'S clients and have found that online BT/BRC/BID filing, and payment is the most convenient option for most businesses, and results in expedited filing and payment throughput for CONSULTANT'S clients.

CONSULTANT'S online-hosted SaaS system seamlessly handles the basic processing steps in the filing process:

- Applicants' filings and payments are entered using secure website.
- Online payments are recorded in CONSULTANT'S online-hosted SaaS system.
- Automatic reconciliation between payment and application.

Typically, the process takes most applicants no more than five minutes from start to finish. The same portal enables businesses to update their account information, correspond with CONSULTANT specialists, view their previously filed returns that were submitted through the online filing website and receive assistance for their BT/BRC/BID questions. CONSULTANT shall encourage businesses to utilize CONSULTANT'S online file-and-pay option by providing 24/7 access to a secure web-based portal.

### Reporting

CONSULTANT'S online-hosted SaaS reporting system shall allow City to access reports and business information whenever City shall require it.

Here is a sample list of the reports available online:

- New Account Listing
- Transfer and Distribution Report
- Daily, Weekly and Monthly Reconciliation Reports
- Detailed Payment History Reports
- Top Remitters Reports
- BRC Issued Report
- BRC Certificates on Hold Report
- Business Search Tool

In addition to the collection of reports and business lookup tool available online, CONSULTANT shall have a large collection of reports available for electronic transfer. These reports originated from internal analysis or clients suggesting new analysis formats. CITY will have access to any new reports or features on the online system as soon as they are implemented. All of CONSULTANT'S clients benefit from the ideas and suggestions of CONSULTANT'S other clients.

### Support Services

*Government Relations/Legislative and Policy Updates/Advocacy.* CONSULTANT’S product and service offerings are complemented by a dedicated Government Relations team that provides local government advocacy, policy, regulatory and legislative consulting support and expertise. CONSULTANT has a proven track record of surfacing and successfully resolving numerous issues that have resulted in the preservation and expansion of the tax base for its clients. CONSULTANT’S Government Relations Team is located in the League of California Cities building in Sacramento which provides opportunities for firsthand collaboration on a daily basis with the advocacy groups that support California cities. CONSULTANT’S overall Government Relations program brings tremendous value to the client and is a natural progression in the successful determination of revenue preservation and enhancement; and for which no consulting fee is charged to CITY for the associated policy, regulatory, and legislative support.

*Industry Partner.* CONSULTANT is a proud partner and supporter of industry organizations dedicated to local government. CONSULTANT’S firm is a long-standing associate member and local government business partner for industry organizations including the League of California Cities, the California Municipal Revenue Tax Association and California Society of Municipal Finance Officers. CONSULTANT is the sole Business Council Member of the United States Conference of Mayors (USCM) that provides local government revenue enhancement, information and consulting services. CONSULTANT’S Business Tax Compliance and Discovery Program was featured in the USCM’s 2016 Mayors Business Council Best Practices. Each member of CONSULTANT’S team shares the common goal with these organizations – strengthening local government. CONSULTANT’S team members are invested in their communities and in local government. CONSULTANT makes the necessary investment into its team to ensure active involvement with industry organizations throughout the country. CONSULTANT’S experts regularly present as conference speakers, participate as exhibitors and sponsors, and participate in policy development.

The Services, where provided by CONSULTANT’s online-hosted SaaS, include all related services and support necessary to implement the Services detailed in this Scope of Services, including, for example and without limitation, data/content migration, software licensing, online-hosting, maintenance, updates, upgrades, security, and technical and user support as detailed in this Scope of Services and elsewhere in this Agreement, in CONSULTANT’s proposal, and in the Documentation.

## **Task 2: Sales and Use Tax Audit and Information Services**

CONSULTANT will provide sales and use tax audit and information services. This will include identifying and ensuring City receipt of misallocated or underreported tax revenues. Revenue reporting services will include written reports and periodic briefings concerning revenue performance, trend analysis, gains and declines, revenue projections, enhanced recovery options, and, if appropriate, an analysis of present and future issues related to revenue recovery.

Requirements

- 1) Verify California Department of Tax and Fee Administration (CDTFA) quarterly sales and use tax allocations to the City.
- 2) Track and report on misallocations that have been corrected as a result of CONSULTANT's efforts and remitted to the City by the CDTFA.
- 3) Provide sales and use tax reporting services that include detail and summary information for:
  - a) Quarterly sales and use tax analysis reports that are benchmarked to previous years. Analysis should include information on the top revenue producers, indication of revenue changes by business and economic category, identification of the major businesses that influenced change in the City's tax revenue, analysis of key businesses that grew or declined during the reporting period, identification of the top revenue generators in the City, and an analysis of their potential to grow or decline.
  - b) Reports by geographical area (for example, shopping centers, business districts, commercial districts, redevelopment area, governmental, residential, etc.).
  - c) Revenue forecasting reports.
  - d) Other sales and use tax summary reports.
- 4) The ability to provide at least four quarters of historical data and continuity of reporting during transition is critical.
- 5) Ability to provide sales and use tax data for City use that can be downloaded standard file format (e.g., comma-delimited text, Excel, MS Access) or access to a web-based application to view or download data.
- 6) Ability and commitment to tailor reports to the City's reporting needs in a mutually agreed format.
- 7) Attend quarterly meetings to discuss analytical reports for sales and use tax. Provide charts and graphs as supporting documentation. Assign staff such that the City has a consistent point of contact in these discussions.
- 8) Meet with designated City staff as necessary to support the City in recovering and preventing tax deficiencies.
- 9) Define methodology for identifying potential misallocations and underreported sales and use tax.
- 10) Provide ongoing communication to the City on revenue recovery work in progress. This requirement will include:
  - a) Providing a quarterly report of all inquiries filed on behalf of the City and the status of outstanding past inquiries filed with the CDTFA;
  - b) Notifying the City's Project Manager of all oral communication with the CDTFA regarding the City; and
  - c) Providing the City's Project Manager with a copy of all written communication (e.g. correspondence and email) with the CDTFA regarding the City.

- 11) Prepare short forms or other appropriate documentation to facilitate the recovery of revenue due the City from prior reporting periods (plus applicable interest and penalties, if appropriate).
- 12) Provide a detailed listing of all misallocations and underreported sales and use tax detected by the firm. Information shall include the company name, account number, value of the detection, correction status, payment amount received by the City, payment amount due, reporting period for which the payment is related, and any additional information deemed necessary by the firm.
- 13) Provide support for the development of a point-of-sale attraction and retention strategy. This includes, but is not limited to:
  - a) Yearly: A complete list of businesses by North American Industry Classification System (NAICS) codes, in excel format, including geographic area (e.g., Downtown, Midtown).
  - b) Quarterly: List of all new businesses in Palo Alto by size, location, etc., including an estimate of revenue potential for the City.
  - c) Quarterly: List of businesses looking to expand in the region, with appropriate contact information.
  - d) Quarterly: Newsletter customized for Palo Alto public consumption, in PDF form.
  - e) Quarterly: Track and report sales tax data for the following cities in Santa Clara County and others as agreed by City and CONSULTANT.
  - f) Yearly: Training on software, customization of reports, and all available tools.
  - g) Relevant Strategic Plans from other similar cities.
  - h) A list of interesting incentive programs from other California cities.
- 14) Obtain advanced, written authorization from City Staff to perform work beyond the filing of a short form to recover funds on behalf of the City, such as a decision appeal, in instances where the CDTFA has an earlier date of knowledge than the firm. The firm will not be eligible to earn compensation for work performed unless such authorization is obtained.

### **Task 3: Transient Occupancy Tax (TOT) Administrative and Reporting Services**

CONSULTANT will ensure compliance with the City's TOT regulations and filing procedures. The City's TOT regulations can be found in Title 2, Chapter 2.33 of the Palo Alto Municipal Code (PAMC). The PAMC requires that the City assess a 15.5 percent TOT on its approximately 30 plus hotels, inns, and various lodging houses and on-line platforms (e.g. AirBnB, Expedia, Inc. Aboda, Inc., etc.) that are intended or designed for occupancy by transients for dwelling. At a minimum, the following capabilities are required: tax return processing and posting; reporting of tax assessment, including relevant statistical data for analytical purposes; compliance monitoring; and customer support services for lodging providers.

#### **Requirements**

- 1) Payment processing – process all payments made by new and existing lodging providers, using the CONSULTANT-provided secure online-hosted filing and payment website. The

website and database will be hosted, administered, supported, updated and maintained by the CONSULTANT. TOT filings will be processed within three (3) business days of submission.

- 2) Database management – maintain and update the tax registration database for new TOT registrations for lodging, including newly opened establishments, business name changes, and/or changes in business owners. Registration of lodging businesses the database accessible by City staff.
- 3) Customer support for lodging businesses – provide multiple customer support options for businesses on how to register, file, make payment, and answer general inquiries regarding the TOT tax and filing process. Provide a response to the business within one (1) business day.
- 4) Compliance monitoring – review filings to ensure accuracy and the correct TOT amount has been remitted to the City. Conduct compliance audits as mutually agreed to by the City and the CONSULTANT.
- 5) Prepare, or make data available online for City staff review, reports that summarize activity and statistics on a monthly, quarterly, and annual basis. Types of information include total occupancy revenue, TOT payments, number of rooms, occupied (rental) days, available (rental) days, exemptions, amounts, etc.
- 6) Provide monthly reports, on or before the 10<sup>th</sup> of every month, that summarize collected tax, less proposed fees, along with remittance of TOT revenue collected for the preceding month.

#### Ongoing Tax Administration Cycle

- 1) Beginning on the scheduled date, CONSULTANT will receive filings and payments by mail and online.
- 2) All paper filings checks and correspondence will be opened and batched in our secure facility.
- 3) Paper filings will be reconciled with payments and any errors, omissions or balance discrepancies logged for follow-up. Web filings are reconciled daily. CONSULTANT also handles NSF check processing, returns and refunds.
- 4) CONSULTANT will generate and send invoices for balances due to any taxpayer under-payments or late payments.
- 5) Payments received will be deposited and disbursed to the City 10 – 12 times per month.
- 6) CONSULTANT Tax Specialists will contact the taxpayer by phone to resolve any filing errors, omissions, or discrepancies.
- 7) Each month, the CONSULTANT Administration System will flag any missed filings for follow-up. Taxpayers will receive a courtesy phone call and a late notice to let them know



a filing has not been received as of the due date. The CONSULTANT will continue to follow-up with the taxpayer until payments are received and taxpayer complies.

- 8) Monthly, CONSULTANT Tax Specialists will analyze the month's receipts and flag significant variations for follow-up with the taxpayer and possible auditor review.
- 9) CONSULTANT will provide complete taxpayer support via toll-free number and e-mail to taxpayers requiring assistance with filing or payment, mailing address or contact changes, and any other related issues they may have.
- 10) CONSULTANT will register new taxpayers and assist them with all materials needed to begin and maintain filing.

### TOT Compliance Services

In addition to TOT administrative services, the goal of the TOT compliance services program is to ensure successful, long-term compliance for lodging establishments that operate in the City. The TOT inventory and compliance services cover traditional lodging properties (hotels, motels, inns) and it does not cover online short-term rentals (such as Air BnB, VRBO, etc.). Should the City seek inventory and compliance services for online short-term rental properties, there will need to be an amendment to this contract pursuant to Section 27.4. This amendment would be at the City's sole and absolute discretion and the pricing, services, and terms of such an amendment will be negotiated at a future date.

The TOT Compliance Services workplan and project schedule for the program are outlined below:

#### Analysis - Phase 1

- 1) Inventory. Establish a comprehensive inventory of all lodging properties subject to taxation by the City and the database elements (public and private databases) needed to facilitate further analysis to identify and locate lodging providers not properly registered with the City and not appearing on the City rolls as TOT remitters.
- 2) Analysis. Analyze lodging provider "return information" to identify unusual or suspicious reporting and/or activities that warrant further review.
- 3) Data collection. Conduct unobtrusive collection of information on each property, including number of rooms, occupancy rate, transient and non-transient guests, exemptions, property's condition, business dynamics, etc.
- 4) Reporting. Provide a detailed analysis report to the City identifying lodging providers who might require additional investigation or review to determine their compliance with the City's TOT ordinance and coordinate with the City to review the analysis report.
- 5) Identify Phase 2 reviews. Work with the City to develop a list of lodging providers subject to a compliance review of lodging and tax records.

- 6) Deliverables. CONSULTANT will provide the City with a detailed analysis report identifying lodging providers who might require additional investigation or review to determine their compliance with the City's TOT ordinance.

#### Audit and Compliance Review - Phase 2

- 1) Records. Provide the City with a detailed list of all records required from lodging providers, together with a draft engagement announcement letter to be sent to each lodging provider.
- 2) Examine & Verify. Review records pertaining to TOT for each lodging provider selected for a compliance review and verify the accuracy of filed TOT returns with daily and monthly activity summaries.
  - a) Review a random sample of the daily and monthly summaries to determine if the daily summaries reconcile to the monthly summaries.
  - b) If CONSULTANT believes such a review is necessary, review secondary and tertiary documentation such as bank statements to verify that deposits reconcile with the reported revenue on the TOT returns or other tax filings.
  - c) Review exempted revenue for proper supporting documentation.
- 3) Compliance Report. Submit and review with the City a compliance review report that includes:
  - a) All review findings;
  - b) Documentation for each error/omission identified and confirmed by CONSULTANT that is necessary to facilitate recovery of revenue due from lodging providers for prior periods.
  - c) Draft notices of deficiency determination, commendation and warning letters as applicable.
- 4) Findings. Assist the City in reviewing any matters submitted in extenuation and mitigation by lodging providers in contesting a deficiency determination. Prepare and document any changes to the compliance review findings and provide revised tax, interest or penalty amounts due the City.
- 5) Consulting. During the term of this Agreement, provide up to ten (10) hours of additional consulting time to assist the City in evaluating or implementing any of the proposed actions suggested by the above report.
- 6) Deliverables. CONSULTANT will provide City staff with a detailed list of all records required to be made available by lodging providers for the reviews, together with a draft engagement announcement letter to be sent to each lodging provider. This Phase will include:

- a) Review findings
- b) For each identified and confirmed error/omission, CONSULTANT will request accompanying documentation that CONSULTANT believes is necessary to facilitate recovery of revenue due from lodging providers for prior periods;
- c) Draft notices of deficiency determination, commendation and warning letters as applicable, and recommendations.

Within 30 days of completing all audit reviews, CONSULTANT will provide a summary report of all findings to the City.

Legislative analysis, economic impact reporting on measures, consulting and policy updates are provided timely, regularly and year-round, and are included as part of the overall Compliance services.

#### TOT Project Schedule

- 1) Start-up of TOT Audit Process (within first 30-60 days)
  - a) Procedural meeting with the City
  - b) Request Documentation from City
    - i) 48 Months of Returns for all properties (or properties City selected)
    - ii) Current TOT Ordinance and any related information
- 2) Property Review and Hotels Selected for Audits (within 90 days)
  - a) When the CONSULTANT receives the returns, the CONSULTANT enters the data into worksheets to develop trends, property comparison, exempt rent to gross rent variation, etc. The CONSULTANT will research the statistics on the City and properties. Based on this data, the CONSULTANT selects specific properties for audit (if the City hasn't requested specific properties).
  - b) The CONSULTANT will submit to the City an Audit Report identifying the properties and reasons they were selected.
  - c) Once the City approves the hotels selected for audits, the CONSULTANT will forward the City Announcement Letters that need to be mailed to the properties on City letterhead. Once the City sends out the letters to the properties, CONSULTANT requests City send CONSULTANT a copy of the signed letters.
- 3) Start-up of TOT Audits (30 days later)
  - a) Auditors will contact the City for a brief conference call to discuss the audit timeline.

- b) Once the timeline has been approved, CONSULTANT issues an Appointment Letter with a list of required information.
  - c) The date for the on-site review will allow the property a minimum of 30 days of preparation time.
- 4) Desk Audits and Field Audits (8 weeks later)
  - a) Conduct a review search on specifics of hotels to determine/confirm number of rooms, any special requirements and any other charges to which guests may be charged.
  - b) One week after the Appointment Letters are mailed, contact hotel operator to confirm date and time of audit, explain procedures, and request data for sample months selected (such as Property Management System, Month End Reports, Profit & Loss Statements, Exemption Reports, etc.).
  - c) Conduct on-site review.
- 5) Provide Final Audit Report to the City (30 days following completion of audit program)
  - a) Auditors will submit (via email) all the Commendation/Deficiency Letters that need to be submitted to the hoteliers by the City.
  - b) City will receive an electronic copy of the Final Audit Report.

#### **Task 4: Telecommunications Users Tax (TUT) Administrative and Reporting Services**

The City assesses a TUT (Palo Alto Municipal Code, Title 2, 2.35.090) upon every person in the City using telephone communication services in the City at a rate of 4.75 percent of the charges made to service the user. Tax returns are due from each service supplier at the end of the month for activity and taxes collected for the preceding month. CONSULTANT will provide the following:

#### **Requirements**

- 1) Payment processing – process all payments made by every service supplier that is operating in the City. TUT filings will be processed within three (3) business days of submission.
- 2) Database management – update and maintain the tax registration database for all TUT payors.
- 3) Customer support for TUT payors – provide multiple customer support options for businesses on how to register, file, make payment, and answer general inquiries regarding the TUT tax and filing process. CONSULTANT shall provide a response to the business within one (1) business day.
- 4) Compliance monitoring – review filings to ensure accuracy and the correct TUT amount has been remitted to the City. Conduct compliance audits as mutually agreed to by the City and the CONSULTANT.

- 5) Prepare, or make data available online for City staff review, reports that summarize activity and statistics on a monthly, quarterly, and annual basis.
- 6) Provide monthly reports, on or before the 10<sup>th</sup> of every month, that summarize collected tax, less proposed fees, along with remittance of TUT revenue collected for the preceding month.

#### Ongoing Tax Administration Cycle

- 1) Beginning as of the scheduled date, CONSULTANT will receive filings and payments by mail and online.
- 2) All paper filings checks and correspondence will be opened and batched in our secure facility.
- 3) Paper filings will be reconciled with payments and any errors, omissions or balance discrepancies logged for follow-up. Web filings are reconciled daily. CONSULTANT also handles NSF check processing, returns and refunds.
- 4) CONSULTANT will generate and send invoices for balances due to any TUT taxpayer under-payments or late payments.
- 5) Payments received will be deposited and disbursed to the City 10 – 12 times per month.
- 6) CONSULTANT' TUT Tax Specialists will contact the taxpayer by phone to resolve any filing errors, omissions, or discrepancies.
- 7) Each month, the CONSULTANT TUT online-hosted SaaS Administration system will flag any missed filings for follow-up. Taxpayers will receive a courtesy phone call and a late notice to let them know a filing has not been received as of the due date. CONSULTANT will continue to follow-up with the taxpayer until payments are received and taxpayer complies.
- 8) Monthly, CONSULTANT TUT Tax Specialists will analyze the month's receipts and flag significant variations for follow-up with the taxpayer and possible auditor review.
- 9) CONSULTANT will provide complete TUT taxpayer support via toll-free number and e-mail to taxpayers requiring assistance with filing or payment, mailing address or contact changes, and any other related issues they may have.
- 10) CONSULTANT will register new TUT taxpayers and assist them with all materials needed to begin and maintain TUT filing.

#### *TUT Compliance Program Objectives and Scope*

The CONSULTANT will provide the following Compliance Activities:

- 1) Optional City Specific Compliance Reviews. At City's option, CONSULTANT will offer "City-Specific" reviews on a performance fee or other negotiated basis, if the above activities or other factors (e.g., non-response by utility provider) would suggest that there is a reasonable need to do so. If City elects to have CONSULTANT conduct such optional reviews, assignment and authorization of such services may be approached as Additional Services pursuant to Section 1 ("Scope of Services") and Section 4 ("Not to exceed Compensation") provided that the amount set aside for Additional Services is not exceeded. Otherwise, if the City elects to have CONSULTANT conduct such optional reviews, the parties may execute an amendment to this Agreement pursuant to Section 27.4.

#### Administrative and Reporting Activities

- 1) UUT Payment History. CONSULTANT will provide the City, on a monthly or otherwise mutually agreed upon basis, with a spreadsheet reflecting the City's TUT payments by provider and utility category (based on remittance data provided by City to CONSULTANT).

#### Revenue Protection and Enhancement Activities

- 1) Legislative Review Services. CONSULTANT will monitor proposed state and federal legislation to identify issues affecting the City's TUT or utility franchise revenues and, make recommendations to client cities, their lobbyists, and other potential stakeholders or municipal advocates and otherwise assist in developing effective consensus positions and coordinated advocacy.
- 2) Technology and Marketing Analysis. CONSULTANT will identify, monitor and anticipate changes in technology, services, or marketing of services, which may have an impact on future TUT revenues.

#### **Additional Customization & Consulting Services (Not Included in Scope of Services)**

CITY may request CONSULTANT provide Additional Services, as detailed in Section 4 ("Not to Exceed Compensation") of this Agreement, including but not limited to enhanced customization to its online filing website, reports, or Client Reporting Portal beyond the customization outlined in this Agreement. In such a situation, CITY and CONSULTANT may identify CITY'S desired scope and reasonable and customary fees (a cost proposal) for the desired scope, pursuant to a Task Order as detailed in Section 1 ("Scope of Services") herein. Before making any such enhanced customizations, such Additional Services shall be authorized and executed as provided in Section 1 and in accordance with Section 4.

## EXHIBIT A-1

### PROFESSIONAL SERVICES TASK ORDER

CONSULTANT shall perform the Services detailed below in accordance with all the terms and conditions of the Agreement referenced in Item 1A below. All exhibits referenced in Item 8 are incorporated into this Task Order by this reference. CONSULTANT shall furnish the necessary facilities, professional, technical and supporting personnel required by this Task Order as described below.

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CONTRACT NO.

OR PURCHASE ORDER REQUISITION NO. (AS APPLICABLE)

- 1A. MASTER AGREEMENT NO. (MAY BE SAME AS CONTRACT / P.O. NO. ABOVE):
  - 1B. TASK ORDER NO.:
  2. CONSULTANT NAME:
  3. PERIOD OF PERFORMANCE: START: COMPLETION:
  4. TOTAL TASK ORDER PRICE: \$ \_\_\_\_\_  
BALANCE REMAINING IN MASTER AGREEMENT/CONTRACT \$ \_\_\_\_\_
  5. BUDGET CODE \_\_\_\_\_  
COST CENTER \_\_\_\_\_  
COST ELEMENT \_\_\_\_\_  
WBS/CIP \_\_\_\_\_  
PHASE \_\_\_\_\_
  6. CITY PROJECT MANAGER'S NAME & DEPARTMENT: \_\_\_\_\_
  7. DESCRIPTION OF SCOPE OF SERVICES (Attachment A)  
MUST INCLUDE:
    - SERVICES AND DELIVERABLES TO BE PROVIDED
    - SCHEDULE OF PERFORMANCE
    - MAXIMUM COMPENSATION AMOUNT AND RATE SCHEDULE (as applicable)
    - REIMBURSABLE EXPENSES, if any (with "not to exceed" amount)
  8. ATTACHMENTS: A: Task Order Scope of Services B (if any): \_\_\_\_\_
- 

**I hereby authorize the performance of the work described in this Task Order.**

**APPROVED:**  
CITY OF PALO ALTO

BY: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

**I hereby acknowledge receipt and acceptance of this Task Order and warrant that I have authority to sign on behalf of Consultant.**

**APPROVED:**  
COMPANY NAME: \_\_\_\_\_

BY: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

## EXHIBIT B

### SCHEDULE OF PERFORMANCE

CONSULTANT shall perform the Services so as to complete each milestone within the number of days/weeks specified below. The time to complete each milestone may be increased or decreased by mutual written agreement of the Project Managers for CONSULTANT and CITY so long as all work is completed within the term of the Agreement. CONSULTANT shall provide a detailed schedule of work consistent with the schedule below within 2 weeks of receipt of the notice to proceed (“NTP”) from the CITY.

TASK	SCHEDULE
<b>Task 1: Business Fee Collection Services for the Business Registration Certificate and Business Improvement District Programs (BRC and BID)</b>	
Task 1B: Business Registry Certificate and Business Improvement District (BID) Fee Administration	Ongoing annually with annual cycle launch occurring January to March of respective year.
Task 1B: Business Community and City Staff Communications	Ongoing
Task 1C and 1D: On-going Business Registry Certificate / Business Improvement District (BID) Discovery Services	November and December of respective year; prior to launch of annual cycle; and ongoing throughout year.
Task 1B: Continuation of customer support as described in Exhibit A - Scope of Services	TBD, if any
Task 1E: Additional Customization & Consulting Services (if executed per Sections 1 and 4, or per Section 27.4)	TBD, if any
<b>Task 1: Business Tax Collection Services for the Business Tax (BT)</b>	
Task 1A: Convert and load all existing taxpayer records (provided by the CITY and exiting vendor records) to CONSULTANT Revenue Administration system.	July 2023
Task 1A: Verify with the CITY all taxpayer letters, forms, notices and any other taxpayer correspondence that are in use for the collection and administration of the tax.	July 2023
Task 1A: Configure secure web filing and payment portal for use by	By Mid-August 2023



the CITY'S taxpayers. Provide "test site" for City review.	
Task 4: Provide customer access to on-line portal.	By Mid-September 2023
Task 1B: Contact all taxpayers a) by mail, including introductory letter with new filing address, telephone contact for taxpayer support, and web filing instructions; and then b) by telephone follow-up.	October 2023
Task 1B: Ongoing BT Administrative and Reporting Services as described in Exhibit A – Scope of Work	Ongoing
Task 1B: Ongoing BT Compliance Activities as described in Exhibit A – Scope of Work	Ongoing
Task 1E: Additional Customization & Consulting Services (if executed per Sections 1 and 4, or per Section 27.4)	TBD, if any
<b>Task 2: Sales &amp; Use Tax Audit and Information Services</b>	
Task 2A: Delivery of reports specified in Exhibit A – Scope of Work, including report of all inquiries filed on behalf of the CITY and the status of outstanding pas inquiries filed with the CDTFA; update to Clearview database of sales and use ta data for the most recent quarter; and meeting with designated CITY staff. Complete list of businesses by NAICS codes (when available), in Excel format, including geographic area (e.g., Downtown, Midtown, etc.)	On-going - Quarterly by middle of the first month of each quarter in January, April, July, and October
Task 2A: Training on Clearview software, customization of reports, and all available tools	Annually or as needed
Task 2B: Sales and use tax audit and recovery	Ongoing
Task 2C: Additional Customization & Consulting Services (if executed per Sections 1 and 4, or per Section 27.4)	TBD, if any
<b>Task 3: Transient Occupancy Tax Administrative and Reporting Services (TOT)</b>	
Task 3A: Continuation of TOT Administrative and Reporting Services as described in Exhibit A – Scope of Work	On-going

Task 3A: Continuation of customer support as described in Exhibit A – Scope of work.	On-going
Task 3B: Continuation of Transient Occupancy Tax audit and recovery	On-going
Task 3C: Additional Customization & Consulting Services (if executed per Sections 1 and 4, or per Section 27.4)	TBD, if any.
<b>Task 4: Telecommunications Users Tax Administrative and Reporting Services (TUT)</b>	
Task 4A: Ongoing TUT Administrative and Reporting Services as described in Exhibit A – Scope of Work	On-going
Task 4B: Continuation TUT Compliance Activities as described in Exhibit A – Scope of Work	On-going
Task 4B: Continuation of customer support as described in Exhibit A – Scope of Work.	On-going
Task 4C: Ongoing – TUT Revenue Protection and Enhancement, Ordinance Advisory Services, and Legislative and Regulatory Review Services as described in Exhibit A – Scope of Work	On-going
Task 4C: Additional Customization & Consulting Services (if executed per Sections 1 and 4, or per Section 27.4)	On-going

☒ Optional Schedule of Performance Provision for On-Call or Additional Services Agreements.  
(This provision only applies if checked and only applies to on-call agreements per Section 1 or agreements with Additional Services per Section 4.)

The schedule of performance shall be as provided in the approved Task Order, as detailed in Section 1 (Scope of Services) in the case of on-call Services, or as detailed in Section 4 in the case of Additional Services, provided in all cases that the schedule of performance shall fall within the term as provided in Section 2 (Term) of this Agreement.

## **EXHIBIT C COMPENSATION**

CITY agrees to compensate CONSULTANT for Services performed in accordance with the terms and conditions of this Agreement, and as set forth in the budget schedule below. Compensation shall be calculated based on the rate schedule attached as Exhibit C-1 up to the not to exceed budget amount for each task set forth below.

CITY's Project Manager may approve in writing the transfer of budget amounts between any of the tasks or categories listed below, provided that the total compensation for the Services, including any specified reimbursable expenses, and the total compensation for Additional Services (if any, per Section 4 of the Agreement) do not exceed the amounts set forth in Section 4 of this Agreement.

CONSULTANT agrees to complete all Services, any specified reimbursable expenses, and Additional Services (if any, per Section 4), within this/these amount(s). Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth in this Agreement shall be at no cost to the CITY.

### **Consumer Price Index Adjustments**

Where noted in this Exhibit, the Consumer Price Index refers to the Consumer Price Index – All Urban Consumers for San Francisco-Oakland-Hayward Area as reported by the Bureau of Labor Statistics. The initial CPI used for the first CPI adjustment will be the CPI for the month in which the agreement is fully signed. The adjustments thereafter will be based on the CPI from December of the prior calendar year. Each annual adjustment will not be less than two percent (2%) or greater than five percent (5%).

### **Credit Card Processing Fee for Tax and Fee Collection Services**

If the City opts to absorb the credit card processing fees charged by the credit card companies, the CONSULTANT will withhold the exact processing fees charged by the credit card companies when the CONSULTANT remits Business Tax, Business Registry, Business Improvement District, Transient Occupancy Tax, and/or Telecommunication Users Tax revenue to the City. If the City opts-out of absorbing this cost, a standard 3% processing fee will be directly paid by businesses that choose this payment option and added to the business licensing fees at the time of payment.

### **Task 1: Business Tax, Business Registry, and Business Improvement District Program Administrative, Reporting, and Audit Services**

#### **A. Business Tax, Business Registry and Business Improvement District Administration**

The fee for the Administration is determined by how many business taxpayers and business registry certificates the City has and what the City ordinance is for administrative fees. compensation for providing the standard Administration Services shall be:

- Setup fee to implement City's new Business Tax: \$15,000
  - May increase to \$30,000 depending on City requirements and will be determined and mutually agreed upon between CITY and CONSULTANT as requirements are finalized during implementation planning.
- Annual flat fee: \$10,000
- \$13.00 annual per participant fee, adjusted by CPI-U at the beginning of each calendar year
- For a customization beyond the standard offering and current processes, a mutually agreed upon one-time set up fee may apply or a slightly higher per registry fee may apply. This will be determined through more in-depth needs gathering from the City.

Included in the above compensation for Administration Services are:

- Incorporation/Merging of the Business Registry and Business Improvement District database with the Business Tax
- Printing and Mailing costs (for notifications, registry issuance, etc.)
- Ongoing database management and back-up (business applicant information)
- Forms processing and funds disbursement (secure lockbox operation)
- Development and support of an on-line business registry filing and payment application.

#### Cost for Sending the Original Registry/Application to the City

The CONSULTANT archives all original registry certificate/applications. If the City wants a copy of the original registry/application, a fee of \$3.75 per business registry/application for the mailing or faxing.

#### Delinquencies

Should the usual process of notifying businesses (2 additional notices and a follow-up phone call) result in the non-payment of a business listed on the CONSULTANT'S online-hosted SaaS system or the data sent to the CONSULTANT from the City, the account will then be considered a delinquency. Delinquency processing involves another strongly worded notice and additional phone calls. The account is then subject to the same fees as the LTC Discovery services listed below.

#### Non-Sufficient Funds (NSF) and Associated Penalties

If a business pays its Business Registry fee by check without sufficient funds, then a \$25 NSF will be charged to the business. If the NSF payment causes the Business Registry/BID payments to be late, then the associated late penalties and interest will apply.

The CONSULTANT offers a variety of payment option to businesses seeking a Business Registry Certificate. Some of these options incur additional fees and costs. The CONSULTANT understands it is customary and reasonable for certain fees and charges to be absorbed by the issuing party and others to be charged to the business applicant/remitter. The CONSULTANT will follow existing City policy in charging any applicable fees and charges to either the business applicant/remitter or continue to allow the City to absorb those fees and charges.

Remitters' Payments and Invoice Process

The following section describes how applicant/remitters' payments are handled by the CONSULTANT and invoices the City for its fees.

Payments received by the CONSULTANT shall be deposited into a general non-interest bearing, collateral trust account maintained by the CONSULTANT. The business applicants/remitters' payments deposited into the escrow account shall be remitted to the City on a bi-weekly basis (typically on the 15th and by the last business day of each month) net of the CONSULTANT'S fees.

Should there be any disputed payments; the CONSULTANT shall work with City to mutually resolve these issues. If the resolution results in City's favor, the CONSULTANT shall refund the applicable portion of the fee to City within 10 days of resolution.

Completion of Services

The CONSULTANT'S service may result in collection of deficiencies after termination of the Agreement, the City's obligation to collect fees and notify the CONSULTANT, and the CONSULTANT'S right to continue to receive contingency fees, shall survive termination of the Agreement.

The City shall have the right, at the City's option, to elect not to proceed with recovery of any identified deficiencies. Deficiencies which are uncollectible due to insolvency or dissolution of the entity liable, or for deficiencies which are otherwise incapable of collection (e.g. statute of limitations expiration or other legal defense) shall not be considered an "election" by the City for the purposes of this Agreement. For deficiencies otherwise collectable but for which the City elects not to collect, the City shall notify the CONSULTANT of its election not to pursue ("waive") collection of said deficiencies. The CONSULTANT shall be entitled to one-half (½) of the fee the CONSULTANT would have been entitled to for the waived portion of the deficiency.

Business Tax, Business Registry, and Business Improvement District Discovery

Compensation for providing Discovery Services shall be a contingency fee of thirty five percent (35%) of the additional revenue received by the City from the services. The contingency fee shall apply to the calendar year, all eligible prior period revenues, and any applicable penalties, interest, and late charges. The contingency fee only applies to revenue received by the CITY. If CITY elects this service, the annual minimum fee is \$7,500.

**Task 2: Sales and Use Tax Audit and Information Services****A. Sales and Use Tax Information and Reporting**

The Sales Tax Analysis and Reporting Service (STARS) will be provided at an annual fixed fee of \$4,000 paid \$1,000 per quarter. The Annual Fee will be adjusted at the beginning of each calendar year by CPI as reported by the Bureau of Labor Statistics.

**B. Sales and Use Tax Audit**

The Sales and Use Tax Audit (SUTA) services will be provided for a fifteen percent (15%) contingency fee for the tax revenues identified by the CONSULTANT and corrected by the California Department of Tax and Fee Administration (CDTFA). This fee applies to four (4) quarters after the Date of Correction and all eligible prior quarters back to and including the three (3) quarters prior to the Date of Knowledge quarter with a maximum of ten total quarters. As used herein, the Date of Knowledge is the quarter during which the CONSULTANT notifies the CDTFA of the existence of a misallocation. As used herein, the Date of Correction refers to the quarter in which the taxpayer has correctly reported the local tax and the CDTFA distributes the local tax properly to City based on the taxpayer's reporting, together with any prior period reallocations. For QDR Misallocations detected and corrected, the CONSULTANT'S compensation will only include the quarters in which the misallocation actually occurred.

For clarification and to encourage communication and collaboration between the CONSULTANT and the CITY, the CONSULTANT shall be entitled to full payment of all compensation as provided herein even if any one or more of City, its personnel, agents, or representatives, or any third party or parties provide(s) information to the CONSULTANT that assists or is used by the CONSULTANT in the identification, detection, and correction of point-of-sale distribution errors or the reporting and/or misallocation of revenue.

**Completion of Services**

Because the services performed by the CONSULTANT results in corrections of misallocations and other revenue after cessation of services performed by the CONSULTANT for the City, the City agrees that with regards to misallocations identified to the CDTFA whose Date of Knowledge occurred during the CONSULTANT performance of services for the City or for other revenue resulting from the CONSULTANT'S actions taken during the term of the Agreement, that the City's obligation to pay the CONSULTANT in accordance with the compensation language of the Agreement will survive expiration or termination of the Agreement for any reason. Additionally, notwithstanding any other provision of the Agreement, if the Agreement is terminated or expires, the CONSULTANT will continue to pursue corrections of accounts identified during the term of the Agreement that have not been corrected by the CDTFA as of the effective date of termination or expiration. The period after termination during which the CONSULTANT is pursuing correction of accounts identified before termination is referred to as the "completion period." The City will compensate the CONSULTANT in accordance with the compensation language of the Agreement for corrected misallocations that result from the CONSULTANT efforts during the completion period. The City will also take all necessary steps to allow the CONSULTANT to continue to receive the required information from the SBE during this completion period.

**Method of Payment**

The Sales and Use Tax Audit Service is self-funding and entirely predicated and contingent upon the CONSULTANT'S audit service producing new sales/use tax revenue that would not otherwise have been realized by the City. The sales/use tax audit shall be paid by quarterly invoice, after the City has received the revenue from the correction and the quarterly distribution report has verified this receipt. Each invoice will include the business name, permit number, local allocation amount

received by the City, and amount due to the CONSULTANT. Invoices shall be due and payable upon receipt.

### **Task 3: Transient Occupancy Tax (TOT) Administration and Reporting Services**

#### **A. Administration and Reporting Services**

Transient Occupancy Tax administration services are available to the CITY for an annual cost of \$150 per lodging property, adjusted by CPI at the beginning of the calendar year. The annual cost of \$150 applies regardless of whether the lodging property is hotel or a short-term rental. The TOT Administration Service will be invoiced to the City at the beginning of each contract year based on the number of properties registered to report transient occupancy tax. Should new short-term rental properties be added to the administration program during the year, these new properties will be billed on a pro-rated annual basis from the time they join the program.

#### **B. TOT Audit and Compliance Services**

Upon mutual agreement between CITY and CONSULTANT, TOT audits can be provided for hotel and lodging properties on a fixed fee basis. Our TOT audit services consist of two inter-related audit phases. The Phase 1 review must be done first, and it must include all traditional (hotels, motels, inns) lodging properties within the City. This service does not include TOT audit and compliance services for online short-term rentals (Air Bnb, VRBO, etc.), as detailed in the “TOT Compliance Services” section of Exhibit A (“Scope of Services”) of this Agreement. Phase 2 cannot proceed without a Phase 1 review first being completed. The City can determine the number of Phase 2 audits that they wish for the CONSULTANT to complete (typically CONSULTANT recommends roughly 33% of lodging properties for Phase 2 audit but it is up to the City to determine the number).

##### *Phase 1: Analysis*

The City will pay the CONSULTANT a fixed fee of \$800 per lodging property. This fee applies to all lodging properties located in the City limits. The CONSULTANT will invoice this upon delivery of the analysis report.

##### *Phase 2: Audit and Compliance Review*

The City will pay the CONSULTANT a fixed fee of \$1,200 per lodging property reviewed unless the City does not approve the list of lodging properties for Compliance Review within 90 days of submission, in which the cost will increase to \$1,400 per lodging property reviewed. The CONSULTANT will invoice this upon delivery of the compliance report with payment to be made within thirty-days (30) of receipt of invoice.

Based on our experiences, through review of lodging properties in the initial Discovery and Audit Phase (Phase 1), our staff typically recommends approximately 33% of the lodging providers for the Phase 2 Compliance Review.

##### *Reimbursement of Travel Costs for Audit Services (Visits to City)*

For the Transient Occupancy Tax services, the CONSULTANT will also charge the City out-of-pocket expenses for travel costs related to the performance of the audits in accordance with the City of Palo Alto's policy for reimbursement of travel and meal expenses. Travel costs will not exceed \$2,500 per visit. If CONSULTANT expect to spend more than \$2,500 per visit, CONSULTANT will get prior approval from the City for any amounts over the allotted \$2,500, executed in writing per Section 27.4 of this Agreement. The travel costs will be invoiced to the City upon delivery of the final report to the City.

Typically for years two and three there will not be a need to audit every property within the statute. The CONSULTANT will continue to monitor the lodging properties reporting and notify the City of any anomaly and then charge \$500 per property for any of those that require further compliance review.

Should the City elect the full Phases 1 and 2 service for years two and three, the travel costs reimbursement provisions above will apply, to be executed in writing per Section 27.4 of this Agreement.

#### **Task 4: Telecommunications Users Tax (TUT) Administrative and Reporting Services**

##### **A. Administration and Reporting Services**

Telecommunications Users Tax (TUT) administration services are available to the City for a monthly administration fee equal to \$2.95 per filing transaction (typically one transaction per UUT taxpayer per month), adjusted by CPI at the beginning of the calendar year. The Administration Service will be invoiced to the City on a monthly basis and be based on the number of returns filed in the month.

##### **B. Utility User Tax City-Specific Compliance Review Audit**

Upon mutual agreement of a suitable telecommunications utility for compliance review, the City shall pay the CONSULTANT thirty percent (30%) of the additional revenues, including interest and penalties, that has resulted from its City-specific compliance review activities. The CONSULTANT will seek to recover or assist the City in recovering all revenue due the City from prior periods, if any, and the CONSULTANT will receive 30% of any retroactive recovery. Said 30% also applies to the additional revenue received by the City for the first three years following the correction of the error/omission. As used in this subsection, the term "additional revenues" includes the value of any other services, credits, property of every kind or nature, or other consideration received by the City in lieu of monetary payment.

Compensation is due and payable within thirty (30) days of the City's receipt of the invoice. Any amounts which remain unpaid after thirty (30) days shall accrue interest at a rate of one and one-half percent (1.5%) per month, or the maximum amount permitted by law.



## **REIMBURSABLE EXPENSES**

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, telecommunications, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost. Expenses for which CONSULTANT shall be reimbursed are as detailed below, not to exceed \$2,500 per visit (per the “Reimbursement of Travel Costs for Audit Services (Visits to City)” section above):

1) Travel related to discovery and/or audits as authorized in writing by the City’s Project Manager, including transportation and meals, will be reimbursed at actual cost subject to the City of Palo Alto’s policy for reimbursement of travel and meal expenses.

All requests for payment of expenses shall be accompanied by appropriate backup information.

## **ADDITIONAL SERVICES**

The CONSULTANT shall provide Additional Services, as detailed in Section 4 of this Agreement, only by advanced, written authorization from the CITY as detailed in Section 1 of this Agreement.

BUDGET SCHEDULE	RATE	NOT TO EXCEED AMOUNT (5-YEARS)
<b>Task 1: Business Tax, Business Registry, and Business Improvement District Program Administrative, Reporting, and Audit Services</b>		
a. Business tax, Business Registry, and Business Improvement District Program set up and implementation	<ul style="list-style-type: none"> <li>Set-up fee: \$30,000</li> </ul>	<ul style="list-style-type: none"> <li>\$30,000.00</li> </ul>
b. Business tax, Business Registry, and Business Improvement District Program administration and reporting	<ul style="list-style-type: none"> <li>Annual flat fee: \$10,000</li> <li>Annual fee per participant: \$13/annually (adj annually by CPI) – extended NTE assumes 9,300 businesses, over 5 years, and 5% annual CPI</li> </ul>	<ul style="list-style-type: none"> <li>\$50,000.00</li> <li>\$668,050.00</li> </ul>
c. Business Tax and Business Registry discovery and recovery (if City elects this service)	<ul style="list-style-type: none"> <li>Contingency fee: 35%</li> <li>Minimum annual fee: \$7,500</li> </ul>	<ul style="list-style-type: none"> <li>\$50,000.00</li> </ul>
d. Business Tax and Business Registry audit	<ul style="list-style-type: none"> <li>Hourly rate: \$100 (adj annually by CPI)</li> </ul>	<ul style="list-style-type: none"> <li>\$50,000.00</li> </ul>
	<b>SUBTOTAL: BASIC SERVICES</b>	<b>\$848,050.00</b>
e. Additional customization and consulting services (if City elects this service)	<ul style="list-style-type: none"> <li>Hourly rate as listed in Exhibit C-1</li> </ul>	<ul style="list-style-type: none"> <li>\$50,000.00</li> </ul>
<b>Task 2: Sales and Use Tax Audit and Information Services</b>		
a. Sales and use tax information	<ul style="list-style-type: none"> <li>Annual flat fee: \$4,000 (adj annually by CPI) – extended NTE assumes 5% CPI over 5 years</li> </ul>	<ul style="list-style-type: none"> <li>\$22,500.00</li> </ul>
b. Sales and use tax audit	<ul style="list-style-type: none"> <li>Contingency fee: 15%</li> </ul>	<ul style="list-style-type: none"> <li>\$100,000.00</li> </ul>
	<b>SUBTOTAL: BASIC SERVICES</b>	<b>\$122,500.00</b>

<b>Task 3: Transient Occupancy Tax Administrative, Reporting, and Audit Services</b>		
a. Transient Occupancy Tax administrative and reporting	<ul style="list-style-type: none"> <li>Annual fee per lodging property: \$150 (adj annually by CPI) – extended NTE assumes 35 lodging properties, over 5 years, and 5% annual CPI</li> </ul>	<ul style="list-style-type: none"> <li>\$29,000.00</li> </ul>
b. Transient Occupancy Tax audit (traditional hotel/motel) <i>(if City elects this service)</i> – extended NTE assumes one round each of Phase 1 and 2 for half of the City's hotel properties, travel costs for one visit, and compliance review as agreed upon.	<ul style="list-style-type: none"> <li>Phase 1: \$800 per lodging property</li> <li>Phase 2: \$1,200 per lodging property (adj annually by CPI)</li> <li>Travel costs: up to \$2,500 per visit</li> <li>Compliance review: \$500 per property</li> </ul>	<ul style="list-style-type: none"> <li>\$40,000.00</li> </ul>
	<b>SUBTOTAL: BASIC SERVICES</b>	<b>\$69,000.00</b>
<b>Task 4: Telecommunication Users Tax Administrative, Reporting, and Audit Services</b>		
a. Telecommunication Users Tax administrative and reporting services	<ul style="list-style-type: none"> <li>Filing fee: \$2.95/transaction (adj annually by CPI) – extended NTE assumes 250 filers, over 5 years, and 5% annual CPI</li> </ul>	<ul style="list-style-type: none"> <li>\$47,000</li> </ul>
b. Telecommunication users tax audit services <i>(if City elects this service)</i>	<ul style="list-style-type: none"> <li>Contingency fee: 30%</li> </ul>	<ul style="list-style-type: none"> <li>\$25,000</li> </ul>
	<b>SUBTOTAL: BASIC SERVICES</b>	<b>\$72,000.00</b>
	<b>TOTAL BASIC SERVICES</b>	<b>\$1,111,550.00</b>
	<b>TOTAL ADDITIONAL SERVICES</b>	<b>\$50,000.00</b>
	<b>TOTAL NOT TO EXCEED</b>	<b>\$1,161,550.00</b>

**EXHIBIT “C-1”  
SCHEDULE OF RATES**

**Additional Consulting Services (“Additional Services”)**

Should the City desire Additional Services, per Section 4 and Exhibit “C” of this Agreement, the City may request that the CONSULTANT provide Additional Services at any time during term of the Agreement. CONSULTANT shall provide such services on a Time and Materials basis and based on the hourly rate schedule below.

<b>Position</b>	<b>Hourly Rate</b>
Principal	\$225
Project Manager/Director	\$200
Client Services Executive	\$175
Senior Analyst	\$150
Information Technology	\$200
Analyst	\$125
Administrative	\$85

## EXHIBIT D INSURANCE REQUIREMENTS

CONSULTANTS TO THE CITY OF PALO ALTO (CITY), AT THEIR SOLE EXPENSE, SHALL FOR THE TERM OF THE CONTRACT OBTAIN AND MAINTAIN INSURANCE IN THE AMOUNTS FOR THE COVERAGE SPECIFIED BELOW, **AFFORDED BY COMPANIES WITH AM BEST'S KEY RATING OF A-VII, OR HIGHER, LICENSED OR AUTHORIZED TO TRANSACT INSURANCE BUSINESS IN THE STATE OF CALIFORNIA.**

AWARD IS CONTINGENT ON COMPLIANCE WITH CITY'S INSURANCE REQUIREMENTS AS SPECIFIED HEREIN.

REQUIRED	TYPE OF COVERAGE	REQUIREMENT	MINIMUM LIMITS	
			EACH OCCURRENCE	AGGREGATE
YES	WORKER'S COMPENSATION	STATUTORY		
YES	EMPLOYER'S LIABILITY	STATUTORY		
YES	GENERAL LIABILITY, INCLUDING PERSONAL INJURY, BROAD FORM PROPERTY DAMAGE BLANKET CONTRACTUAL, PRODUCTS/COMPLETED OPERATIONS AND FIRE LEGAL LIABILITY	BODILY INJURY	\$2,000,000	\$2,000,000
		PROPERTY DAMAGE	\$2,000,000	\$2,000,000
		BODILY INJURY & PROPERTY DAMAGE COMBINED.	\$2,000,000	\$2,000,000
YES	<p>TECHNOLOGY ERRORS AND OMISSIONS LIABILITY COVERAGE. THE POLICY SHALL AT A MINIMUM COVER PROFESSIONAL MISCONDUCT OR LACK OF REQUISITE SKILL FOR THE PERFORMANCE OF SERVICES DEFINED IN THE CONTRACT AND SHALL ALSO PROVIDE COVERAGE FOR THE FOLLOWING RISKS:</p> <p>(i) NETWORK SECURITY LIABILITY ARISING FROM UNAUTHORIZED ACCESS TO, USE OF, OR TAMPERING WITH COMPUTERS OR COMPUTER SYSTEMS, INCLUDING HACKERS, EXTORTION, AND</p> <p>(ii) LIABILITY ARISING FROM INTRODUCTION OF ANY FORM OF MALICIOUS SOFTWARE INCLUDING COMPUTER VIRUSES INTO, OR OTHERWISE CAUSING DAMAGE TO THE CITY'S OR THIRD PERSON'S COMPUTER, COMPUTER SYSTEM, NETWORK, OR SIMILAR COMPUTER RELATED PROPERTY AND THE DATA, SOFTWARE AND PROGRAMS THEREON. CONTRACTOR SHALL MAINTAIN IN FORCE DURING THE FULL LIFE OF THE CONTRACT.</p> <p>THE POLICY SHALL PROVIDE COVERAGE FOR BREACH RESPONSE COSTS AS WELL AS REGULATORY FINES AND PENALTIES AS WELL AS CREDIT MONITORING EXPENSES WITH LIMITS SUFFICIENT TO RESPOND TO THESE OBLIGATIONS.</p>	ALL DAMAGES	\$2,000,000	\$2,000,000

YES	CYBER AND PRIVACY INSURANCE. SUCH INSURANCE SHALL INCLUDE COVERAGE FOR LIABILITY ARISING FROM COVERAGE IN AN AMOUNT SUFFICIENT TO COVER THE FULL REPLACEMENT VALUE OF DAMAGE TO, ALTERATION OF, LOSS OF, THEFT, DISSEMINATION OR DESTRUCTION OF ELECTRONIC DATA AND/OR USE OF CONFIDENTIAL INFORMATION, "PROPERTY" OF THE CITY OF PALO ALTO THAT WILL BE IN THE CARE, CUSTODY, OR CONTROL OF VENDOR, INFORMATION INCLUDING BUT NOT LIMITED TO, BANK AND CREDIT CARD ACCOUNT INFORMATION OR PERSONAL INFORMATION, SUCH AS NAME, ADDRESS, SOCIAL SECURITY NUMBERS, PROTECTED HEALTH INFORMATION OR OTHER PERSONAL IDENTIFICATION INFORMATION, STORED OR TRANSMITTED IN ELECTRONIC FORM.	ALL DAMAGES	\$2,000,000	\$2,000,000
YES	AUTOMOBILE LIABILITY, INCLUDING ALL OWNED, HIRED, NON-OWNED	BODILY INJURY EACH PERSON EACH OCCURRENCE  PROPERTY DAMAGE  BODILY INJURY AND PROPERTY DAMAGE, COMBINED	\$1,000,000 \$1,000,000 \$1,000,000  \$1,000,000  \$1,000,000	\$1,000,000 \$1,000,000 \$1,000,000  \$1,000,000  \$1,000,000
YES	PROFESSIONAL LIABILITY, INCLUDING, ERRORS AND OMISSIONS, MALPRACTICE (WHEN APPLICABLE), AND NEGLIGENT PERFORMANCE	ALL DAMAGES	\$1,000,000	
YES	THE CITY OF PALO ALTO IS TO BE NAMED AS AN ADDITIONAL INSURED: CONTRACTOR, AT ITS SOLE COST AND EXPENSE, SHALL OBTAIN AND MAINTAIN, IN FULL FORCE AND EFFECT THROUGHOUT THE ENTIRE TERM OF ANY RESULTANT AGREEMENT, THE INSURANCE COVERAGE HEREIN DESCRIBED, INSURING NOT ONLY CONTRACTOR AND ITS SUBCONSULTANTS, IF ANY, BUT ALSO, WITH THE EXCEPTION OF WORKERS' COMPENSATION, EMPLOYER'S LIABILITY AND PROFESSIONAL INSURANCE, NAMING AS ADDITIONAL INSURED'S CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, AND EMPLOYEES.			

I. INSURANCE COVERAGE MUST INCLUDE:

- A. A CONTRACTUAL LIABILITY ENDORSEMENT PROVIDING INSURANCE COVERAGE FOR CONTRACTOR'S AGREEMENT TO INDEMNIFY CITY.
- II. CONTRACTOR MUST SUBMIT CERTIFICATES(S) OF INSURANCE EVIDENCING REQUIRED COVERAGE AT THE FOLLOWING URL: <https://www.planetbids.com/portal/portal.cfm?CompanyID=25569>.
- III. ENDORSEMENT PROVISIONS, WITH RESPECT TO THE INSURANCE AFFORDED TO "ADDITIONAL INSUREDS"
- A. PRIMARY COVERAGE
- WITH RESPECT TO CLAIMS ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, INSURANCE AS AFFORDED BY THIS POLICY IS PRIMARY AND IS NOT ADDITIONAL TO OR CONTRIBUTING WITH ANY OTHER INSURANCE CARRIED BY OR FOR THE BENEFIT OF THE ADDITIONAL INSUREDS.
- B. CROSS LIABILITY

THE NAMING OF MORE THAN ONE PERSON, FIRM, OR CORPORATION AS INSURED UNDER THE POLICY SHALL NOT, FOR THAT REASON ALONE, EXTINGUISH ANY RIGHTS OF THE INSURED AGAINST ANOTHER, BUT THIS ENDORSEMENT, AND THE NAMING OF MULTIPLE INSURED, SHALL NOT INCREASE THE TOTAL LIABILITY OF THE COMPANY UNDER THIS POLICY.

C. NOTICE OF CANCELLATION

1. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR ANY REASON OTHER THAN THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A THIRTY (30) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.
2. IF THE POLICY IS CANCELED BEFORE ITS EXPIRATION DATE FOR THE NON-PAYMENT OF PREMIUM, THE CONSULTANT SHALL PROVIDE CITY AT LEAST A TEN (10) DAY WRITTEN NOTICE BEFORE THE EFFECTIVE DATE OF CANCELLATION.

VENDORS ARE REQUIRED TO FILE THEIR EVIDENCE OF INSURANCE AND ANY OTHER RELATED NOTICES WITH THE CITY OF PALO ALTO AT THE FOLLOWING URL:

[HTTPS://WWW.PLANETBIDS.COM/PORTAL/PORTAL.CFM?COMPANYID=25569](https://www.planetbids.com/portal/portal.cfm?companyid=25569)

OR

[HTTP://WWW.CITYOFPALOALTO.ORG/GOV/DEPTS/ASD/PLANET\\_BIDS\\_HOW\\_TO.ASP](http://www.cityofpaloalto.org/gov/depts/asd/planet_bids_how_to.asp)

**EXHIBIT E**

**POLICY AND PROCEDURES 1-64/IT**  
Revised: December 2017

**INFORMATION PRIVACY POLICY****POLICY STATEMENT**

The City of Palo Alto (the "City") strives to promote and sustain a superior quality of life for persons in Palo Alto. In promoting the quality of life of these persons, it is the policy of the City, consistent with the provisions of the California Public Records Act, California Government Code §§ 6250 – 6270, to take appropriate measures to safeguard the security and privacy of the personal (including, without limitation, financial) information of persons, collected in the ordinary course and scope of conducting the City's business as a local government agency. These measures are generally observed by federal, state and local authorities and reflected in federal and California laws, the City's rules and regulations, and industry best practices, including, without limitation, the provisions of California Civil Code §§ 1798.3(a), 1798.24, 1798.79.8(b), 1798.80(e), 1798.81.5, 1798.82(e), 1798.83(e)(7), and 1798.92(c). Though some of these provisions do not apply to local government agencies like the City, the City will conduct business in a manner which promotes the privacy of personal information, as reflected in federal and California laws. The objective of this Policy is to describe the City's data security goals and objectives, to ensure the ongoing protection of the Personal Information, Personally Identifiable Information, Protected Critical Infrastructure Information and Personally Identifying Information of persons doing business with the City and receiving services from the City or a third party under contract to the City to provide services. The terms "Personal Information," "Protected Critical Infrastructure Information", "Personally Identifiable Information" and "Personally Identifying Information" (collectively, the "Information") are defined in the California Civil Code sections, referred to above, and are incorporated in this Policy by reference.

**PURPOSE**

The City, acting in its governmental and proprietary capacities, collects the Information pertaining to persons who do business with or receive services from the City. The Information is collected by a variety of means, including, without limitation, from persons applying to receive services provided by the City, persons accessing the City's website, and persons who access other information portals maintained by the City's staff and/or authorized third-party contractors. The City is committed to protecting the privacy and security of the Information collected by the City. The City acknowledges federal and California laws, policies, rules, regulations and procedures, and industry best practices are dedicated to ensuring the Information is collected, stored and utilized in compliance with applicable laws.



## **POLICY AND PROCEDURES 1-64/IT**

Revised: December 2017

The goals and objectives of the Policy are: (a) a safe, productive, and inoffensive work environment for all users having access to the City's applications and databases; (b) the appropriate maintenance and security of database information assets owned by, or entrusted to, the City; (c) the controlled access and security of the Information provided to the City's staff and third party contractors; and (d) faithful compliance with legal and regulatory requirements.

### **SCOPE**

The Policy will guide the City's staff and, indirectly, third party contractors, which are by contract required to protect the confidentiality and privacy of the Information of the persons whose personal information data are intended to be covered by the Policy and which will be advised by City staff to conform their performances to the Policy should they enjoy conditional access to that information.

### **CONSEQUENCES**

The City's employees shall comply with the Policy in the execution of their official duties to the extent their work implicates access to the Information referred to in this Policy. A failure to comply may result in employment and/or legal consequences.

### **EXCEPTIONS**

In the event that a City employee cannot fully comply with one or more element(s) described in this Policy, the employee may request an exception by submitting Security Exception Request. The exception request will be reviewed and administered by the City's Information Security Manager (the "ISM"). The employee, with the approval of his or her supervisor, will provide any additional information as may be requested by the ISM. The ISM will conduct a risk assessment of the requested exception in accordance with guidelines approved by the City's Chief Information Officer ("CIO") and approved as to form by the City Attorney. The Policy's guidelines will include at a minimum: purpose, source, collection, storage, access, retention, usage, and protection of the Information identified in the request. The ISM will consult with the CIO to approve or deny the exception request. After due consideration is given to the request, the exception request disposition will be communicated, in writing, to the City employee and his or her supervisor. The approval of any request may be subject to countermeasures established by the CIO, acting by the ISM.

### **MUNICIPAL ORDINANCE**

This Policy will supersede any City policy, rule, regulation or procedure regarding information privacy.

### **RESPONSIBILITIES OF CITY STAFF**

**POLICY AND PROCEDURES 1-64/IT**  
Revised: December 2017

**A. RESPONSIBILITY OF CIO AND ISM**

The CIO, acting by the ISM, will establish an information security management framework to initiate and coordinate the implementation of information security measures by the City's government.

The City's employees, in particular, software application users and database users, and, indirectly, third party contractors under contract to the City to provide services, shall be guided by this Policy in the performance of their job responsibilities.

The ISM will be responsible for: (a) developing and updating the Policy; (b) enforcing compliance with and the effectiveness of the Policy; (c) the development of privacy standards that will manifest the Policy in detailed, auditable technical requirements, which will be designed and maintained by the persons responsible for the City's IT environments; (d) assisting the City's staff in evaluating security and privacy incidents that arise in regard to potential violations of the Policy; (e) reviewing and approving department-specific policies and procedures which fall under the purview of this Policy; and (f) reviewing Non-Disclosure Agreements (NDAs) signed by third party contractors, which will provide services, including, without limitation, local or 'cloud-based' software services to the City.

**B. RESPONSIBILITY OF INFORMATION SECURITY STEERING COMMITTEE**

The Information Security Steering Committee (the "ISSC"), which is comprised of the City's employees, drawn from the various City departments, will provide the primary direction, prioritization and approval for all information security efforts, including key information security and privacy risks, programs, initiatives and activities. The ISSC will provide input to the information security and privacy strategic planning processes to ensure that information security risks are adequately considered, assessed and addressed at the appropriate City department level.

**C. RESPONSIBILITY OF USERS**

All authorized users of the Information will be responsible for complying with information privacy processes and technologies within the scope of responsibility of each user.

**D. RESPONSIBILITY OF INFORMATION TECHNOLOGY (IT) MANAGERS**

The City's IT Managers, who are responsible for internal, external, direct and indirect connections to the City's networks, will be responsible for configuring, maintaining and securing the City's IT networks in compliance with the City's information security and privacy policies. They are also responsible for timely internal reporting of events that may have compromised network, system or data security.

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**E. RESPONSIBILITY OF AUTHORIZATION COORDINATION**

The ISM will ensure that the City's employees secure the execution of Non-Disclosure Agreements (NDA), whenever access to the Information will be granted to third party contractors, in conjunction with the Software as a Service (SaaS) Security and Privacy Terms and Conditions. An NDA must be executed prior to the sharing of the Information of persons covered by this Policy with third party contractors. The City's approach to managing information security and its implementation (i.e. objectives, policies, processes, and procedures for information security) will be reviewed independently by the ISM at planned intervals, or whenever significant changes to security implementation have occurred.

The CIO, acting by the ISM, will review and recommend changes to the Policy annually, or as appropriate, commencing from the date of its adoption.

**GENERAL PROCEDURE FOR INFORMATION PRIVACY****A. OVERVIEW**

The Policy applies to activities that involve the use of the City's information assets, namely, the Information of persons doing business with the City or receiving services from the City, which are owned by, or entrusted to, the City and will be made available to the City's employees and third party contractors under contract to the City to provide Software as a Service consulting services. These activities include, without limitation, accessing the Internet, using e-mail, accessing the City's intranet or other networks, systems, or devices.

The term "information assets" also includes the personal information of the City's employees and any other related organizations while those assets are under the City's control. Security measures will be designed, implemented, and maintained to ensure that only authorized persons will enjoy access to the information assets. The City's staff will act to protect its information assets from theft, damage, loss, compromise, and inappropriate disclosure or alteration. The City will plan, design, implement and maintain information management systems, networks and processes in order to assure the appropriate confidentiality, integrity, and availability of its information assets to the City's employees and authorized third parties.

**B. PERSONAL INFORMATION AND CHOICE**

Except as permitted or provided by applicable laws, the City will not share the Information of any person doing business with the City, or receiving services from the City, in violation of this Policy, unless that person has consented to the City's sharing of such information during the conduct of the City's business as a local government agency with third parties under contract to the City to provide services.

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**C. METHODS OF COLLECTION OF PERSONAL INFORMATION**

The City may gather the Information from a variety of sources and resources, provided that the collection of such information is both necessary and appropriate in order for the City to conduct business as a local government agency in its governmental and proprietary capacities. That information may be gathered at service windows and contact centers as well as at web sites, by mobile applications, and with other technologies, wherever the City may interact with persons who need to share such formation in order to secure the City's services.

The City's staff will inform the persons whose Information are covered by this Policy that the City's web site may use "cookies" to customize the browsing experience with the City of Palo Alto web site. The City will note that a cookie contains unique information that a web site can use to track, among others, the Internet Protocol address of the computer used to access the City's web sites, the identification of the browser software and operating systems used, the date and time a user accessed the site, and the Internet address of the website from which the user linked to the City's web sites. Cookies created on the user's computer by using the City's web site do not contain the Information, and thus do not compromise the user's privacy or security. Users can refuse the cookies or delete the cookie files from their computers by using any of the widely available methods. If the user chooses not to accept a cookie on his or her computer, it will not prevent or prohibit the user from gaining access to or using the City's sites.

**D. UTILITIES SERVICE**

In the provision of utility services to persons located within Palo Alto, the City of Palo Alto Utilities Department ("CPAU") will collect the Information in order to initiate and manage utility services to customers. To the extent the management of that information is not specifically addressed in the Utilities Rules and Regulations or other ordinances, rules, regulations or procedures, this Policy will apply; provided, however, any such Rules and Regulations must conform to this Policy, unless otherwise directed or approved by the Council. This includes the sharing of CPAU-collected Information with other City departments except as may be required by law.

Businesses and residents with standard utility meters and/or having non-metered monthly services will have secure access through a CPAU website to their Information, including, without limitation, their monthly utility usage and billing data. In addition to their regular monthly utilities billing, businesses and residents with non-standard or experimental electric, water or natural gas meters may have their usage and/or billing data provided to them through non-City electronic portals at different intervals than with the standard monthly billing.

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Businesses and residents with such non-standard or experimental metering will have their Information covered by the same privacy protections and personal information exchange rules applicable to Information under applicable federal and California laws.

**E. PUBLIC DISCLOSURE**

The Information that is collected by the City in the ordinary course and scope of conducting its business could be incorporated in a public record that may be subject to inspection and copying by the public, unless such information is exempt from disclosure to the public by California law.

**F. ACCESS TO PERSONAL INFORMATION**

The City will take reasonable steps to verify a person's identity before the City will grant anyone online access to that person's Information. Each City department that collects Information will afford access to affected persons who can review and update that information at reasonable times.

**G. SECURITY, CONFIDENTIALITY AND NON-DISCLOSURE**

Except as otherwise provided by applicable law or this Policy, the City will treat the Information of persons covered by this Policy as confidential and will not disclose it, or permit it to be disclosed, to third parties without the express written consent of the person affected. The City will develop and maintain reasonable controls that are designed to protect the confidentiality and security of the Information of persons covered by this Policy.

The City may authorize the City's employee and or third party contractors to access and/or use the Information of persons who do business with the City or receive services from the City. In those instances, the City will require the City's employee and/or the third party contractors to agree to use such Information only in furtherance of City-related business and in accordance with the Policy.

If the City becomes aware of a breach, or has reasonable grounds to believe that a security breach has occurred, with respect to the Information of a person, the City will notify the affected person of such breach in accordance with applicable laws. The notice of breach will include the date(s) or estimated date(s) of the known or suspected breach, the nature of the Information that is the subject of the breach, and the proposed action to be taken or the responsive action taken by the City.

**H. DATA RETENTION / INFORMATION RETENTION**

**POLICY AND PROCEDURES 1-64/IT**

Revised: December 2017

The City will store and secure all Information for a period of time as may be required by law, or if no period is established by law, for seven (7) years, and thereafter such information will be scheduled for destruction.

**I. SOFTWARE AS A SERVICE (SAAS) OVERSIGHT**

The City may engage third party contractors and vendors to provide software application and database services, commonly known as Software-as-a-Service (SaaS).

In order to assure the privacy and security of the Information of those who do business with the City and those who received services from the City, as a condition of selling goods and/or services to the City, the SaaS services provider and its subcontractors, if any, including any IT infrastructure services provider, shall design, install, provide, and maintain a secure IT environment, while it performs such services and/or furnishes goods to the City, to the extent any scope of work or services implicates the confidentiality and privacy of the Information.

These requirements include information security directives pertaining to: (a) the IT infrastructure, by which the services are provided to the City, including connection to the City's IT systems; (b) the SaaS services provider's operations and maintenance processes needed to support the IT environment, including disaster recovery and business continuity planning; and (c) the IT infrastructure performance monitoring services to ensure a secure and reliable environment and service availability to the City. The term "IT infrastructure" refers to the integrated framework, including, without limitation, data centers, computers, and database management devices, upon which digital networks operate.

Prior to entering into an agreement to provide services to the City, the City's staff will require the SaaS services provider to complete and submit an Information Security and Privacy Questionnaire. In the event that the SaaS services provider reasonably determines that it cannot fulfill the information security requirements during the course of providing services, the City will require the SaaS services provider to promptly inform the ISM.

**J. FAIR AND ACCURATE CREDIT TRANSACTION ACT OF 2003**

CPAU will require utility customers to provide their Information in order for the City to initiate and manage utility services to them.

Federal regulations, implementing the Fair and Accurate Credit Transactions Act of 2003 (Public Law 108-159), including the Red Flag Rules, require that CPAU, as a "covered financial institution or creditor" which provides services in advance of payment and which can affect consumer credit, develop and implement procedures for an identity theft program for new and existing accounts to detect, prevent, respond and mitigate potential identity theft of its customers' Information.

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CPAU procedures for potential identity theft will be reviewed independently by the ISM annually or whenever significant changes to security implementation have occurred. The ISM will recommend changes to CPAU identity theft procedures, or as appropriate, so as to conform to this Policy.

There are California laws which are applicable to identity theft; they are set forth in California Civil Code § 1798.92.

NOTE: Questions regarding this policy should be referred to the Information Technology Department, as appropriate.

Recommended:	<div>Digitized by: <i>Jonathan Reichental</i> 791420807578424</div> <hr/> Director Information Technology/CIO	<div>12/5/2017</div> <hr/> Date
Approved:	<div>Digitized by: <i>Joe A. Forger</i> 2067208742204208</div> <hr/> City Manager	<div>12/13/2017</div> <hr/> Date



## EXHIBIT "F"

### CYBERSECURITY TERMS AND CONDITIONS

In order to assure the privacy and security of the personal information of the City's customers and people who do business with the City, including, without limitation, vendors, utility customers, library patrons, and other individuals and companies, who are required to share such information with the City, as a condition of receiving services from the City or selling goods and services to the City, including, without limitation, the Software as a Service services provider (the "Consultant") and its subcontractors, if any, including, without limitation, any Information Technology ("IT") infrastructure services provider, shall design, install, provide, and maintain a secure IT environment, described below, while it renders and performs the Services and furnishes goods, if any, described in the Statement of Work, Exhibit B, to the extent any scope of work implicates the confidentiality and privacy of the personal information of the City's customers. The Consultant shall fulfill the data and information security requirements (the "Requirements") set forth in Part A below.

A "secure IT environment" includes (a) the IT infrastructure, by which the Services are provided to the City, including connection to the City's IT systems; (b) the Consultant's operations and maintenance processes needed to support the environment, including disaster recovery and business continuity planning; and (c) the IT infrastructure performance monitoring services to ensure a secure and reliable environment and service availability to the City. "IT infrastructure" refers to the integrated framework, including, without limitation, data centers, computers, and database management devices, upon which digital networks operate.

In the event that, after the Effective Date, the Consultant reasonably determines that it cannot fulfill the Requirements, the Consultant shall promptly inform the City of its determination and submit, in writing, one or more alternate countermeasure options to the Requirements (the "Alternate Requirements" as set forth in Part B), which may be accepted or rejected in the reasonable satisfaction of the Information Security Manager (the "ISM").

#### **Part A. Requirements:**

The Consultant shall at all times during the term of any contract between the City and the Consultant:

- (a) Appoint or designate an employee, preferably an executive officer, as the security liaison to the City with respect to the Services to be performed under this Agreement.
- (b) Comply with the City's Information Privacy Policy:
- (c) Have adopted and implemented information security and privacy policies that are documented, are accessible to the City, and conform to ISO 27001/2 – Information Security Management Systems (ISMS) Standards. See the following:



[http://www.iso.org/iso/home/store/catalogue\\_tc/catalogue\\_detail.htm?csnumber=42103](http://www.iso.org/iso/home/store/catalogue_tc/catalogue_detail.htm?csnumber=42103)  
[http://www.iso.org/iso/iso\\_catalogue/catalogue\\_tc/catalogue\\_detail.htm?csnumber=50297](http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=50297)

- (d) Conduct routine data and information security compliance training of its personnel that is appropriate to their role.
- (e) Develop and maintain detailed documentation of the IT infrastructure, including software versions and patch levels.
- (f) Develop an independently verifiable process, consistent with industry standards, for performing professional and criminal background checks of its employees that (1) would permit verification of employees' personal identity and employment status, and (2) would enable the immediate denial of access to the City's confidential data and information by any of its employees who no longer would require access to that information or who are terminated.
- (g) Provide a list of IT infrastructure components in order to verify whether the Consultant has met or has failed to meet any objective terms and conditions.
- (h) Implement access accountability (identification and authentication) architecture and support role-based access control ("RBAC") and segregation of duties ("SoD") mechanisms for all personnel, systems, and Software used to provide the Services. "RBAC" refers to a computer systems security approach to restricting access only to authorized users. "SoD" is an approach that would require more than one individual to complete a security task in order to promote the detection and prevention of fraud and errors.
- (i) Assist the City in undertaking annually an assessment to assure that: (1) all elements of the Services' environment design and deployment are known to the City, and (2) it has implemented measures in accordance with industry best practices applicable to secure coding and secure IT architecture.
- (j) Provide and maintain secure intersystem communication paths that would ensure the confidentiality, integrity, and availability of the City's information.
- (k) Deploy and maintain IT system upgrades, patches and configurations conforming to current patch and/or release levels by not later than one (1) week after its date of release. Emergency security patches must be installed within 24 hours after its date of release.
- (l) Provide for the timely detection of, response to, and the reporting of security incidents, including on-going incident monitoring with logging.
- (m) Notify the City within one (1) hour of detecting a security incident that results in the unauthorized access to or the misuse of the City's confidential data and information.
- (n) Inform the City that any third party service provider(s) meet(s) all of the Requirements.
- (o) Perform security self-audits on a regular basis and not less frequently than on a quarterly basis, and provide the required summary reports of those self-audits to the ISM on the annual anniversary date or any other date agreed to by the Parties.
- (p) Accommodate, as practicable, and upon reasonable prior notice by the City, the City's performance of random site security audits at the Consultant's site(s), including the site(s) of a third-party service provider(s), as applicable. The scope of these audits will extend to the Consultant's and its third-party service provider(s)' awareness of security policies and practices, systems configurations, access authentication and authorization, and incident detection and response.
- (q) Cooperate with the City to ensure that to the extent required by applicable laws, rules and regulations, and the Confidential Information will be accessible only by the Consultant and any authorized third-party service provider's personnel.

- (r) Perform regular, reliable secured backups of all data needed to maximize the availability of the Services. Adequately encrypt the City of Palo Alto's data, during the operational process, hosted at rest, and the backup stage at the Vendors' environment (including Vendor's contracting organization's environment).
- (s) Maintain records relating to the Services for a period of three (3) years after the expiration or earlier termination of this Agreement and in a mutually agreeable storage medium. Within thirty (30) days after the effective date of expiration or earlier termination of this Agreement, all of those records relating to the performance of the Services shall be provided to the ISM.
- (t) Maintain the Confidential Information in accordance with applicable federal, state, and local data and information privacy laws, rules, and regulations.
- (u) Encrypt the Confidential Information before delivering the same by electronic mail to the City and or any authorized recipient.
- (v) Provide Network Layer IP filtering services to allow access only from the City of Palo Alto's IP address to the Vendor environment (primarily hosted for the City of Palo Alto).
- (w) Offer a robust disaster recovery and business continuity (DR-BCP) solutions to the City for the systems and services the Vendor provides to the City.
- (x) Provide and support Single Sign-on (SSO) and Multifactor Authentication (MFA) solutions for authentication and authorization services from the "City's environment to the Vendor's environment," and Vendor's environment to the Vendor's cloud services/hosted environment." The Vendor shall allow two employees of the City to have superuser and super-admin access to the Vendor's IT environment, and a cloud-hosted IT environment belongs to the City.
- (y) Unless otherwise addressed in the Agreement, shall not hold the City liable for any direct, indirect or punitive damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the City's IT environment, including, without limitation, IT infrastructure communications.
- (z) The Vendor must provide evidence of valid cyber liability insurance policy per the City's **EXHIBIT "D" INSURANCE REQUIREMENTS.**