

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND MACIAS, GINI & O'CONNELL, LLP**

This Agreement is entered into this 21<sup>st</sup> day of April, 2020, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Macias, Gini & O'Connell, LLP, hereinafter called "Contractor."

\* \* \*

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

Whereas, it is necessary and desirable that Contractor be retained for the purpose of post-audits, examination of various County Departments' financial statements and for other specified audit work.

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

**1. Exhibits and Attachments**

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

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

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

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

**3. Payments**

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed Seven Hundred Forty-Nine Thousand and Six Hundred and Fifty Dollars (\$749,650) for the initial term of the Agreement from April 21, 2020 through April 20, 2022, and an additional Three Hundred Ninety-One Thousand, Seven Hundred Dollars (\$391,700) if the County exercises its option to extend the Agreement by one year pursuant to § 4 of the Agreement. In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

#### **4. Term**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from April 21, 2020, through April 20, 2022. A one-year extension may be exercised at the sole option of the County, potentially extending the term through April 20, 2023. The option shall be exercisable by delivery of written notice of extension to Contractor not less than 30 days prior to the expiration of the then-existing term. In the event of such exercise, this Agreement shall be deemed to be extended for the additional period pursuant to all the terms and conditions set forth herein.

#### **5. Termination**

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

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

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

#### **6. Contract Materials**

At the end of this Agreement, or in the event of termination, except for Contractor's audit documentation as defined herein, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law and County may make and retain a copy of such Audit Documentation. "Audit Documentation" shall mean all records related to the Agreement, excluding financial records that report Contractor's professional hours and expenses, that are required by professional standards or Contractor's internal policies to support the services performed under the Agreement. Examples of Audit Documentation are audit programs, analysis, memoranda, letters of confirmation and representation, extract or copies of City documents, and schedules or commentaries prepared by or obtained by Contractor. Audit Documentation may be in paper form, electronic form, or other media.

**7. Relationship of Parties**

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

**8. Hold Harmless**

**a. General Hold Harmless**

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

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging;
- (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or
- (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

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

**9. Assignability and Subcontracting**

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

**10. Insurance**

**a. General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

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

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

**c. Liability Insurance**

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

- (a) Comprehensive General Liability... \$1,000,000
- (b) Motor Vehicle Liability Insurance... \$1,000,000
- (c) Professional Liability..... \$1,000,000

Cyber Liability .....\$5,000,000 per occurrence for Privacy and Network Security, \$1,000,000 per occurrence for Technology Errors and Omissions

To be carried at all times during the term of the Contract and for three years thereafter.

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

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

**11. Compliance With Laws**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and

Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

**f. History of Discrimination**

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

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

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

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

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

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

**h. Compliance with Living Wage Ordinance**

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

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

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time

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

**14. Retention of Records; Right to Monitor and Audit**

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

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

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

**15. Merger Clause; Amendments**

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

**16. Controlling Law; Venue**

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be

venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

**17. Notices**

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

In the case of County, to:

Name/Title: Roberto Manchia, County Chief Financial Officer  
Address: C/O County Manager's Office  
400 County Center, First Floor  
Redwood City, CA 94063  
Telephone: (650) 363-4123  
Facsimile: (650) 363-1916  
Email: rmanchia@smcgov.org

In the case of Contractor, to:

Name/Title: Annie Louie, Partner  
Address: Macias, Gini & O'Connell, LLP, 2121 N. California Blvd., Suite 750,  
Walnut Creek, CA 94596  
Telephone: (925) 395-2831  
Email: alouie@mgocpa.com

**18. Electronic Signature**

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

**19. Payment of Permits/Licenses**


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

\* \* \*



In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: **MACIAS, GINI & O'CONNELL, LLP**

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

April 14, 2020  
Date

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

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COUNTY OF SAN MATEO

By:  
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:  
Clerk of Said Board

**Exhibit A**

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

1. Contractor shall, conduct an audit of the financial statements of the County in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards issued by the Comptroller General of the United States. The audit shall conduct such tests of the accounting records and such other auditing procedures considered necessary under the circumstances in order that Contractor may render an opinion of the financial statements of the County for the fiscal year ending June 30.

Contractor is not required to audit the introductory section of the CAFR or the statistical section of the CAFR or the combining and individual fund financial statements and supporting schedules. However, Contractor is to provide an "in-relation-to" report on the combining and individual fund financial statements and supporting schedules based on the auditing procedures applied during the audit of the basic financial statements.

Contractor shall also be responsible for performing certain limited procedures involving supplementary information required by the Governmental Accounting Standards Board (GASB) and as mandated by generally accepted auditing standards.

The schedule for the 2020 fiscal year audit of the Comprehensive Annual Financial Report (CAFR) is provided below. A similar time schedule will be developed for audits of future fiscal years. Each of the following should be completed by Contractor no later than the dates indicated. Should the **County** require additional time up to 40 days, Contractor shall ensure that the necessary auditor resources remain available to complete the audit as close to the scheduled dates as possible. Subject to § 15 of the Agreement, to the extent that any state or federal tax deadlines are altered as a consequence of the COVID-19 pandemic that would affect the timing of Contractor’s deliverables for FY2020, the parties agree to confer on any necessary modifications to the schedule.

EVENT	NO LATER THAN DUE DATE
Detailed Audit Plan - Contractor shall provide County a list of all schedules to be prepared by the County.	Friday, May 8 <sup>th</sup>
Complete Interim Work	Friday, June 5 <sup>th</sup>
Complete Fieldwork	4 <sup>th</sup> Friday in September
Draft Reports - Contractor shall have drafts of the audit report and recommendations to management available for review by the Controller and County Manager.	1 <sup>st</sup> week in November

Entrance Meetings, Progress Reports and Exit Meetings. A similar time schedule will be developed for audits of future fiscal years. At a minimum, the following meetings should be held within the week of the dates indicated:

Entrance conference with all key finance department personnel and department heads of key offices or programs. The purpose of this meeting will be to discuss prior audit findings and the interim work to be performed. This meeting will also be used to establish overall liaison for the audit and to make arrangements for work space and other needs of Contractor.

Ongoing weekly status update.

Note: The purpose of this meeting will be to update progress of audit and to identify internal controls or other matters to address.

Exit meetings.

Note: The purpose of this meeting will be to summarize the results of the field work and to review significant findings.

#### Date Final CAFR is Due

The Controller shall prepare draft financial statements, based on the available information, notes and required supplementary schedules and statistical data by predetermined date. Contractor shall provide all recommendations, revisions and suggestions for the financial report to predetermined date.

The Controller will incorporate all recommendations, revisions, and suggestions into the draft report as expeditiously as possible. It is expected that this process should not exceed one week. During that period, Contractor should be available for meetings that may be necessary to discuss the audit reports. Once all issues are resolved, the final signed report shall be delivered to the Controller within 5 working days. It is anticipated that this process will be completed and the final report delivered no later than the first Friday in November.

Contractor shall deliver the report electronically and via hardcopies.

2. Contractor shall conduct a Single Audit in accordance with OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Contractor shall, in conjunction with the audit of the County's financial statements, conduct audits described in the following three (3) paragraphs and issue separate reports thereon:

a. The audits shall be performed in accordance with the audit requirements of the US Code of Federal Regulations Title 2, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.

- b. Contractor's examination of the County's financial statements shall be the financial type described in the American Institute of Certified Public Accountants (AICPA) Industry Audit Guide, *Audits of State and Local Governmental Units* and the *Governmental Accounting and Financial Reporting Standards* published by GASB. The examination shall be conducted in accordance with auditing standards generally accepted in the United States of America leading to the expression of an opinion in compliance with the regulations of the California State Board of Accountancy, Article 9 – Rules of Professional Conduct, Section 58.
  - c. The compliance examination shall enable Contractor to determine whether the organization has complied with the laws and regulations that may have a material effect on each major Federal assistance program. Contractor shall supply special reports and expressions as required by the cognizant agency and express an opinion on the County's compliance with all Federal assistance programs in accordance with Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Audits of secondary recipients are excluded from this agreement.
3. Upon completion of the audit of each fiscal year's financial statements (described in 1 and 2 above) Contractor shall issue to the Controller and Board of Supervisors of the County of San Mateo the following:
    - A report on the fair presentation of the financial statements in conformity with accounting principles generally accepted in the United States of America.

A report on compliance and internal control over financial reporting based on an audit of the financial statements.
    - A report on compliance with requirements that could have a direct and material effect on each major program and a report on and internal control over compliance and on the Schedule of Expenditures of Federal Awards based on a single audit of federal awards.

In the required reports on compliance and internal controls, Contractor shall communicate any control deficiency that is considered a material weakness or a significant deficiency found during the audit. A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency or a combination of control deficiencies such that there is more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected. A material weakness is a significant deficiency, or a combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected.

The reports on compliance and internal controls shall include all instances of noncompliance required to be reported under Government Auditing Standards.

Each year Contractor shall communicate in writing to management matters required to be communicated under the auditing standards described in this section. Such matters shall include but not be limited to control deficiencies identified during the audit that are considered significant deficiencies or material

weaknesses, including matters that were communicated in previous audits and have not yet been remediated.

Each year Contractor shall also communicate in writing to management matters related to internal control that Contractor believes to be of potential benefit to the entity, such as recommendations for operational or administrative efficiency, or for improving internal control.

The audits (described in 1 and 2 above) should also include a review to determine if the County is complying with the uniform accounting standards and procedures as specified by the State of California Code of Regulations.

4. For each fiscal year ending June 30, Contractor shall conduct an agreed-upon procedure and prepare separate reports on the County's compliance with the Investment Policy adopted by the Board of Supervisors and other relevant Government Code sections.
5. For each fiscal year ending June 30, Contractor shall review the calculations of the appropriations limits of the County pursuant to the provisions of Proposition 111 (Section 1.5 of Article XIII B of the California Constitution). The review will evaluate the accuracy of the computations and the adequacy of documentation. Contractor shall provide a separate report thereon.
6. District Attorney – Grants (3). Contractor shall audit the following three grants for the District Attorney's Office and issue separate reports thereon in accordance with grant requirements:

California Department of Insurance

- Automobile Insurance Fraud Grant - Sub-Org 25132
- Worker's Compensation Insurance Fraud Grant - Sub-Org 25131
- Disability and Healthcare Insurance Fraud Program - Sub-Org 25134

7. Contractor shall audit the JPFA and issue a report thereon. These financial statements will be blended into the County's financial statements.
8. Contractor shall perform a separate, stand-alone audit of the San Mateo Medical Center enterprise funds (inclusive of Clinics) and issue a report thereon. This audit shall be performed in accordance with auditing standards generally accepted in the United States of America and shall comply with the applicable AICPA audit guide(s).
9. Contractor shall audit the San Mateo County Local Transportation Fund and issue a report thereon.

#### **10. Auditing Standards to be Followed**

The audit shall be performed in accordance with generally accepting auditing standards as set forth by AICPA, the standards for financial audits set forth in the Government Accountability Office Government

Auditing Standards (2018), and the provisions of OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

### **11. Irregularities and illegal acts**

Contractor shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the County.

### **12. Required Communication to the County**

Contractor shall ensure that the County is informed of each of the following:

- a. Contractor's responsibility under auditing standards generally accepted in the United States of America and OMB 2 CFR 200.
- b. Significant accounting policies
- c. Audit adjustments
- d. Disagreements with management
- e. Consultations with other independent accountants
- f. Significant issues and concerns
- g. Difficulties in performing the audit

### **13. Special Considerations**

- a. The County will send its CAFR to the Government Finance Officers Association of the United States and Canada for review in the Certificate of Achievement for Excellence in Financial Reporting program. Contractor will be required to provide assistance, primarily in the form of a technical review and guidance, to the County to meet the requirements of that program. Should the Award not be received for any fiscal year covered by the contract, it shall be considered sufficient grounds for the County to terminate the contract.
- b. The Schedule of Expenditures of Federal Awards and related auditor's report, as well as the reports on compliance and internal controls are not to be included in the CAFR, but are to be issued separately.

### **14. Working Paper Retention and Access to Working Papers**

All working papers and reports must be retained, at Contractor's expense, for a minimum of seven (7) years, unless Contractor is notified in writing by the County of the need to extend the retention period. Contractor will be required to make working papers available, upon request, to the following parties or their designees:

- County Management
- Government Accountability Office
- Parties designated by the federal or state governments or by the County as part of an audit quality review process.
- Auditor of entities of which the County is a sub-recipient of grant funds

In addition, Contractor shall respond to the reasonable inquiries of successor auditor and allow successor auditor to review working papers relating to matters of continuing accounting significance.

**15. Due Dates for reports listed in this section.**

<b>Deliverable*</b>	<b>Due Date</b>
* All reports require electronic copy and hard copies	
• <b>JPFA Report</b>	3 <sup>rd</sup> Friday in September
• <b>Comprehensive Annual Financial Report (CAFR)</b>	1 <sup>st</sup> Friday in November
• <b>Report on Appropriation Limit</b>	1 <sup>st</sup> Friday in October
• <b>Medical Center Enterprise Funds Audit Report</b>	3 <sup>rd</sup> Friday in October
• <b>Investment Policy Report</b>	September 30
• <b>All District Attorney's Reports</b>	October 31
• <b>Single Audit Reports</b>	March 25
• <b>Local Transportation Fund</b>	November 30
• <b>Management Letter</b>	November 1

## Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

### **Fee Schedule for Auditor Service**

The terms of this Agreement shall cover audit services relating to FY 2020 and FY 2021 and shall not exceed \$749,650 for those years. Should the County exercise its option to extend the term of the Agreement by one additional year pursuant to § 4 of this Agreement, the amount for that year shall not exceed \$391,700.

<b>Deliverable Report</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>
Comprehensive Annual Financial Report	\$164,950	\$169,900	\$175,000
Single Audit Report - up to six (6) major programs	\$80,100	\$82,500	\$85,000
Investment Policy Agreed Upon Procedures Report	\$8,900	\$9,150	\$9,400
Appropriations Limit Agreed Upon Procedures Report	\$1,550	\$1,600	\$1,650
Three (3) District Attorney's Grants Audit Reports	\$12,100	\$12,450	\$12,800
Joint Powers Financing Authority Financial Statement Report	\$21,600	\$22,250	\$22,900
San Mateo Medical Center Fund Financial Statement Report	\$76,800	\$79,100	\$81,450
Local Transportation Fund Report	\$3,300	\$3,400	\$3,500
<b>Grand Total</b>	<b>\$369,300</b>	<b>\$380,350</b>	<b>\$391,700</b>



## Attachment H

### Health Insurance Portability and Accountability Act (HIPAA)

#### Business Associate Requirements

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##### DEFINITIONS

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.
- b. **Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.
- c. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (E PHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- f. **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- g. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- h. **Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 160.103 and is limited to the information created or received by Business Associate from or on behalf of County.
- i. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.
- j. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- k. **Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI *is presumed* to be a breach, unless it can be demonstrated there is a low probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:

1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
  2. Identity of the unauthorized person or to whom impermissible disclosure was made;
  3. Whether PHI was actually viewed or only the opportunity to do so existed;
  4. The extent to which the risk has been mitigated.
- l. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
- m. **Unsecured PHI.** "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.
- n. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.

#### **OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE**

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.
- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.

- j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the County at the request of County or the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- l. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.
- n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- p. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.
- q. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

#### **PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE**

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

#### **OBLIGATIONS OF COUNTY**

- a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

- c. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

#### **PERMISSIBLE REQUESTS BY COUNTY**

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if so requested by County, unless the Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

#### **DUTIES UPON TERMINATION OF AGREEMENT**

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protection Health Information.

#### **MISCELLANEOUS**

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.

## ATTACHMENT I

### Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

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The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

**Name of 504 Person:** Penny Auterson, Human Resources Director

**Name of Contractor(s):** Macias Gini & O'Connell LLP

**Street Address or P.O. Box:** 2121 N. California Blvd, Suite 750

**City, State, Zip Code:** Walnut Creek, CA 94596

**I certify that the above information is complete and correct to the best of my knowledge**

**Signature:**



**Title of Authorized Official:** Partner

**Date:** April 14, 2020

\*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."