

COUNTY OF SANTA CLARA, CALIFORNIA



REQUEST FOR PROPOSAL # 968

FOR

THERAPEUTIC SUPPORT SURFACES & BED RENTALS

July 24, 2009

PROPOSALS DUE:

August 27, 2009 by 3:00 p.m. PST

PROCUREMENT DEPARTMENT

2310 NORTH FIRST STREET, SUITE 201

SAN JOSE, CA 95131-1040

CONTACT: JOE GRIMES

408-491-7402

JOE.GRIMES@PROC.SCCGOV.ORG

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EXHIBIT B-1 ATTACHMENT (electronic): Pricing: To Be Completed By Vendor

MS Excel spread sheet, electronic format.

Provide as part of the electronic copy of the entire proposal in CD-ROM format.

I. INTRODUCTION

A. INVITATION

The County of Santa Clara (hereafter, County) is requesting proposals from qualified vendors to provide the rental of therapeutic support surfaces and bariatric beds to meet the need for patients requiring pressure relief and to meet the needs of bariatric patients for Santa Clara County (County), San Jose, California, for its Hospital (Santa Clara Valley Medical Center), and other programs. The proposal should include delivery, training, service support and reporting. The County intends that this RFP will result in a single source award but reserves the right to award multiple source if it is to the best advantage of the County. The initial contract shall be for a term of three (3) years with two (2) one-year renewals.

The hospital-owned beds upon which the vendor's therapeutic support surfaces would be placed are older Hill-Rom bed frames: Centra, Care Assist, Century CC, and Century Model 840. The recommended width of the mattress for these beds is between 34" - 36". The equipment (support surfaces/mattresses) provided by the vendor are required to fit appropriately onto these bed frames.

The proposed equipment shall provide the functionality of the existing equipment or equal. The list of features that represent the minimum requirement is displayed in Appendix F, Specifications Requirements.

A summary listing of the items required for the rental program for our 524 bed Hospital is as follows:

Therapeutic Support Surfaces:	Bariatric Beds:
Mattress, Low Air Loss	Bed, Low Air Loss
Mattress, Low Air Loss / Pulmonary Therapy	Bed, Low Air Loss / Pulmonary Therapy
Bed, Air Fluidized Therapy	Bed (foam mattress)

Refer to Exhibit B-1 for a complete listing of items, including the utilization breakdown.

B. BACKGROUND

1. Santa Clara Valley Health and Hospital System (SCVHHS)

The County of Santa Clara operates Santa Clara Valley Health and Hospital System (SCVHHS) and Valley Health Plan (VHP). SCVHHS is comprised of an acute care public teaching hospital - Santa Clara Valley Medical Center (VMC) - as well as Ambulatory and Community Health Services (ACHS)

outpatient services, Custody, Public Health, Mental Health and Drug and Alcohol Services.

2. Santa Clara Valley Medical Center (VMC)

VMC is affiliated with Stanford University Medical School and provides a full range of inpatient, emergency, rehabilitation, neonatal, intensive care, high-risk maternity care, psychiatry, pediatric intensive care, and burn intensive care services. The Ambulatory outpatient services include both primary and specialty clinics located not only at VMC, but also at satellite facilities located throughout the County.

3. Current Utilization of Therapeutic Support Surfaces & Bed Rentals at VMC

To meet the need for patients requiring pressure relief, the Sterile Processing department rents the appropriate therapeutic support surface or bed from our existing vendor. The total number of units rented (surfaces/mattresses and beds) is 592 annually, which represents 6,287 billing days. Utilization is coordinated by the Wound/Skin Care Nurse Specialist.

To meet the needs of bariatric patients, the Sterile Processing department rents the appropriate bed from one of our two existing vendors. The total number of units (beds) rented is 310 annually which represents 2,050 billing days. Utilization is coordinated by the Wound/Skin Care Nurse Specialist.

C. PROCUREMENT OFFICER/POINT OF CONTACT

The County has designated a Procurement Officer who is responsible for the conduct of this procurement whose name, address, and telephone number are listed below:

Joe Grimes, Senior Management Analyst
Procurement Department
County of Santa Clara
2310 N. First Street, Suite 201
San Jose, CA 95131-1040

Telephone: 408-491-7402
E-mail: Joe.Grimes@proc.sccgov.org
Fax Number: (408) 938-2383

All deliveries via express carrier should be addressed as follows:

Joe Grimes, Senior Management Analyst
Procurement Dept.
County of Santa Clara
2310 N. First St., Suite 201
San Jose, CA 95131-1040

Any inquiries or request regarding this procurement should be submitted to the Procurement Officer in writing. Offerors may contact ONLY the Procurement Officer regarding the procurement. Other County employees do not have the authority to respond on behalf of the County.

II. CONDITIONS GOVERNING THE PROCUREMENT

This RFP contains the anticipated schedule for the procurement and describes the procurement events as well as conditions governing the procurement.

A. SEQUENCE OF EVENTS AND CONTACT INFORMATION

The Procurement Officer will make every effort to adhere to the following anticipated schedule:

	Action	Date
1.	Issue of RFP	July 24, 2009
2.	Deadline To Submit Written Questions	August 7, 2009 (by 5:00pm Pacific Time)
3.	Response to Written Questions/RFP Addendum	August 14, 2009 (by 5:00pm Pacific Time)
4.	Submission of Proposals	August 27, 2009 (by 3:00pm Pacific Time)
5.	Proposal Evaluation	August 31 – October 7 2009
6.	Selection of Short List	October 8, 2009
7.	Oral Presentations of Short List	October 13, 2009
8.	Equipment Demos of Short List	October 19 – October 30, 2009
9.	Selection of Finalist(s) for Negotiation	November 5, 2009
10.	Final Negotiations, BAFO, finalize contract, and award contract	November 9 – December 9 2009
11.	Contract Commences	December 16, 2009

B. EXPLANATION OF EVENTS

1. ISSUE OF RFP

This RFP is being issued by the County Procurement Department. Copies of this RFP including supporting documents may be obtained from BidSYNC's web site at www.bidsync.com.

2. PRE-PROPOSAL CONFERENCE

There is no pre-proposal conference for this RFP.

3. DEADLINE TO SUBMIT ADDITIONAL WRITTEN QUESTIONS

Potential offerors may submit written questions to this RFP until 5:00 P.M. PST as indicated in Paragraph II.A. The Procurement Officer will not respond to questions submitted in any other manner or format.

Additional written requests must be received by the Procurement Officer no later than three (3) days after the answers are provided as an addendum to the RFP which will be posted on the bid management site www.bidsync.com.

4. RESPONSE TO WRITTEN QUESTIONS/RFP AMENDMENTS

Written responses to written questions and any changes to the RFP will be will issued as an addendum will be posted on www.bidsync.com. The County reserves the right to post addenda until the RFP closing date and time.

5. SUBMISSION OF PROPOSAL

PROPOSALS MUST BE RECEIVED NO LATER THAN THE DEADLINE SPECIFIED IN PARAGRAPH A, OF SECTION II. Proposals are to be received at the time and place listed below. All received proposals will be time stamped.

All deliveries via express carrier should be addressed as follows:

Joe Grimes, Senior Management Analyst - RFP # 908
Procurement Department
County of Santa Clara
2310 N. First Street, Suite 201
San Jose, CA 95131-1040

Proposals must be sealed and labeled on the outside of the package to clearly indicate that they are in response to the RFP # and title as referenced on the cover page.

C. GENERAL

1. INCURRING COST

This RFP does not commit the County to award, nor does it commit the County to pay any cost incurred in the submission of the Proposal, or in

making necessary studies or designs for the preparation thereof, nor procure or contract for services or supplies. Further, no reimbursable cost may be incurred in anticipation of a contract award.

2. CLAIMS AGAINST THE COUNTY

Neither your organization nor any of your representatives shall have any claims whatsoever against the County or any of its respective officials, agents, or employees arising out of or relating to this RFP or these procedures (other than those arising under a definitive Agreement with your organization in accordance with the terms thereof).

3. GUARANTEE OF PROPOSAL

Responses to this RFP, including proposal prices, will be considered firm and irrevocable for one-hundred and eighty (180) days after the due date for receipt of proposals or one-hundred eighty (180) days after receipt of a best and final offer, if one is submitted.

4. BASIS FOR PROPOSAL

Only information supplied by the County in writing or in this RFP should be used as the basis for the preparation of offeror proposals.

5. FORM OF PROPOSALS

No oral, telephone, facsimile or electronic proposals will be accepted.

6. AMENDED PROPOSAL

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The County personnel will not merge, collate, or assemble proposal materials.

7. WITHDRAWAL OF PROPOSAL

Offerors will be allowed to withdraw their proposals at any time prior to the deadline for receipt of proposals. The offeror must submit a written

withdrawal request signed by the offeror's duly authorized representative addressed to the Director of Procurement.

8. LATE RESPONSES

All proposals submitted in response to this RFP must be delivered in person or received via courier or mail no later than the RFP due date and time. The Procurement Department time and date stamp will be the basis of determining receipt of proposal.

9. NO PUBLIC PROPOSAL OPENING

There will be no public opening for this RFP.

10. CALIFORNIA PUBLIC RECORDS ACT (CPRA)

All proposals become the property of the County, which is a public agency subject to the disclosure requirements of the Public Records Act (PRA, California Government Code section 6250 and following). If proprietary information is contained in or attached to the written proposal, and offeror claims that it falls within one or more PRA exemptions, the proposal must clearly identify the "proprietary" or "confidential" information. In the event of a PRA request for such information, the County will ask offeror to provide a legal basis for exempting it under the PRA. If the offeror provides an adequate legal basis to keep the information confidential, the County will request the offeror agree in writing to defend and indemnify the County in any litigation that may result from denial of a PRA request. Unless offeror responds timely and agrees to do so, the County will disclose the information under the PRA.

11. CONFIDENTIALITY

All data and information gathered by the offeror and its agents in this RFP process, including reports, recommendations, specifications and data, shall be treated by the offeror and its agents as confidential. The offeror and its agents shall not disclose or communicate this information to a third party or use it in advertising, publicity, propaganda, or in another job or jobs, unless written consent is obtained from the County. Generally,

each proposal and all documentation, including financial information, submitted by an offeror to the County is confidential until a contract is awarded, when such documents become public record under state and local law, unless exempted under CPRA.

12. ELECTRONIC MAIL ADDRESS

Most of the communication regarding this procurement will be conducted by electronic mail (e-mail). Potential offerors agree to provide the Procurement Officer with a valid e-mail address to receive this correspondence.

13. USE OF ELECTRONIC VERSIONS OF THE RFP

This RFP is being made available by electronic means. If accepted by such means, the offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the Procurement Department the version maintained by the Procurement Department must govern.

14. COUNTY RIGHTS

The County reserves the right to do the following at any time:

- a. Reject any or all proposal(s), without indicating any reason for such rejection.
- b. Waive or correct any minor or inadvertent defect, irregularity or technical error in a proposal or the RFP process, or as part of any subsequent contract negotiation.
- c. Request that offerors supplement or modify all or certain aspects of their proposals or other documents or materials submitted.
- d. Terminate the RFP, and at its option, issue a new RFP.
- e. Procure any equipment or services specified in this RFP by other means.
- f. Modify the selection process, the specifications or requirements for

materials or services, or the contents or format of the proposals.

- g. Extend a deadline specified in this RFP, including deadlines for accepting proposals.
- h. Negotiate with any or none of the offerors.
- i. Modify in the final agreement any terms and/or conditions described in this RFP.
- j. Terminate failed negotiations with an offeror without liability, and negotiate with other offerors.
- k. Disqualify any offeror on the basis of a real or apparent conflict of interest, or evidence of collusion that is disclosed by the proposal or other data available to the County.
- l. Eliminate, reject or disqualify a proposal of any offeror who is not a responsible offeror or fails to submit a responsive offer as determined solely by the County.
- m. To accept all or a portion of an offeror's proposal.

III. RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal.

B. NUMBER OF COPIES

Offerors must provide one (1) original and six (6) identical copies of their proposal to the location specified on or before the closing date and time for receipt of proposals. The original must be stamped "original" and contain original signatures on the necessary forms.

All of the original binders must be stamped "original". Original Binder must contain all of the required signatures from the Offeror. The remaining sets should be copies of the originals.

Offerors must also provide one (1) electronic copies of their proposal in CD-ROM format, prepared using Microsoft Office 2003, Word, Excel and Project. The CD shall be included in the original Binder.

C. PROPOSAL FORMAT

All proposals shall be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section. Hard copies should utilize both sides of the paper where practical.

1. LETTER OF TRANSMITTAL

Each proposal received must include a letter of transmittal. The letter of transmittal **MUST**:

- a. Identify the submitting organization;
- b. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the organization to contractually obligate the organization;

- c. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
- d. Identify the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
- e. Be signed by the person authorized to contractually obligate the organization
- f. Acknowledge receipt of any and all addenda to this RFP; and identify all sections of the proposal that the Offeror claims contain “proprietary” or “confidential” information.

2. PROPOSAL ORGANIZATION

The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated:

- Tab 1 - Letter of Transmittal
- Tab 2 - Table of Contents
- Tab 3 - Executive Summary
- Tab 4 - Offeror Experience/Information
- Tab 5 - Past Performance References
- Tab 6 - Specifications Requirements Narrative and Response Form -Appendix F
- Tab 7 - Value Added Services
- Tab 8 - Indemnity & Insurance Requirements – Appendix D
- Tab 9 - Non-Collusion Declaration – Appendix C
- Tab 10 - HIPAA – Appendix E
- Tab 11 – Declaration of Local Business – Appendix G
- Tab 12 - Response to County Terms & Conditions – Appendix A
- Tab 13 - Offeror’s Additional Terms and Conditions
- Tab 14 - Financial Stability/Offeror’s Financial Information
- Tab 15 - Offeror’s Proposal Cost Response Form – Appendix B
- Tab 16 – Pricing To Be Completed By Vendor – Exhibit B-1
- Tab 17 - Magnetic Media (CDs)

Appendix B and Exhibit B-1 (Offeror’s Proposal Cost Response Form and Pricing To Be Completed By Vendor): the original forms must be submitted in a sealed envelope marked “Original Appendix B and Exhibit B-1 .” In addition, submit six (6) copies in a separate sealed envelope marked “Copies of Appendix B and Exhibit B-1.”

3. PROPOSAL PREPARATION INSTRUCTIONS

Within each section of their proposal, Offerors should address the items in the order in which they appear in this RFP. All forms provided in the RFP shall be thoroughly completed and included in the appropriate section of the proposal.

The proposal summary may be included by Offerors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal.

IV. REQUIREMENTS AND OFFEROR SUBMITTALS

This section contains requirements and relevant information Offerors should use for the preparation of their proposals. Offerors should thoroughly respond to each requirement.

A. OFFEROR'S CORPORATE INFORMATION

1. EXECUTIVE SUMMARY

Include an executive summary which should be a one or two page summary intended to provide the Evaluation Committee with an overview of the significant business features of the proposal.

2. OFFEROR EXPERIENCE/INFORMATION

The Offeror shall include in their proposal a statement of relevant experience. The Offeror should thoroughly describe, in the form of a narrative, its experience and success as well as the experience and success of subcontractors, if applicable in providing and/or supporting the proposed program.

In addition, Offerors are required to provide the following information:

- a. Offerors shall provide the company name, business address, including headquarters, all local offices, co-location locations (city/state), and telephone numbers.
- b. Offerors shall provide the length of time they have been providing rental programs specified in this RFP. State years of rental program experience.
- c. Offerors shall indicate any offices or facilities located within the County of Santa Clara that substantially and directly enhances the Offeror's ability to perform the proposed contract.
- d. Offerors shall provide a description of the offeror's organization, including names of principals, number of employees, client base, areas of specialization and expertise, and any other information that will assist the Evaluation Committee in formulating an opinion about the stability and strength of the organization.

- e. Offerors shall provide the name of the jurisdiction in which the Offeror is organized and the date of such organization.
- f. Offerors shall provide specifics on the number of certified local (stationed in greater Bay Area) technicians.
- g. Offerors shall provide a description of the depth of their experience with initiating and supporting the proposed program.
- h. Offerors shall provide a discussion of the type and duration of the business relationship with the manufacturer(s) whose products are included in the proposed program.
- i. Offeror must identify the location and facility that would service the proposed program. Also include the number of technicians and the level of training and years of experience per technician.
- j. Provide a complete disclosure if Offeror, its subsidiaries, parent, other corporate affiliates, or subcontractors have defaulted in its performance on a contract during the past five years which has led the other party to terminate the contract. If so, identify the parties involved and the circumstances of the default or termination.
- k. A list of any lawsuits filed against the Offeror, its subsidiaries, parent, other corporate affiliates, or subcontractors in the past five years and the outcome of those lawsuits. Identify the parties involved and circumstances. Also, describe any civil or criminal litigation or investigation pending.

3. FINANCIAL STABILITY/OFFEROR FINANCIAL INFORMATION

Offeror shall submit copies of the most recent years independently audited financial statements, as well as those for the preceding three years, if they exist. The submission shall include the audit opinion, balance sheet, income statement, retained earnings, cash flows, and notes to the financial statements. If independently audited financial statements do not exist for the Offeror, the Offeror shall state the reason and, instead, submit sufficient information such as the latest Dun and Bradstreet report to enable the Evaluation Committee to determine the financial stability of the Offeror. The

Procurement Officer may request and the Offeror shall supply any additional financial information requested in a timely manner.

4. PAST PERFORMANCE (REFERENCES)

The Offeror's proposal shall include three different external references from clients who have been provided the program in the last three years, who are willing to validate the Offeror's past performance on similar programs of size and scope. References should be provided from clients who have been provided the same program being currently offered to Santa Clara County. The minimum information that shall be provided for each client reference follows:

1. Name of the contact person;
2. Name of the company or governmental entity;
3. Address of the contact person;
4. Telephone number of contact person;
5. Email address of the contact person;
6. A description of the program provided and dates the program was provided;

B. SPECIFICATION REQUIREMENTS

The County is seeking a contractor to provide a rental program for therapeutic support surfaces and bariatric beds.

The specification requirements are to be defined in Appendix F to the RFP.

Offerors must submit a thorough narrative supported by references to the technical documentation in response to questions asked in Appendix F.

C. VALUE ADDED SERVICES (OPTIONAL)

Offerors are encouraged but not required to propose any optional value added services they believe would help the using agency to effectively use the proposed items. Information provided in this section must be directly relevant to the item listing and not exceed two (2) pages in length.

D. COST PROPOSAL (APPENDIX B)

Offerors shall complete the Proposal Cost Response Form and submit it with their proposal.

The proposed cost shall include:

- All Services, including delivery, pick-up, and so forth.
- Price Protection period.
- Itemized listing of optional cost elements, if any.
- Differentiation of costs by daily fee, etc.
- The County is a member of the University HealthSystem Consortium (UHC) and is eligible to access Novation contracts at the option of the County. If vendor is incorporating a Novation contract in the proposal submission, this should be noted.

E. OTHER SUBMITTALS

1. INSURANCE REQUIREMENTS (APPENDIX D)

Offerors shall provide a certificate(s) of insurance or a copy insurance declaration page(s) with their proposals as written evidence of their ability to meet the insurance certificate and other applicable County insurance requirements in accordance with the provisions listed in the RFP. In addition, Offerors shall provide a letter from an insurance agent or other appropriate insuring authority documenting their willingness and ability to endorse their insurance policies making the County an additional insured.

2. NON-COLLUSION DECLARATION (APPENDIX C)

Offerors shall complete and submit with their proposal the Non-Collusion Declaration with their proposals.

3. HIPAA (APPENDIX E)

Business Associates Agreement (HIPAA) - Offeror must complete and submit with proposal.

4. DECLARATION OF LOCAL BUSINESS (APPENDIX G)

The Offeror has the option of completing the Declaration of Local Business and submitting with the proposal.

5. RESPONSE TO AGENCY TERMS AND CONDITIONS (APPENDIX A)

Should an Offeror object to any of the County's terms and conditions, as contained in this appendix, the Offeror must propose specific alternative language and indicate the reason for the objection. The County may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions are not acceptable to the County. Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

6. OFFEROR'S ADDITIONAL TERMS AND CONDITIONS

The Offeror must submit with their proposal any additional terms and conditions that they expect to have included in the contract negotiated with the County. Offerors must provide specific proposed wording and a brief discussion of the purpose and impact, if any.

V. EVALUATION

A. EVALUATION FACTORS

The **Evaluation Criteria** listed below will be utilized in the evaluation of the Offeror's written proposals, presentations and demonstrations accordingly. The expectation is that those proposals in the competitive range may be considered for contract award. The proposal should give clear, concise information in sufficient detail to allow an evaluation based on the following criteria. An Offeror must be acceptable in all criteria for a contract to be awarded to that Offeror whose proposal provides the best value to the County.

- a. Adherence to the RFP;
- b. Corporate strength, experience, financial strength, and reputation of offeror;
- c. Ability to meet the business, functional and technical requirements;
- d. Methodology and approach for the rental program including service;
- e. Local Preference;
- f. Cost.

The overall cost to the County will be considered and the degree of the importance of price will increase with the degree of equality of the proposals in relation to the other factors on which the selection is based upon.

LOCAL BUSINESS PREFERENCE:

In accordance with applicable sections of Board Policy, Section 5.3.13, in the formal solicitation of goods or services, the County of Santa Clara shall give responsive and responsible Local Businesses the preference described below.

"Local Business" means a lawful business with a physical address and meaningful "production capability" located within the boundary of the County of Santa Clara.

The term "production capability" means sales, marketing, manufacturing, servicing, or research and development capability that substantially and directly enhances the firm's or bidder's ability to perform the proposed contract. Post Office box numbers and/or

residential addresses may not be used as the sole bases for establishing status as a "Local Business."

In the procurement of goods or services in which best value is the determining basis for award of the contract, five percent (5%) of the total points awardable will be added to the Local Business score.

When a contract for goods or services, as defined in this policy, is presented to the Board of Supervisors for approval, the accompanying transmittal letter shall include a statement as to whether the proposed vendor is a Local Business, and whether the application of the local preference policy was a decisive factor in the award of the proposed contract.

This Local Business preference shall not apply to the following:

1. Public works contracts,
2. Where such a preference is precluded by local, state or federal law or regulation,
3. Contracts funded in whole or in part by a donation or gift to the County where the special conditions attached to the donation or gift prohibits or conflicts with this preference policy. The donation or gift must be approved or accepted by the Board of Supervisors in accordance with County policy, or
4. Contracts exempt from solicitation requirements under an emergency condition in accordance with board policy, state law and/or the County of Santa Clara Ordinance Code (Section A34-82).

In order to be considered for Local Preference, bidder must complete and submit Declaration of Local Business with RFP response.

APPENDIX A
SAMPLE AGREEMENT BY AND BETWEEN
THE COUNTY OF SANTA CLARA AND “CONTRACTOR”

Note: The exhibits and sections listed below may be modified to reflect the actual products purchased and services provided.

This Agreement is entered into and is effective _____ by and between the County of Santa Clara, California (hereafter referred to as “County”) and _____ (hereafter referred to as “Contractor”).

It is mutually agreed between the parties:

1. EXHIBITS

The following Exhibits are attached hereto and incorporated herein by reference:

- A. Exhibit A – Price Summary and Compensation Plan
- B. Exhibit B – Insurance Requirements
- C. Exhibit C – HIPAA Requirements
- D. (Others to be determined.)

2. NON-EXCLUSIVE AGREEMENT

This Agreement does not establish an exclusive contract between the County and the Contractor. The County expressly reserves rights to, without limitation, the following: the right to utilize others to provide products, support and services; the right to request proposals from others with or without requesting proposals from the Contractor; and the unrestricted right to bid any such product, support or service.

3. PRODUCTS

Contractor agrees to provide the County all goods on terms set forth in this Agreement (including Exhibits), as well as all necessary equipment and resources. However, this Agreement does not provide authority to ship goods. That authority shall be established by contract release purchase orders placed by the County and sent to Contractor throughout the term of the Agreement. Each and every contract release purchase order shall incorporate all terms of this Agreement and this Agreement shall apply to same.

ANY ADDITIONAL OR DIFFERENT TERMS OR QUALIFICATIONS SENT BY CONTRACTOR, INCLUDING, WITHOUT LIMITATION, IN MAILINGS, ATTACHED TO INVOICES OR WITH ANY GOODS SHIPPED, SHALL NOT BECOME PART OF THE CONTRACT BETWEEN THE PARTIES. COUNTY'S ACCEPTANCE OF CONTRACTOR'S OFFER IS EXPRESSLY MADE CONDITIONAL ON THIS STATEMENT.

Contractor shall provide to the County, all documentation and manuals relevant to the goods to be supplied, at no additional cost. Such documentation and shall be delivered either in advance of the delivery of goods or concurrently with the delivery of goods.

Employees and agents of Contractor, shall, while on the premises of the County, comply with all rules and regulations of the premises, including, but not limited to, security requirements.

If required, Contractor shall be responsible for installation, training and knowledge transfer activities in relation to the goods being supplied.

All equipment shall be delivered to a County site specified in the contract release purchase order, or if not so specified therein, in the Statement of Work/Specifications.

Contractor holds itself out as an expert in the subject matter of the Agreement. Contractor represents itself as being possessed of greater knowledge and skill in this area than the average person. Accordingly, Contractor is under a duty to exercise a skill greater than that of an ordinary person, and the manner in which performance is rendered will be evaluated in light of the Contractor's superior skill. Contractor shall provide equipment and perform work in a professional manner consistent, at minimum, with industry standards.

Contractor represents that all prices, warranties, benefits and other terms being provided hereunder are fair, reasonable and commensurate with the terms otherwise being offered by Contractor to its current customers ordering comparable goods and services.

County does not guarantee any minimum orders.

This Agreement shall not be effective or binding unless approved in writing by the County Director of Procurement, or authorized designee, as evidenced by their signature as set forth in this Agreement.

Furthermore, at any time during the term of the Agreement, the Agreement is subject to Termination in accordance with this Agreement. The County may contract with Contractor for recurring services beyond the contract term.

4. NECESSARY ACTS AND FURTHER ASSURANCES

The Contractor shall at its own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

5. COUNTING DAYS

Days are to be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it is to be excluded.

6. PRICING

Unless otherwise stated, prices shall be fixed for the term of the contract, including all extensions. If any product listed in this Agreement is discontinued or upgraded prior to delivery, Contractor shall extend the same pricing towards a comparable replacement which is functionally equivalent or an upgraded version.

Exhibit A of this Agreement is the basis for pricing and compensation throughout the term of the Agreement.

Notwithstanding the above, if at any time during the term of the Agreement the Contractor offers special, promotional or reduced pricing when compared with the price paid by the County, County shall benefit from that pricing, and that pricing shall apply to the County at the same time that is offered to other entities. Contractor is required, on an ongoing basis, to inform the County of any such special, promotional or reduced pricing.

7. MODIFICATION

This Agreement or any contract release purchase order may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement contract release purchase order will be binding on County unless it is in writing and signed by County's Procurement Director.

8. TIME OF THE ESSENCE

Time is of the essence in the delivery of goods by Contractor under this Agreement and any contract release purchase order. In the event that the Contractor fails to deliver goods and/or services on time, the Contractor shall be liable for any costs incurred by the County because of Contractor's delay. For instance, County may purchase or obtain the goods and/or services elsewhere and the Contractor shall be liable for the difference between the price in the Agreement and the cost to the County; or County may terminate on grounds of material and Contractor shall be liable for County's damages.

The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under any contract with the County.

The rights and remedies of County provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law. The acceptance by County of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the rights or requirements for the complete and timely performance of any obligation remaining to be performed by the Contractor, or of any other claim, right or remedy of the County.

9. HAZARDOUS SUBSTANCES

If any product being offered, delivered or supplied to the County is listed in the Hazardous Substances List of the Regulations of the Director of Industrial Relations with the California Occupational Safety and Health Standards

Board, or if the product presents a physical or health hazard as defined in the California Code of Regulations, General Industry Safety Order, Section 5194 (T8CCR), Hazard Communication, the Contractor must include a Material Safety Data Sheet (MSDS) with delivery, or shipment. Each MSDS must reference the contract/purchase order number, and identify the "Ship To Address". All shipments and containers must comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the hazardous substance, name and address of manufacturer, and appropriate hazard warning regarding potential physical safety and health hazard.

10. SHIPPING AND RISK OF LOSS

Goods shall be packaged, marked and otherwise prepared by Contractor in suitable containers in accordance with sound commercial practices. Contractor shall include an itemized packing list with each shipment and with each individual box or package shipped to the County. The packing list shall contain, without limitation, the applicable contract release purchase order number.

Unless otherwise specified in writing, all shipments by Contractor to County will be F.O.B. point of destination. Freight or handling charges are not billable unless such charges are referenced on the order. Transportation receipts, if required by contract release purchase order, must accompany invoice. Regardless of F.O.B. point, Contractor agrees to bear all risks of loss, injury, or destruction to goods and materials ordered herein which occur prior to delivery at County's destination; and such loss, injury or destruction shall not release Contractor from any obligation hereunder.

Any shipments returned to the Contractor shall be delivered as F.O.B. shipping point.

11. INSPECTION AND RELATED RIGHTS

All goods and services are subject to inspection, testing, approval and acceptance by the County. Inspection shall be made within 60 days or a reasonable time after delivery, whichever period is longer. If the goods, services, or the tender of delivery fail in any respect to conform to the contract, the County may reject the entire tender, accept the entire tender, or, if the deliverables are commercially divisible, may, at its option, accept any commercial unit or units and reject the rest.

Contractor shall be responsible to reclaim and remove any rejected goods or items at its own expense. Should Contractor fail to reclaim or remove any rejected goods or items within a reasonable time, County shall, at its option dispose of such goods or items and require reimbursement from Contractor for any costs or expenses incurred.

In the event that the Contractor's goods are not accepted by County, the Contractor shall be liable for any costs incurred by the County because of such failure by Contractor. For instance, County may purchase or obtain the goods elsewhere and the Contractor shall be liable for the difference between the price in the Agreement and the cost to the County, and any other costs incurred; or County may terminate for cause on grounds of material breach and Contractor shall be liable for County's damages.

The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under any contract with the County.

The rights and remedies of County provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law. The acceptance by County of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach nor constitute a waiver of the rights or requirements for the complete and timely performance of any obligation remaining to be performed by the Contractor, or of any other claim, right or remedy of the County.

12. ADJUSTMENT BY COUNTY

The County reserves the right to waive a variation in specification of goods or services supplied by the Contractor. Contractor may request an equitable adjustment of payments to be made by County if County requires a change in the goods or services to be delivered. Any claim by the Contractor for resulting adjustment of payment must be asserted within 30 days from the date of receipt by the Contractor of the notification of change required by County; provided however, that the Procurement Director, if he/she decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment made for goods and services supplied by Contractor. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Purchasing Director shall have the right to prescribe the manner of disposition of such property. Nothing in this clause shall excuse performance by Contractor.

13. INVOICING

Contractor shall invoice according to the pricing exhibit of this Agreement. Invoices shall be sent to the County customer or department referenced in the individual contract release purchase order. Invoices for goods or services not specifically listed in the Agreement will not be approved for payment.

Invoices shall include: Contractor's complete name and remit-to address; invoice date, invoice number, and payment term; County contract number; pricing per the Agreement; applicable taxes; and total cost.

Contractor and County shall make reasonable efforts to resolve all invoicing disputes within seven (7) days.

14. AVAILABILITY OF FUNDING

The County's obligation for payment of any contract beyond the current fiscal year end is contingent upon the availability of funding and upon appropriation for payment to the Contractor. No legal liability on the part of the County shall arise for payment beyond June 30 of the calendar year unless funds are made available for such performance.

15. PAYMENT

Payment shall be due Net 30 days from the date of acceptance of the goods ordered, or Net 30 days from the date of approval by County of correct and proper invoices, whichever date is later. Payment is deemed to have been made on the date when the County mails the warrant or initiates the electronic fund transfer.

Notwithstanding anything to the contrary, County shall not make payments prior to receipt of goods or services (i.e. the County will not make "advance payments"). Unless specified in writing in a contract release purchase order, the County will not accept partial delivery with respect to any purchase order. Any acceptance of partial delivery shall not waive any of County's rights.

Sales tax shall be noted separately on every invoice. Items that are not subject to sales tax shall be clearly identified.

Contractor shall be responsible for payment of all state and federal taxes assessed on the compensation received under this Agreement and such payment shall be identified under the Contractor's federal and state identification number(s).

The County does not pay Federal Excise Taxes (F.E.T). The County will furnish an exemption certificate in lieu of paying F.E.T. Federal registration for such transactions is: County #94-730482K. Contractor shall not charge County for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose, unless expressly authorized by the County.

16. LATE PAYMENT CHARGES OR FEES

The Contractor acknowledges and agrees that the County will not pay late payment charges.

17. DISALLOWANCE

In the event the Contractor receives payment for goods or services, which payment is later disallowed by the County or state or federal law or regulation, the Contractor shall promptly refund the disallowed amount to the County upon notification. At County's option, the County may offset the amount disallowed from any payment due to the Contractor under any contract with the County.

18. TERMINATION FOR CONVENIENCE

The County may terminate this Agreement or any contract release purchase order at any time for the convenience of the County by giving ten (10) days written notice specifying the effective date and scope of such termination.

In no event shall the County be liable for any loss of profits on the resulting order or portion thereof so terminated.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other materials (collectively referred to as "materials") prepared by Contractor under this Agreement contract release purchase order shall become the property of the County and shall be promptly delivered to the County. Upon receipt of such materials, County shall pay the Contractor as full compensation for performance, the unit or pro rata price for the then-accepted portion of goods and/or services.

19. TERMINATION FOR CAUSE

County may terminate this Agreement or any contract release purchase order, in whole or in part, for cause upon ten (10) days written notice to Contractor. For purposes of this Agreement, cause includes, but is not limited to, any of the following: (a) material breach of this Agreement or any contract release purchase order by Contractor, (b) violation by Contractor of any applicable laws or regulations; (c) assignment or delegation by Contractor of the rights or duties under this Agreement without the written consent of County or (d) less than perfect tender of delivery or performance by Contractor that is not in strict conformance with terms, conditions, specifications, covenants, representations, warranties or requirements in this Agreement or any contract release purchase order.

In the event of such termination, the Contractor shall be liable for any costs incurred by the County because of Contractor's default. For instance, the County may purchase or obtain goods elsewhere and the defaulting Contractor shall be liable for the difference between Contractor's price pursuant to this Agreement, and all costs incurred by the County. The Contractor shall promptly reimburse the County for the full amount of its liability, or, at County's option, the County may offset such liability from any payment due to the Contractor under any contract or contract release purchase order with the County.

If, after notice of termination under the provisions of this clause, it is determined for any reason that the Contractor was not in default under this provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination For Convenience clause.

In lieu of terminating immediately upon contractor's default, County may, at its option, provide written notice specifying the cause for termination and allow Contractor 10 days (or other specified time period) to cure. If, within 10 days (or other specified time) after the County has given the Contractor such notice, Contractor has not cured to the satisfaction of the County, or if the default cannot be reasonably cured within that time period, County may terminate this Agreement at any time thereafter. County shall determine whether Contractor's actions constitute complete or partial cure. In the event of partial cure, County may, at its option, decide whether to (a) give Contractor additional time to cure while retaining the right to immediately terminate at any point thereafter for cause; or (b) terminate immediately for cause. If County determines that the Contractor's actions contribute to the curtailment of an essential service or pose an immediate threat to life, health or property, County may terminate this Agreement immediately without penalty upon issuing either oral or written notice to the Contractor and without any opportunity to cure.

20. TERMINATION FOR LACK OF APPROPRIATION

The term of the agreement between Contractor and County, and the purchase of goods and/or services hereunder, are contingent on the appropriation of funds by the County. Should sufficient funds not be appropriated, this Agreement may be terminated by County at any time by providing Contractor with thirty (30) days written notice. In the event of such Termination for Lack of Appropriation, County shall be responsible only for any undisputed, unpaid balances for goods and/or services provided by Contractor and accepted by County prior to the effective date of termination.

21. EARLY TERMINATION

Notwithstanding any other provision of this Agreement, County may terminate this Agreement by delivering to Contractor notice of the intent to terminate at least sixty (60) days prior to the intended date of termination. By such termination, neither County nor the Contractor may nullify obligations, if any, already incurred for performance or failure to perform prior to the date of termination. Termination under this paragraph may be made with or without cause.

22. TERMINATION FOR BANKRUPTCY

If Contractor is adjudged to be bankrupt or should have a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of Contractor's insolvency, the County may terminate this Agreement immediately without penalty.

23. BUDGETARY CONTINGENCY

Performance and/or payment by the County pursuant to this Agreement is contingent upon the appropriation of sufficient funds by the County for services covered by this Agreement. If funding is reduced or deleted by the County for services covered by this Agreement, the County may, at its option and without penalty or liability, terminate this Agreement or offer an amendment to this Agreement indicating the reduced amount.

24. DISENTANGLEMENT

Contractor shall cooperate with County and County's other contractors to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall cooperate with County's efforts to ensure that there is no interruption of work required under the Agreement and no adverse impact on the supply of goods, provision of services or the County's activities. Contractor shall return to County all County assets or information in Contractor's possession.

For any software programs developed for use under the County's Agreement, Contractor shall provide a nonexclusive, nontransferable, fully-paid, perpetual, irrevocable, royalty-free worldwide license to the County, at no charge to County, to use, copy, and modify, all work or derivatives that would be needed in order to allow County to continue to perform for itself, or obtain from other providers, the services as the same might exist at the time of termination.

County shall be entitled to purchase at net book value those Contractor assets used for the provision of services to or for County, other than those assets expressly identified by the parties as not being subject to this provision. Contractor shall promptly remove from County's premises, or the site of the work being performed by Contractor for County, any Contractor assets that County, or its designee, chooses not to purchase under this provision.

Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, including, but not limited to, the County Data and client files, held by Contractor, and after return of same, Contractor shall destroy all copies thereof not turned over to County, all at no charge to County.

25. DISPUTES

- A. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this contract that is not disposed of by agreement shall be decided by the Director of Procurement who shall furnish the decision to the Contractor in writing. The decision of the Director of Procurement shall be final and conclusive unless determined by the court of competent jurisdiction to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith. The Contractor shall proceed diligently with the performance of the contract pending the Director of Procurement's decision.
- B. The "Disputes" clause does not preclude consideration of legal questions in connection with decisions provided for in paragraph (a) above. Nothing in this agreement shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

26. ACCOUNTABILITY

Contractors will be the primary point of contact and assume the responsibility of all matters relating to the purchase, including those involving the manufacturer and deliverer or any subcontractor, as well as payment issues. If issues arise, the Contractor must take immediate action to correct or resolve the issues.

27. NO ASSIGNMENT, DELEGATION OR SUBCONTRACTING WITHOUT PRIOR WRITTEN CONSENT

Contractor may not assign any of its rights, delegate any of its duties or subcontract any portion of its work or business under this Agreement or any contract release purchase order without the prior written consent of County. No assignment, delegation or subcontracting will release Contractor from any of its obligations or alter any of its obligations to be performed under the Agreement. Any attempted assignment, delegation or subcontracting in violation of this provision is voidable at the option of the County and constitutes material breach by Contractor. Contractor is responsible for payment to sub-contractors and must monitor, evaluate, and account for the sub-contractor(s) services and operations.

As used in this provision, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance, or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

28. MERGER AND ACQUISITION

The terms of this Agreement will survive an acquisition, merger, divestiture or other transfer of rights involving Contractor. In the event of an acquisition, merger, divestiture or other transfer of rights Contractor must ensure that the enquiring entity or the new entity is legally required to:

- A. Honor all the terms negotiated in any pre-acquisition or pre-merger Agreement between Contractor and the County, including but not limited to a) established pricing and fees; b) guaranteed product support until the contract term even if a new product is released; and c) no price escalation during the term of the contract.
- B. If applicable, provide the functionality of the software in a future, separate or renamed product, if the acquiring entity or the new entity reduces or replaces the functionality, or otherwise provide a substantially similar functionality of the current licensed product. No additional license or maintenance fee will apply.
- C. Give 30-days written notice to the County following the closing of an acquisition, merger, divestiture or other transfer of right involving Contractor.

29. COMPLIANCE WITH ALL LAWS & REGULATIONS

Contractor shall comply with all laws, codes, regulations, rules and orders (collectively, "Regulations") applicable to the goods and/or services to be provided hereunder. Contractor's violation of this provision shall be deemed a material default by Contractor, giving County a right to terminate the contract. Examples of such Regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code §6300 et. seq. the Fair Packaging and Labeling Act, etc. and the standards and regulations issued there under. Contractor agrees to indemnify and hold harmless the County for any loss, damage, fine, penalty, or any expense whatsoever as a result of Contractor's failure to comply with the act and any standards or regulations issued there under.

30. FORCE MAJEURE

Neither party shall be liable for failure of performance, nor incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused by events, occurrences, or causes beyond the reasonable control and without negligence of the parties. Such events, occurrences, or causes will include Acts of God/Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, riots, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, lockout, blockage, embargo, labor dispute, strike, interruption or failure of electricity or telecommunication service.

Each party, as applicable, shall give the other party notice of its inability to perform and particulars in reasonable detail of the cause of the inability. Each party must use best efforts to remedy the situation and remove, as soon as practicable, the cause of its inability to perform or comply.

The party asserting *Force Majeure* as a cause for non-performance shall have the burden of proving that reasonable steps were taken to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

The County shall reserve the right to terminate this Agreement and/or any applicable order or contract release purchase order upon non-performance by Contractor. The County shall reserve the right to extend the agreement and time for performance at its discretion.

31. CONFLICT OF INTEREST

Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement.

32. INDEPENDENT CONTRACTOR

Contractor shall supply all goods and/or perform all services pursuant to this Agreement as an independent contractor and not as an officer, agent, servant, or employee of County. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the County and Contractor. No person performing any

services and/or supplying all goods shall be considered an officer, agent, servant, or employee of County, nor shall any such person be entitled to any benefits available or granted to employees of the County.

33. INSURANCE

Contractor shall maintain insurance coverage pursuant to the exhibit setting forth insurance requirements, if such exhibit is attached.

34. DAMAGE AND REPAIR BY CONTRACTOR

Any and all damages caused by Contractor's negligence or operations shall be repaired, replaced or reimbursed by Contractor at no charge to the County. Repairs and replacements shall be completed within 72 hours of the incident unless the County requests or agrees to an extension or another time frame. The clean up of all damage related to accidental or intentional release of any/all non-hazardous or hazardous material (e.g. hydraulic fluid, fuel, grease, etc.) from Contractor's vehicles or during performance shall be responsibility of the Contractor. All materials must be cleaned up in a manner and time acceptable to County (completely and immediately to prevent potential as well as actual environmental damage). Contractor must immediately report each incident to the County's Director of Procurement. Damage observed by Contractor, whether or not resulting from Contractor's operations or negligence shall be promptly reported by Contractor to County. County may, at its option, approve and/or dictate the actions that are in County's best interests.

35. LIENS, CLAIMS, AND ENCUMBRANCES AND TITLE

The Contractor represents and warrants that all the goods and materials ordered and delivered are free and clear of all liens, claims or encumbrances of any kind. Title to the material and supplies purchased shall pass directly from Contractor to County at the F.O.B. point, subject to the right of County to reject upon inspection.

36. INDEMNITY

County shall not be liable for, and Contractor shall defend, indemnify and hold harmless County and the employees and agents of County (collectively, "County Parties") against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including without limitation attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to and arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, licensees, agents, servants or employees, excepting only Claims caused by the sole negligence or willfulness of County Parties. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under its agreement with the County.

37. INTELLECTUAL PROPERTY INDEMNITY

Contractor represents and warrants for the benefit of the County and its users that it is the exclusive owner of all rights, title and interest in the product or services to be supplied. Contractor shall, at its own expense, indemnify, defend, settle, and hold harmless the County and its agencies against any claim or potential claim that any good, (including software) and/or service, or County's use of any good (including software) and/or service, provided under this Agreement infringes any patent, trademark, copyright or other proprietary rights, including trade secret rights. Contractor shall pay all costs, damages and attorneys' fees that a court awards as a result of any such claim.

38. WARRANTY

Any goods and/or services furnished under this order shall be covered by the most favorable commercial warranties that Contractor gives to any of its customers for the same or substantially similar goods and/or services. Any warranties so provided shall supplement, and shall not limit or reduce, any rights afforded to County by any clause in this Agreement, any applicable Uniform Commercial Code warranties, including, without limitation, Implied Warranty of Merchantability and Implied Warranty of Fitness for a Particular Purpose as well as any other express warranty.

Contractor expressly warrants that all goods supplied shall be new, suitable for the use intended, of the grade and quality specified, free from all defects in design, material and workmanship, in conformance with all samples, drawings, descriptions and specifications furnished by the County, in compliance with all applicable federal, state and

local laws and regulations and free of liens, claims and encumbrances. Contractor warrants that all services shall strictly conform to the County's requirements.

Contractor shall immediately replace or repair any good not conforming to any warranty, or provide services to conform to County's requirements. If after notice, Contractor fails to repair or replace goods, or to provide services to conform to County's requirements, Contractor shall promptly refund to County the full purchase price paid by the County. This remedy is non-exclusive of other remedies and rights that may be exercised by the County. Claims for damages may include direct damages, such as cost to repair, as well as incidental and consequential damages.

During the provision of goods and services, Contractor may not disclaim any warranty, express or implied, and any such disclaimer shall be void. Additionally, the warranties above shall not be deemed to exclude Contractor's standard warranties or other rights and warranties that the County may have or obtain.

39. COOPERATION WITH REVIEW

Contractor shall cooperate with County's periodic review of Contractor's performance. Contractor shall make itself available onsite to review the progress of the project and Agreement, as requested by the County, upon reasonable advanced notice.

Contractor agrees to extend to the County or his/her designees and/or designated auditor of the County, the right to monitor or otherwise evaluate all work performed and all records, including service records and procedures to assure that the project is achieving its purpose, that all applicable County, State, and Federal regulations are met, and that adequate internal fiscal controls are maintained.

40. AUDIT RIGHTS

Pursuant to California Government Code Section 8546.7, the parties acknowledge and agree that every contract involving the expenditure of public funds in excess of \$10,000 shall be subject to audit by the State Auditor.

All payments made under this Agreement shall be subject to an audit at County's option, and shall be adjusted in accordance with said audit. Adjustments that are found necessary as a result of auditing may be made from current billings.

The Contractor shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in any County audits. The Contractor shall pay to County the full amount of any audit determined to be due as a result of County audit exceptions. This provision is in addition to other inspection and access rights specified in this Agreement.

41. ACCESS AND RETENTION OF RECORDS AND PROVISION OF REPORTS

Contractor shall maintain financial records adequate to show that County funds paid were used for purposes consistent with the terms of the contract between Contractor and County. Records shall be maintained during the terms of the Agreement and for a period of four (4) years from its termination, or until all claims have been resolved, whichever period is longer, unless a longer period is required under any contract.

All books, records, reports, and accounts maintained pursuant to the Agreement, or related to the Contractor's activities under the Agreement, shall be open to inspection, examination, and audit by County, federal and state regulatory agencies, and to parties whose Agreements with the County require such access. County shall have the right to obtain copies of any and all of the books and records maintained pursuant to the Agreement, upon the payment of reasonable charges for the copying of such records.

Contractor shall provide annual reports that include, at minimum, (i) the total contract release purchase order value for the County as a whole and individual County departments, (ii) the number of orders placed, the breakdown (by customer ID/department and County) of the quantity and dollar amount of each product and/or service ordered per year. Annual reports must be made available no later than 30 days of the contract anniversary date unless otherwise requested.

Contractor shall also provide quarterly reports to the County that show a breakdown by contract release purchase order (i) the order date (ii) ship date (iii) estimated arrival date (iv) actual arrival date (v) list of products, services and maintenance items (vi) the number and details of problem/service calls and department name that each such call pertains to (including unresolved problems). Quarterly reports must be made available to the County in electronic format, two (2) business days after the end of each quarter unless otherwise requested.

42. ACCESS TO BOOKS AND RECORDS PURSUANT TO THE SOCIAL SECURITY ACT

Access to Books and Records: If and to the extent that, Section 1861 (v) (1) (1) of the Social Security Act (42 U.S.C. Section 1395x (v) (1) (1) is applicable, Contractor shall maintain such records and provide such information to County, to any payor which contracts with County and to applicable state and federal regulatory agencies, and shall permit such entities and agencies, at all reasonable times upon request, to access books, records and other papers relating to the Agreement hereunder, as may be required by applicable federal, state and local laws, regulations and ordinances. Contractor agrees to retain such books, records and information for a period of at least four (4) years from and after the termination of this Agreement. Furthermore, if Contractor carries out any of its duties hereunder, with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, through a subcontract with a related organization, such subcontract shall contain these same requirements. This provision shall survive the termination of this Agreement regardless of the cause giving rise to the termination.

43. NON-DISCRIMINATION

Contractor shall comply with all applicable Federal, State, and local laws and regulations, including Santa Clara County's policies, concerning nondiscrimination and equal opportunity in contracting. Such laws include, but are not limited to, the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (§§ 503 and 504); California Fair Employment and Housing Act (Government Code §§ 12900 et seq.); and California Labor Code §§ 1101 and 1102. Contractor shall not discriminate against any employee, subcontractor or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Contractor discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status. Contractor's violation of this provision shall be deemed a material default by Contractor giving County a right to terminate the contract for cause.

44. DEBARMENT

Contractor represents and warrants that it, its employees, contractors, subcontractors or agents (collectively "Contractor") are not suspended, debarred, excluded, or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor must within 30 calendar days advise the County if, during the term of this Agreement, Contractor becomes suspended, debarred, excluded or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, as defined by 42. U.S.C. 1320a-7b(f), or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor will indemnify, defend and hold the County harmless for any loss or damage resulting from the conviction, debarment, exclusion or ineligibility of the Contractor.

45. CALIFORNIA PUBLIC RECORDS ACT

The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor proprietary information is contained in documents or information submitted to County, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the County will make best efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the County's deadline for responding to the CPRA request. If Contractor fails to obtain such remedy within County's deadline for responding to the CPRA request, County may disclose the requested information.

Contractor further agrees that it shall defend, indemnify and hold County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorneys fees) that may result from denial by County of a CPRA request for information arising from any representation, or any action (or inaction), by the Contractor.

46. SEVERABILITY

Should any part of the Agreement between County and the Contractor or any individual contract release purchase order be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of the Agreement or any individual contract release purchase order which shall continue in full force and effect, provided that such remainder can, absent the excised portion, be reasonably interpreted to give the effect to the intentions of the parties.

47. NON-WAIVER

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by County. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless the writing signed by the County so specifies.

48. USE OF COUNTY'S NAME FOR COMMERCIAL PURPOSES

Contractor may not use the name of the County or reference any endorsement from the County in any fashion for any purpose, without the prior express written consent of the County as provided by the Director of Procurement.

49. HEADINGS AND TITLES

The titles and headings in this Agreement are included principally for convenience and do not by themselves affect the construction or interpretation of any provision in this Agreement, nor affect any of the rights or obligations of the parties to this Agreement.

50. HANDWRITTEN OR TYPED WORDS

Handwritten or typed words have no greater weight than printed words in the interpretation or construction of this Agreement.

51. AMBIGUITIES

Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

52. ENTIRE AGREEMENT

This Agreement and its Exhibits (if any) constitutes the final, complete and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this Agreement. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

53. EXECUTION & COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The parties agree that this Agreement, its amendments, and ancillary agreements to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature must be treated in all respects as having the same effect as an original signature. The original signature copy must be sent to the County by United States Postal Service mail, sent by courier or delivered by hand.

54. NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt

requested; when sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed to:

COUNTY:

Name: _____
Contract Administrator
c/o Procurement Department
2310 North First Street, Suite 201
San Jose, CA 95131-1040

CONTRACTOR:

Name: _____
Title: _____
Company: _____
Address 1: _____
Address 2: _____
City: _____
State: _____
Zip: _____

Each party may designate a different person and address by sending written notice to the other party, to be effective no sooner than ten (10) days after the date of the notice.

55. ACCOUNT MANAGER

Contractor must assign an Account Manager to the County to facilitate the contractual relationship, be fully responsible and accountable for fulfilling the County's requirements. Contractor represents and warrants that such person will ensure that the County receives adequate pre- and post-sales support, problem resolution assistance and required information on a timely basis.

56. SURVIVAL

All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of their Agreement, will survive the termination of this Agreement.

57. GOVERNING LAW, JURISDICTION AND VENUE

This Agreement shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions shall be exclusively vested in state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

58. BUSINESS ASSOCIATE PROVISION

Contractor will treat all patient information as confidential and comply with any applicable laws concerning the confidentiality of patient information per Exhibit _ – HIPAA Business Associate Language.

59. ACCEPTANCE TESTING

County reserves the right to test the equipment provided against the specifications provided herein as well as any Contractor provided specifications, published or provided to the County. The more stringent specification will apply in each case. The systems will not be accepted until all specifications are met or deemed acceptable to the County.

Within thirty (30) working days of Contractor’s completion of installation, County must identify in writing any functions that have not performed correctly. Contractor must rectify, within ten (10) working days or a mutually agreed upon timeframe but not more than thirty (30) working days, after County provides notification. County must test the corrections within ten (10) working days or a mutually agreed upon timeframe after receipt of said correction. The failure of County to notify Contractor of non-acceptance within such ten (10) working day period shall be deemed acceptance by County.

60. COUNTY NO-SMOKING POLICY

Contractor and its employees, agents and subcontractors, shall comply with the County’s No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

By signing below, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity, that he/she has the authority to bind the entity listed below to contractual obligations and that by his/her signature on this Agreement, the entity on behalf of which he/she acted, executed this Agreement.

COUNTY OF SANTA CLARA

CONTRACTOR

By: Jenti Vandertuig
Director of Procurement
Date: _____

By: (Print Name) _____
Title: _____
Date: _____

**APPENDIX B
PROPOSAL COST RESPONSE FORM**

Offeror's Organization Name: _____

Instructions:

Display the items proposed as shown on the MS Excel spread sheet attachment, Exhibit B-1, "Pricing: To Be Completed By Vendor". The spread sheet is a reflection of the list of items in Appendix F, Specification Requirements and it also displays the annual utilization breakdown for each item: Units and Bill Days.

Note the columns on the MS Excel spread sheet for you to enter proposed items: vendor (you), your item description, your item #, your proposal price (daily and monthly), an optional column for you to propose other pricing, the dollar extended price, and a column ("Notes") for you to include any explanatory text you choose.

Offerors shall provide to the Procurement Officer an electronic copy of the completed spread sheet. The spread sheet may be manipulated by the Offeror (adding rows or columns) as needed in order to convey the item / price offering. Provide the spread sheet as part of the electronic copy of the entire proposal in CD-ROM format.

Section I – Price Protection Period

The initial contract shall be for a term of three (3) calendar years with two (2) additional one (1) year renewals. Prices will be held firm for the thirty-six (36) months from date of award for all items proposed.

Section II – Other Value Added Services:

If applicable, please itemize the cost of other value added services below.

Description _____	Cost _____
1. _____	\$ _____
2. _____	\$ _____

EXHIBIT B-1

Pricing: To Be Completed By Vendor

Display the items proposed as shown on the MS Excel spread sheet attachment

Provide as part of the electronic copy of the entire proposal in CD-ROM format.

**APPENDIX C
NON – COLLUSION DECLARATION**

I, _____, am the
(Print Name)

_____ of _____
(Position/Title) (Name of Company)

the party making the foregoing proposal that the proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the Offeror has not directly or indirectly induced or solicited any other Offeror to put in a false or sham bid; and has not directly or indirectly colluded, conspired, connived, or agreed with any Offeror or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the Offeror has not in any manner directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Offeror or any other Offeror, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Offeror, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the Offeror has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I declare under penalty of perjury under the Laws of the State of California that the foregoing is true and correct:

COMPANY NAME: _____

AUTHORIZED
SIGNATURE _____

PRINT NAME: _____

DATE: _____

APPENDIX D INDEMNITY AND INSURANCE REQUIREMENTS

Indemnity

The Offeror shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Offeror and/or its agents, employees or sub-offerors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Offeror shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Offeror is obligated to indemnify, defend and hold harmless the County under this Agreement.

Insurance

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

A. Evidence of Coverage

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

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

B. Qualifying Insurers

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

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence - \$1,000,000
- b. General aggregate - \$2,000,000
- c. Equipments/Completed Operations aggregate - \$2,000,000
- d. Personal Injury - \$1,000,000

2. General liability coverage shall include:

- a. Premises and Operations
- b. Equipments/Completed
- c. Personal Injury liability
- f. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the additional insured endorsement as applicable and the Offeror shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

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

4a. Aircraft/Watercraft Liability Insurance (Required if Offeror or any of its agents or subofferors will operate aircraft or watercraft in the scope of the Agreement)

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

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Offeror and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Offeror pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Offeror. However, this shall not in any way limit liabilities assumed by the Offeror under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Offerors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
3. Should any of the work under this Agreement be sublet, the Offeror shall require each of its sub-Offerors of any tier to carry the aforementioned coverages, or Offeror may insure sub-Offerors under its own policies.

The County reserves the right to withhold payments to the Offeror in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, contractor will notify County immediately, and County may withhold further payment to contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.

APPENDIX E
BUSINESS ASSOCIATE AGREEMENT (HIPAA)

**HIPAA- BUSINESS ASSOCIATE AGREEMENT PURSUANT TO THE HEALTH INSURANCE
PORTABILITY AND ACCOUNTABILITY ACT OF 1996**

I. Definitions

Terms used, but not otherwise defined, and terms with initial capital letters in this provision of the Agreement have the same meaning as defined under the Health Insurance Portability and Accountability Act of 1996, 42 USC §§ 1320d et seq. (“HIPAA”) and the implementing regulations. To the extent the HIPAA Privacy Rule changes the meaning of the terms; this provision shall be modified automatically to correspond to the meaning given in the rule.

“PROTECTED HEALTH INFORMATION,” as defined at 45 C.F.R. §§ 164.501, and 160.103, means information that:

- (1) is created or received by a health care provider, health plan, employer or health care clearing house; and
- (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual or the past, present or future payment for the provision of health care to an individual, and (a) identifies the individual or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

“ELECTRONIC PROTECTED HEALTH INFORMATION (EPHI)” as defined at 45 C.F.R. § 160.103(2), means Protected Health Information that is created electronically, transmitted electronically by electronic media, or is maintained in electronic media.

“BUSINESS ASSOCIATE” refers to _____ in this Agreement.

“COVERED ENTITY” refers to the **County of Santa Clara** in this Agreement.

II. Duties & Responsibilities of BUSINESS ASSOCIATE

- A. BUSINESS ASSOCIATE’S use and/or disclosure of PROTECTED HEALTH INFORMATION (“PHI”) will be limited to those permitted or required by the terms of this Agreement or as REQUIRED BY LAW as defined pursuant to 45 CFR 164.501.
- B. Unless otherwise limited by this Agreement, BUSINESS ASSOCIATE may use the PHI in its possession for the proper management and administration of the BUSINESS ASSOCIATE or to carry out its legal responsibilities.
- C. BUSINESS ASSOCIATE may further disclose PHI for the proper management and administration of the BUSINESS ASSOCIATE or to carry out its legal responsibilities if the disclosure is required by law, or the BUSINESS ASSOCIATE receives reasonable assurances from the person receiving the PHI that it will be held confidentially, and will be used or further disclosed only as required by law and that the person receiving the PHI will notify the BUSINESS ASSOCIATE of any instances known in which the confidentiality has been breached.

- D. BUSINESS ASSOCIATE must not use or disclose PHI in any manner that would constitute a violation of the PRIVACY RULE (Standard for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subpart A and E).
- E. BUSINESS ASSOCIATE must use appropriate safeguards to prevent uses or disclosures of PHI other than as provided for by this Agreement.
- F. BUSINESS ASSOCIATE must report in writing any use or disclosure of PHI not provided for by this Agreement to the COVERED ENTITY as soon as it learns of it.
- G. BUSINESS ASSOCIATE must ensure subcontractors and agents that have access to, or to whom the BUSINESS ASSOCIATE provides PHI, agree in writing to the restrictions and conditions concerning the use and disclosure of PHI which are contained in this Agreement.
- H. At the request of the COVERED ENTITY, BUSINESS ASSOCIATE must comply with the COVERED ENTITY'S request to accommodate an individual's access to his/her PHI in a designated record set maintained by the BUSINESS ASSOCIATE. In the event an individual contacts BUSINESS ASSOCIATE directly about access to PHI, BUSINESS ASSOCIATE will not provide access to the individual but will forward the request to the COVERED ENTITY within three business days of contact.
- I. Within fifteen business days of a request by the COVERED ENTITY, BUSINESS ASSOCIATE will comply with the COVERED ENTITY'S request to amend an individual's PHI in a designated record set maintained by the BUSINESS ASSOCIATE. BUSINESS ASSOCIATE will promptly incorporate any such amendment into the PHI. In the event an individual contacts BUSINESS ASSOCIATE directly about making amendments to PHI, BUSINESS ASSOCIATE will not make any amendments to the individual's PHI but will forward the request to COVERED ENTITY within three business days of such contact.
- J. BUSINESS ASSOCIATE must keep a record of disclosures of PHI for a minimum of six years and agrees to make information regarding disclosures of PHI available to the COVERED ENTITY within fifteen days of a request by the COVERED ENTITY. BUSINESS ASSOCIATE must provide, at a minimum, the following information:
 - (1) the name of the individual whose PHI was disclosed.
 - (2) the date of disclosure;
 - (3) the name of the entity or person who received the PHI, and the address of such entity or person, if known;
 - (4) a brief description of the PHI disclosed; and
 - (5) a brief statement regarding the purpose and explanation of the basis of such disclosure.

BUSINESS ASSOCIATE is not required to maintain a record of disclosures of PHI under the following circumstances:

- (1) To carry out treatment, payment or COUNTY health care operations, or activities that are incident to such disclosures;
- (2) To individuals of their own PHI;
- (3) Pursuant to a written authorization;

- (4) For the facility's directory or to person involved in the individual's care or other notification purposes in 45 CFR 164.510;
 - (5) For national security or intelligence purposes;
 - (6) To correctional institutions or law enforcement officials;
 - (7) As part of a limited data set in accordance with 45 CFR 164.514(e); or
 - (8) That occurred prior to the compliance date for the covered entity.
- K. BUSINESS ASSOCIATE must comply with any other restrictions on the use or disclosure of PHI that the COVERED ENTITY may from time to time request.
- L. BUSINESS ASSOCIATE must make its internal practices, books and records relating to uses and disclosures of PHI available to the Secretary of the U.S. Department of Health and Human Services or designee, for purposes of determining the COVERED ENTITY'S compliance with the PRIVACY RULE. BUSINESS ASSOCIATE must notify the COVERED ENTITY regarding any information that BUSINESS ASSOCIATE provides to the Secretary concerning the PHI. Concurrently with providing the information to the Secretary and upon the COVERED ENTITY'S request, BUSINESS ASSOCIATE must provide COVERED ENTITY with a duplicate copy of the information.
- M. Upon the termination of this Agreement for any reason, BUSINESS ASSOCIATE must return or destroy all PHI, including all PHI that is in the possession of subcontractors or agents of the BUSINESS ASSOCIATE. BUSINESS ASSOCIATE must not retain any copies of PHI. If return or destruction is not feasible, BUSINESS ASSOCIATE must notify the COVERED ENTITY of the condition that makes the return or destruction of PHI not feasible. If the COVERED ENTITY agrees that the return or destruction of PHI is not feasible, BUSINESS ASSOCIATE may dispose of the PHI, subject to all of the protections of this Agreement and must make no further use or disclosure of the PHI.
- N. The respective rights and responsibilities of BUSINESS ASSOCIATE related to the handling of PHI survive termination of this Agreement.
- O. Notwithstanding any other provision of this Agreement, the COVERED ENTITY may immediately terminate this Agreement if BUSINESS ASSOCIATE has materially violated its responsibilities regarding PHI under this Agreement upon written notice.
- P. **EPHI:** If BUSINESS ASSOCIATE receives, creates, transmits, or maintains EPH on behalf of COVERED ENTITY, BUSINESS ASSOCIATE will, in addition, do the following:
- (1) Develop, implement, maintain and use appropriate administrative, physical, and technical safeguards in compliance with Section 1173(d) of the Social Security Act, Title 42, Section 1320(d) or the United States Code and Title 45, Part 162 and 164 of CFR to preserve the integrity and confidentiality of all electronically maintained or transmitted PHI received from or on behalf of COVERED ENTITY.
 - (2) Document and keep these security measures current and available for inspection by COVERED ENTITY.
 - (3) Ensure that any agent, including a subcontractor, to whom the BUSINESS ASSOCIATE provides EPHI, agrees to implement reasonable and appropriate safeguards to protect it.
 - (4) Report to the COVERED ENTITY any Security Incident of which it becomes aware. For the purposes of this Agreement, Security Incident means, as set forth in 45 C.F. R. section 164.304, "the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system."

APPENDIX F
SPECIFICATION REQUIREMENTS AND RESPONSE FORM

A. SPECIFICATION REQUIREMENTS

1. Description of Program

- a. Offerors must provide a description of the proposed program, including how it will meet or exceed the requirements stated in the entire RFP.
- b. Offerors must identify/list all items that are not supplied directly by the Offeror (any/all third party products).
- c. The proposed items and their components must conform to all federal standards and guidelines. Clearly state the FDA status of the items. Any FDA noncompliance must be identified and explained in detail.

2. Transaction Requirements

- a. The proposal must provide a description of the transaction requirements, including but not limited to:
 - method of order entry
 - mechanism for pre-delivery confirmation of order
 - mechanism for delivery and pick-up
 - mechanism for sign-off by hospital personnel (upon delivery, upon pick-up)
 - mechanism for billing and invoicing
- b. Turn- around time, the timeframe required from notification /order placement to delivery of the item, is of great importance to VMC. Offerors must state your guaranteed Delivery time in terms of hours after receipt of order : (_____ hours ARO).

Failure of the vendor to meet the guaranteed Delivery time (following a 1 hour grace period) will result in a per item penalty of \$100 per hour assessed for every hour of delay in having the item on-site up to a period of 24 (twenty-four) hours. After 24 (twenty-four) hours, the penalty for not having the item on site will be \$3,000 per day.

c. Offerors must state your guaranteed Pick-up time in terms of hours after notification of rental discontinuation: (____ hours).

Failure of the vendor to meet the guaranteed Pick-up time (following a 24 hour grace period) will result in a per item penalty of \$100 per hour assessed for every hour of delay in having the item picked-up, up to a maximum penalty per item of \$2,400.

d. Offeror must provide the average guaranteed telephone response time to a request for service in terms of working minutes after receipt of call for service: (____ minutes).

e. Offeror must provide the average guaranteed response time in terms of hours for a request for on-site service, e.g., for repairs: (____ hours).

f. STAT Orders (immediate response required of vendor) will be infrequent, only as required to meet urgent patient care needs. STAT Orders delivery will be available 24 hours, 7 days a week, including holidays. Vendor will be required to deliver within 1 hour of order.

g. In order to help mitigate the volume of STAT orders, up to four (4) "Stand-By" items will be located on-site at VMC's Sterile Processing department. There will be no charge for the "Stand-By" items until brought into rental service. Once a "Stand-By" item is brought into rental service, a replacement item will be supplied in the next scheduled delivery.

h. Days utilization for each item will be calculated beginning on the calendar day the vendor delivers the item and continues until the vendor's service center is notified by VMC that the item is discontinued / no longer required.

3. On-Going Service

Offeror must include in your proposal a description of the post-implementation ongoing follow-up that will be provided. Provide the normal hours and describe the channels (phone, email, web, etc.) for support. Describe how after hours support is provided. Identify the technical and field support staff local to the San Jose area. Outline the qualifications /certifications of the technical support staff.

4. Conversion / Implementation Plan

Offeror must provide assurance that sufficient resources would be applied to ensure a smooth conversion should Offeror be awarded. Include a proposed conversion / implementation plan that will lead to the required deliverables. Include the organization of the project management team.

5. Product Information Materials

Offeror must provide the Product Information on each item in the proposal, describing the features and options. Also provide the technical specifications on each item, including the operations manual used for training.

6. Training Plan

Offeror must describe the plan for training the users on the items (RNs and other staff on the units). Describe the type and scope (round-the-clock as needed) of training that will be provided. The description should include:

- i. The methods by which training will be provided, e.g., on-site vs. online;
- ii. A recommended training curriculum;
- iii. An explanation of how the Offeror will work with the County to determine training needs and tailor the curriculum;
- iv. A description of the type of training that will be provided (a) at what stage/phase of a conversion/implementation and (b) as on-going follow-up training after conversion/implementation.

7. On-Going Training and Clinical Education

- a. Upon the conversion to or the addition of a new item, the vendor will provide training on the proper operation of the item at no charge to the facility.
- b. Vendor's Clinical Consultant(s) will be available 24 hours, 7 days a week, including holidays to provide input to VMC personnel. On-site consultations will be provided as needed. A routine will be agreed upon for the frequency of the on-site visits; Offeror should propose a minimum number for on-site visits per year.
- c. Offerors should include in the proposal a description of your capabilities in providing clinical education.
- d. Offerors should include in the proposal (a) a description of your capabilities in providing clinical studies applicable to the items in the proposal and (b) an example of a clinical study.

- e. Offerors should indicate whether Clinical Consultant(s) will provide the option of reporting observations of the condition of the owned beds and bedframes (Hill-Rom manufactured) as part of walk-through inspection reporting.

8. Reporting

- a. Vendor will provide on a quarterly basis a Prevalence Study for review by the Wound Skin Care Nurse Specialist. Include in the proposal an example of a Prevalence Study.
- b. Vendor will provide a Usage Report on a quarterly basis that displays the total number of units and billing days for each item during each month.

9. New Items

If vendor proposes to introduce a New Item to VMC (an item of significance not covered in the existing agreement) then Procurement will be contacted in advance. Pricing will be negotiated between the vendor and Procurement before the item is rented. Pricing on New Items will be commensurate with the level of discount provided on like items.

10. Quality Assurance

- a. All items will be thoroughly decontaminated by vendor before delivery and delivered in clean, ready for use condition in compliance with The Joint Commission (TJC), California Health and Safety Codes, or other regulatory requirements. Vendor's complete Infection Control policy will be made available to VMC personnel upon request.
- b. All items provided for use at VMC will have current electrical safety testing to the satisfaction of the VMC Biomedical Engineering department. All items will be labeled in a manner compliant with Cal-DHS requirements
- c. All delivery, set-up, service and maintenance, biomedical safety checks/certifications and emergency repairs will be performed by vendor's certified technicians. Any routine service will be performed on items prior to being delivered to VMC and any service necessitated by long-term utilization will be arranged at a mutually agreeable time between the Sterile Processing department and the vendor.

- d. Any item delivered to VMC that fails to perform according to original manufacturer’s specifications will be so noted by VMC personnel and vendor will be requested to remove/replace it without additional cost to VMC.

B. SPECIFICATION REQUIREMENTS RESPONSE FORM

OFFEROR NAME: _____

Response Code: Respondent should place the appropriate letter designation in the “Availability” column according to the following codes and their description:

- A.** Specification is one that currently exists in the proposed item in the current production version, and is included in the proposed item.
- B.** Specification is not available or is not included in the proposed item.

Reference: Please provide any additional information requested or any additional information useful to the proposal in the comments column. If referencing attachments or other included information, write the location (Binder/Section/Page Number) of the discussion of the specification in the offeror’s proposal. Technical materials may be submitted as part of the proposal, and should be clearly labeled as such.

#	Category	Description	Availability	Comments or Page and Binder Number in the proposal where additional information can be found
1	Mattress : Pulmonary Therapy with Low Air Loss , Full Body Lateral Rotation, and Percussion/Vibration <i>Required to fit onto Centra, Care Assist, Century CC, and Century Model 840 bed frames</i>	V-CUE 115 V Hill-Rom #P0800020060 or Equal		
2	Mattress : Low Air Loss <i>Required to fit onto Centra, Care Assist, Century CC, and Century Model 840 bed frames</i>	Eclipse Assembly (Flexicaire) Hill-Rom #P0800020036 or Equal		

#	Category	Description	Availability	Comments or Page and Binder Number in the proposal where additional information can be found
3	Bed: Air Fluidized Therapy with High / Low adjustment to 21.5"	Clinitron RiteHite C-8 Assy Hill Rom #P0800010019 or Equal		
4	Bed: Air Fluidized Therapy	Fluid Air Elite KCI #300500.P or Equal		
5	Bed: Spinal Stabilization	RotoRest Delta KCI #208030.P or Equal		
6	Bed: Pulmonary Therapy	TotalCare Sport Hill-Rom #P1900F100 or Equal		
7	Bariatric Bed with Low Air Loss	TC Bariatric Plus W/Air Hill-Rom #TCB2 or Equal		
8	Bariatric Bed with Low Air Loss (1000lb capacity)	SW1000 Rehab Platform with Mighty Air Mattress Sizewise #BSWRP/AMA or Equal		
9	Bariatric Bed with Low Air Loss and Pulmonary	TC Bariatric Plus W/Air & Pulmonary Hill-Rom #TCB3 or Equal		
10	Bariatric Bed with Low Air Loss and Pulmonary (1000lb capacity)	SW1000 Rehab Platform with Big Turn Mattress Sizewise #BSWRP/ABT or Equal		
11	Bariatric Bed with Foam Mattress	Magnum II Bariatric Bed Hill-Rom #FT or Equal		
12	Bariatric Bed with Foam Mattress (1000lb capacity)	SW1000 Rehab Platform with Foam Mattress Sizewise #BSWRP or Equal		
13	Bariatric Bed with Foam Mattress and Trapeze	Magnum II Bariatric Bed with Patient Helper Hill-Rom #FT3 or Equal		
14	Bariatric Bed with Foam Mattress and Trapeze (1000lb capacity)	SW1000 Rehab Platform with Foam Mattress and Trapeze Sizewise #BSWRP/ BTRAP or Equal		
15	Mobility/Transfer Equipment (wheeled)	Bariatric Lift and Transfer System (portable overhead) Sizewise #LIFT or Equal		
16	Mobility/Transfer Equipment (wheeled)	Shuttle Advanced (power adjustable bariatric chair) Sizewise #T1000 or Equal		

#	Category	Description	Availability	Comments or Page and Binder Number in the proposal where additional information can be found
17	Mobility/Transfer Equipment (wheeled)	Shower/Commode Bariatric Chair Sizewise #BSCC or Equal		
18	Mobility/Transfer Equipment (wheeled)	Bariatric Chair Sizewise #WC or Equal		
19	Mobility/Transfer Equipment (wheeled)	Bariatric Walker Sizewise #WOK or Equal		

APPENDIX G
DECLARATION OF LOCAL BUSINESS

Santa Clara County gives local businesses a preference in formal solicitations of goods and services as set forth in the Board Policy, Section 5.3.13. A bidder or proposer has the option of qualifying for the preference by self-declaring its qualification as a "local business." By signing below, the bidder or proposer is certifying its qualification as a "local business" for purposes of application of Santa Clara County's policy and is deemed to be applying for the local preference.

All information submitted is subject to investigation, as well as to disclosure to third parties under the California Public Records Act. Incomplete, unclear, or incomprehensible responses to the following will result in the bid or proposal not being considered for application of Santa Clara County's local preference policy. False or dishonest responses will result in rejection of the bid or proposal and curtail the firm or individual's ability to conduct business with the County in the future. It may also result in legal action.

Provide the complete physical address of your business with meaningful "production capability" located within the boundary of the County of Santa Clara. The term "production capability" means sales, marketing, manufacturing, servicing, or research and development capability that substantially and directly enhances the firm's/bidder's/proposer's ability to perform the proposed contract. Post Office box numbers and/or residential addresses may not be used as the sole bases for establishing status as a "Local Business." If you have more than one physical address in Santa Clara County, please provide an attachment with all of the addresses in the form specified below.

Business Name: _____
Street: _____
City/State: _____ Zip: _____

Please Indicate Business Organization (Check One)

- | | |
|--|--------------------------------------|
| <input type="checkbox"/> Individual Proprietorship | <input type="checkbox"/> Corporation |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Other |

By filling this form, bidder/proposer declares its qualification as a local business as defined in County of Santa Clara Board Policy, Section 5.3.13.

The undersigned declares that he or she is an official/agent of responding firm or individual and is empowered to represent, bind, and execute contracts on behalf of the firm or individual.

The undersigned declares under penalty of perjury, under the laws of the State of California, that all statements in this Exhibit and response are true and correct, with full knowledge that all statements are subject to investigation and that any incomplete, unclear, false or dishonest response may be grounds for denial or revocation of the accompanying bid or proposal and may result in being barred from doing business with Santa Clara County as well as additional legal consequences.

Signature

Title

Name

Date

Business License Number (if applicable)