AGREEMENT FOR SERVICES
between the
silicon valley/santa clara dmo, inc. and
[INSERT CONTRACTOR’s NAME]

PREAMBLE

This Agreement is entered into between **Silicon Valley/Santa Clara DMO, Inc.**, a non-profit mutual benefit corporation, (DMO), and **[insert Contractor’s name]**, a[n] chose one: \_\_\_\_\_\_\_\_\_\_\_ [enter State name] corporation/partnership/individual, (Contractor). DMO and Contractor may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

1. DMO desires to secure the services more fully described in this Agreement, at Exhibit A, entitled “Scope of Services”;
2. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of DMO; and,
3. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT Terms and conditions

# AGREEMENT DOCUMENTS

The documents forming the entire Agreement between DMO and Contractor shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees

Exhibit C – Insurance Requirements

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

# TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on \_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_, 20\_\_\_ and terminate on \_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_, 20\_\_\_.

# Scope of Services & PERFORMANCE SCHEDULE

Contractor shall perform those Services specified in Exhibit A within the time periods stated in Exhibit A. Time is of the essence.

# WARRANTY

Contractor expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to DMO when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace materials or services, DMO may make corrections or replace materials or services and charge Contractor for the cost incurred by DMO.

# QUALIFICATIONS OF CONTRACTOR - STANDARD OF care

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and DMO expressly relies upon Contractor’s representations regarding its skills and knowledge. Contractor shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

# COMPENSATION AND PAYMENT

In consideration for Contractor’s complete performance of Services, DMO shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled “SCHEDULE OF FEES.” The maximum compensation of this Agreement is **spell out dollar amount ($insert numerical dollar amount)**, subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services. All work performed or materials provided in excess of the maximum compensation shall be at Contractor’s expense.

Should DMO request that Contractor perform any additional duties outside the scope of this Agreement, Contractor shall be entitled to additional payment and Contractor shall bill DMO separately for this additional work at a mutually agreed upon rate. Additional services shall only commence upon approval of DMO.

# TERMINATION

## Termination for Convenience. DMO shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days’ prior written notice to Contractor.

## Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, DMO may terminate this Agreement immediately upon written notice to Contractor.

## Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to DMO all DMO information or material that Contractor has in its possession.

# ASSIGNMENT AND SUBCONTRACTING

DMO and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of DMO. Contractor shall not hire subcontractors to perform Services under this Agreement without express written permission from DMO.

Contractor shall be as fully responsible to DMO for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by Contractor, as Contractor is for the acts and omissions of persons directly employed by it.

# NO THIRD-PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

# INDEPENDENT CONTRACTOR

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of DMO and shall not have the authority or right of any kind to bind DMO in any manner. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

# CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held strictly confidential by Contractor and shall not, without the prior written consent of DMO, be used for any purposes other than the performance of the Services nor be disclosed to any person or entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise previously known to Contractor or becomes generally known to the related industry shall be deemed confidential.

# OWNERSHIP OF MATERIAL

All material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of DMO but Contractor may retain and use copies thereof solely for the purposes of providing services covered by this Agreement. DMO shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to, the release of this material to third parties.

# RIGHT OF DMO TO INSPECT RECORDS OF CONTRACTOR

DMO, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for four (4) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to DMO. Any expenses not so recorded shall be disallowed by DMO. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the DMO.

Contractor shall submit to DMO any and all reports concerning its performance under this Agreement that may be requested by DMO in writing. Contractor agrees to assist DMO in meeting DMO’s reporting requirements to the State and other governmental agencies with respect to Contractor’s Services hereunder.

# HOLD HARMLESS/INDEMNIFICATION

## To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify DMO, its DMO directors, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney’s fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor’s employees or persons contracting with Contractor to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by DMO connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of DMO; provided, however, the obligation of Contractor to defend is not similarly limited.

## Contractor’s obligation to protect, defend, indemnify, and hold harmless in full DMO and DMO’s employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against DMO (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

## To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act (“Act”) and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless DMO for any penalties, fines, adverse rulings, or tax payments associated with Contractor’s responsibilities under the Act.

# INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to DMO, insurance policies as set forth in Exhibit C.

# WAIVER

Contractor agrees that waiver by DMO of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither DMO’s review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

# NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to DMO addressed as follows:

Silicon Valley/Santa Clara DMO, Inc.

Attention: [title]

5001 Great America Parkway

Santa Clara, CA 95054

and by e-mail at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

And to Contractor addressed as follows:

Name of Contractor

Address of Contractor

City, State, Zip

and by e-mail at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

# COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to “The Code of the City of Santa Clara, California” (“SCCC”). In particular, Contractor’s attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), and Business Tax Certificate (SCCC section 3.40.060), as such Chapters or Sections may be amended from time to time or renumbered.

# CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no DMO director, officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and following and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise DMO if a conflict arises.

# FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

# NO USE OF DMO NAME OR EMBLEM

Contractor shall not use DMO’s name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without the prior express written consent of DMO.

# Governing Law AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

# SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

# Amendments

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

# Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument. Electronic copies of signed signature pages transmitted electronically by any Party to the other Party either by facsimile or via the Internet (e.g., in a “pdf” or “tif” format data file or comparable format) will be deemed binding originals for all purposes and will be deemed delivered for all purposes when any such copies are received by the other Party.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

**silicon valley/santa clara dmo, inc.**a California non-profit mutual benefit corporation

|  |  |
| --- | --- |
| Dated: |  |
|  |  |
|  | Chief Executive Officer 5001 Great America ParkwaySanta Clara, CA 95050Telephone: (408) 748-7076 |

“DMO”

**INSERT CONTRACTOR’s NAME**
choose one: a[n] (insert State] corporation/partnership/individual

|  |  |
| --- | --- |
| Dated: |  |
| By (Signature): |  |
| Name: |  |
| Title: |  |
| Principal Place of Business Address: |  |
| Email Address: |  |
| Telephone: |  |

“CONTRACTOR”

EXHIBIT A

SCOPE OF SERVICES

The Services to be performed for the DMO by the Contractor under this Agreement are set forth below.

Insert Services to be performed

EXHIBIT B

SCHEDULE OF FEES

Contractor will bill DMO on a monthly basis for Services provided by Contractor during the preceding month on an invoice and in a format approved by DMO and subject to verification and approval by DMO. DMO will pay Contractor within thirty (30) days of DMO’s receipt of an approved invoice.

\*NOTE: This Exhibit B should contain a schedule of rates and fees which includes all billing amounts and costs as follows (if applicable), such as:

-Fee Schedule Effective Date

-Hourly Billing Rates for Each Staff Position/Level

-Minimum Billing Hours

-Charges for Equipment by Day/Week/Month

-Travel Time and Costs

-Per Diem Expenses

-Expendable Material or New Parts Costs

-Outside Services Costs

-Overtime Costs

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting the Contractor’s indemnification of Silicon Valley/Santa Clara DMO, Inc., and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect during the period of performance of the Agreement and for twenty-four (24) months following acceptance by Silicon Valley/Santa Clara DMO, Inc., at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to Silicon Valley/Santa Clara DMO, Inc. so that any other coverage held by Silicon Valley/Santa Clara DMO, Inc. shall not contribute to any loss under Contractor’s insurance. The minimum coverages, provisions and endorsements are as follows:

1. **COMMERCIAL GENERAL LIABILITY INSURANCE**
	1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

$1,000,000 Each Occurrence

$2,000,000 General Aggregate

$2,000,000 Products/Completed Operations Aggregate

$1,000,000 Personal Injury

* 1. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
	2. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
		1. Coverage shall be on a “pay on behalf” basis with defense costs payable in addition to policy limits;
		2. There shall be no cross-liability exclusion which precludes coverage for claims or suits by one insured against another; and
		3. Coverage shall apply separately to each insured against whom a claim is made, or a suit is brought, except with respect to the limits of liability.
1. **BUSINESS AUTOMOBILE LIABILITY INSURANCE**

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars ($1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

1. **WORKERS’ COMPENSATION**
	1. Workers’ Compensation Insurance Policy as required by statute and employer’s liability with limits of at least one million dollars ($1,000,000) policy limit Bodily Injury by disease, one million dollars ($1,000,000) each accident/Bodily Injury and one million dollars ($1,000,000) each employee Bodily Injury by disease.
	2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers’ Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
	3. This policy must include a Waiver of Subrogation in favor of Silicon Valley/Santa Clara DMO, Inc., its directors, commissions, officers, employees, volunteers and agents.
2. **PROFESSIONAL LIABILITY**

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars ($1,000,000) per claim or two million dollars ($2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the DMO Attorney.

1. **COMPLIANCE WITH REQUIREMENTS**

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

* 1. Additional Insureds. Silicon Valley/Santa Clara DMO, Inc., its directors, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor’s work for DMO, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85, or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
	2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor’s insurance.
	3. Cancellation.
		1. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to DMO at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
		2. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to DMO at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
	4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.
1. **ADDITIONAL INSURANCE RELATED PROVISIONS**

Contractor and DMO agree as follows:

* 1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by DMO, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to DMO for review.
	2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge DMO or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to DMO. It is not the intent of DMO to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against DMO for payment of premiums or other amounts with respect thereto.
	3. The DMO reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.
1. **EVIDENCE OF COVERAGE**

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to DMO and as described in this Agreement. Contractor shall file with the DMO all certificates and endorsements for the required insurance policies for DMO’s approval as to adequacy of the insurance protection.

1. **EVIDENCE OF COMPLIANCE**

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to DMO, or its representative as set forth below, at or prior to execution of this Agreement. Upon DMO’s request, Contractor shall submit to DMO copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to DMO pursuant to this Agreement shall be mailed to:

Silicon Valley/Santa Clara DMO, Inc.

5001 Great America Parkway

Santa Clara, CA 95054

1. **QUALIFYING INSURERS**

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the DMO or its insurance compliance representatives.